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November 30, 2007

Our File Number: 2-367869

BY FAX

David Jewitt
Jewitt & Associates
Barristers and Solicitors
1505 Carling Avenue, 2nd Floor
Ottawa, ON K1Z 7L9

Dear Mr. Jewitt:

Re: BRON, Ian v. Attorney General of Canada et al
CFN: 07-CV-39303

Please find attached hereto our Statement of Defence, which is served upon you pursuant to the *Rule of Civil Procedure*.

Yours truly,

Gregory Tzemenakis
Counsel

Enc. Statement of Defence

Canada

Court File No. 07-CV-39303

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

IAN BRON

Plaintiff

and

ATTORNEY GENERAL OF CANADA, JOANNE ST-ONGE,
GERALD FRAPPIER, MARC GREGOIRE and LAUREEN KINNEY

Defendants

STATEMENT OF DEFENCE

Introduction

1. The Attorney General of Canada (Attorney General) defends this action on behalf of Her Majesty the Queen in Right of Canada (Her Majesty). Contrary to the allegations made in the Statement of Claim, the plaintiff is not a whistle-blower. The essence of his allegations relate to what he perceives to be injustices perpetuated against him and not about institutional wrong-doing that have a public interest component. Parliament has entrusted the adjudication of these work-related allegations to legislatively based processes and other tribunals, thereby depriving this Court of jurisdiction. Finally, the plaintiff is barred from recovering any damages because he failed to commence his action within the time prescribed by the *Limitations Act*, R.S.O. 1990, c. L.15.
2. This statement of defence is made without prejudice to the right of the Attorney General to challenge the jurisdiction of this Honourable Court over the subject matter of the action, as more fully explained below.

3. The defendants admit the allegations in paragraph 2, 3, 8, 15, 28, 45 and 81 of the statement of claim.
4. The defendants deny all other allegations in the statement of claim, except where expressly admitted, and in particular deny paragraphs 1, 4-7, 9-14, 16-27, 29, 31-42, 44 and 46-80.
5. The defendants have no knowledge of the allegations in paragraph 30 and 43 of the statement of claim.

The Parties

A. The plaintiff

6. Since June 30, 2003, the Plaintiff has been an employee of Her Majesty. He has, since then, occupied a variety of positions in Her Majesty's public service.

B. The defendants

7. The Attorney General defends this action on behalf of Her Majesty pursuant to sections 3, 10 and 23 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 (as amend).
8. The Attorney General assumes vicariously responsibility for the actions of her servants when acting in their official capacities, in good faith and within the scope of their duties. The plaintiff pleads his action against Joanne St-Onge (St-Onge), Gerald Frappier (Frappier), Laureen Kinney (Kinney) and Marc Grégoire (Grégoire) (collectively referred to as the "Four Named Defendants") in their representative capacities as servants of Her Majesty. The plaintiff has therefore inappropriately named the Four Named Defendants; they should be struck from this proceeding.
9. From January 2002 to September 2003, Grégoire was the Associate Assistant Deputy Minister, Safety and Security. From September 2003 to the present,

Grégoire is the Assistant Deputy Minister, Safety and Security. At no time did the plaintiff report directly to Grégoire.

10. Grégoire has approximately 1700 employees reporting to him through ten Director Generals and has functional responsibility over another 1700 employees working in Transport Canada's five regions through Regional Director Generals.
11. Grégoire also has delegated authority to manage harassments complaints originating from these groups of employees and to hear grievances at the second level made by employees reporting directly to Director Generals.
12. At all material times, Grégoire was the direct supervisor of the Director General, Marine Security, which initially included Frappier and then Kinney.
13. During the material time and up until October 1, 2007, Kinney was an employee of the Public Service Human Resources Management Agency of Canada. At no time, did the plaintiff report directly to Kinney or did Kinney act as a direct supervisor over the plaintiff.
14. Kinney occupied three different positions with Transport Canada, including the position of Director, Marine Security Policy from May 2004 to August 2005 and Director General, Marine Security from May 2006 to the present. From August 24, 2005 to May 7, 2006, Kinney left Marine Security to head up a Rail Transit Security Taskforce.
15. From June 2002 to April 2004, Frappier was Director General, Security and Emergency Preparedness. From April 2004 to May 2006, Frappier was Director General, Marine Security. In May 2006, Frappier left Transport Canada to take a position at the Canadian Nuclear Safety Commission.
16. From June 2003 to May 2004, the plaintiff reported indirectly to Frappier through the SEP Director, Regulatory Affairs and through a Chief, Marine Security Regulatory Affairs. From November 2004 to September 2005, the plaintiff

reported indirectly to Frappier through the Director, Marine Security Regulatory Affairs.

17. From May 1, 2004 to February 4, 2005 St-Onge was the Acting Director, Marine Security Regulatory Affairs. From February 4, 2005 to the present, St-Onge is the Director, Marine Security Regulatory Affairs. From November 15, 2004 to September 6, 2005, the plaintiff reported directly to St-Onge in her capacity as Director, Marine Security Regulatory Affairs.

Transport Canada

18. One of the departments established by Her Majesty is Transport Canada, created by subsection 3(1) of the *Department of Transport Act*, R.S.C. 1985, c. T-18. The Minister of Transport, a member of Her Majesty's Privy Council, presides over Transport Canada. The Minister is assisted by a public servant, the Deputy Minister of Transport Canada.
19. Thirteen senior executives report to the Deputy Minister of Transport: one Associate Deputy Minister, four Assistant Deputy Ministers, two Associate Assistant Deputy Ministers and five Regional-Director Generals and the Director General of Communications.
20. The Safety and Security Group of Transport Canada is responsible for the development of regulations and national standards, as well as for the implementation of monitoring, testing, inspections and subsidy programs, which contribute to safety and security in the aviation, marine, rail and road modes of transport.
21. The Assistant Deputy Minister, Safety and Security has ten Director Generals and one executive Director reporting directly to him, including the Director General, Marine Security.

22. The Marine Security Directorate was established in May 2004, by severing the marine functions from the Security and Emergency Preparedness Directorate to reflect significant new international and Canadian requirements for security systems for the marine transportation system. The Marine Security Directorate is responsible for marine security policy, marine security regulatory affairs and marine security operations, as well as functional authority for a regional marine compliance and enforcement program delivery through the Regional Directors, Security and Emergency Preparedness. Through the Interdepartmental Marine Security Working Group, the Directorate has a lead role in the coordination of government-wide marine security policy and initiatives. It is also responsible for the Marine Security Contribution Program.
23. There are five positions that report to the Director General, Marine Security: Director, Marine Security Regulatory Affairs; Director, Marine Security Policy; Director, Marine Security Operations; Director, Marine Security Contribution and Special Programs; and, Director, Strategic and Business Direction.
24. Marine Security, Regulatory Affairs plans, develops and amends the *Marine Transportation Security Regulations* and other legal instruments to maintain and enhance the security of the marine components of the National Transportation System. It works with internal and external stakeholders to ensure the development of instruments and policies consistent with Treasury Board's "Smart Regulations" policy and the harmonization of Canada's marine security regime with its international partners.
25. There are eight positions that report to the Director, Marine Security Regulatory Affairs including Chief, Marine Regulatory Projects, Chief, Marine Issues Management and Senior Marine Analysts.

The Marine Transportation Security Framework

26. The *Marine Transportation Security Act* S.C.1994, c. 40 [Assented to December 15th, 1994] was the first federal legislation to deal with marine transportation security. It provides the Governor in Council with the authority to make regulations respecting marine security.
27. In December 2002, the International Maritime Organization (IMO) adopted the International Ship and Port Facility Security Code (ISPS Code) and other amendments to the International Convention for Safety of Life at Sea Convention, 1974 (SOLAS Convention). These documents relate to the deterrence, prevention and detection of acts that threaten security in the marine transportation sector. All IMO contracting governments, including Canada, were required to have adopted the ISPS Code by July 1, 2004 and to have necessary regulations in place to give effect to the ISPS Code.
28. Transport Canada held extensive consultations with all sectors of the marine transportation industry. These commenced with a series of informational sessions on the ISPS Code. Subsequently, working groups were formed to produce recommendations and advice on the development of regulations — one each for vessels, marine facilities, offshore facilities and the marine facility restricted area access clearance program. Participants included representatives of industry groups and associations for vessels, marine facilities and the offshore oil and gas sector, operators of marine facilities and shipping lines, marine employer associations, marine insurance companies, marine training institutes, labour organizations, divested ports and public port authorities, the St. Lawrence Seaway Management Corporation, other federal and provincial government departments and agencies, and Transport Canada staff.
29. The draft *Marine Transportation Security Regulations* (MTR) (SOR/2004-144) were released on November 26, 2003. Public consultations were held on the draft proposed Regulations in December 2003 and January 2004 and were attended by 622 stakeholders.

30. The MTSR came into force on July 1, 2004. The MTSR provided comprehensive security requirements for the marine transportation industry that implemented all of the mandatory and most guidance provisions of the ISPS Code. They also implemented other provisions to ensure the unimpeded flow of Canadian maritime trade.
31. In April 2005, the Auditor General of Canada issued the results of her second audit of the government's 2001 budget anti-terrorism initiative in a report entitled Chapter 2-National Security in Canada—The 2001 Anti-Terrorism Initiative — Air Transportation Security, Marine Security, and Emergency Preparedness which included a review of the implementation of the ISPS Code.
32. The Auditor General's Report noted that Canada was required to implement, by 1 July 2004, the domestic ship and marine facility security requirements stipulated in the ISPS Code and did so by incorporating it in the MTSR. The report stated Transport Canada had successfully met the ISPS Code Agreement deadline of 1 July 2004. In particular the Auditor General of Canada stated that:
- the government's implementation of the ISPS Code, necessary to keep Canadian ports and ships in the business of world trade is generally going well;
 - the marine security programs have been based on an adequate threat and risk analysis;
 - the management of projects worked well in the case of marine security.
33. The MTSR were amended on November 2, 2006 to add several new parts and to correct minor errors and other inconsistencies.

Plaintiff's Employment History

34. The plaintiff joined Transport Canada on June 30, 2003 as a Marine Analyst at the PM-04 classification level with Regulatory Affairs in the Security and Emergency Preparedness Directorate.
35. On April 16, 2004, the plaintiff advised of his intention to leave his position and accept an ES-05 position. In a letter to St-Onge, he acknowledged her support and noted her professionalism, strength and dedication.
36. In May 2004, the plaintiff began a permanent position as a Senior Evaluation Officer at the ES-05 classification level with Strategic Policy in the Departmental Evaluation Services Division.
37. On November 15, 2004, the plaintiff rejoined Regulatory Affairs (in the Marine Security Branch) as an Acting Chief, Marine Regulatory Projects at the PM-06 classification level. The plaintiff became Chief, Marine Regulatory Projects on March 14, 2005.
38. On September 6, 2005, some six months later, the plaintiff voluntarily sought and then requested a secondment to another Directorate. St-Onge agreed to a three year secondment to Regulatory Affairs, Security Branch of Transport Canada at the PM-06 classification level, performing duties assigned and associated with the position of Aviation Projects.
39. Contrary to paragraph 49 of the statement of claim, on November 23, 2006 the plaintiff advised, by email, of his intention to accept a promotion and move to the Government Consulting Services Branch of Public Works and Government Services Canada (PWGSC). The plaintiff noted that his experience at Transport Canada over the past three years was invaluable.
40. On December 12, 2006, the plaintiff left Transport Canada for his new position with the Government Consulting Services Branch of PWGSC.

41. Prior to his departure from Transport Canada, and as and when required by Transport Canada management, the plaintiff performed some of the duties described in paragraph 9 of the statement of claim together with other duties and assignments appropriate to his various positions and job classifications. However, the plaintiff never had responsibility with respect to operational implementation issues.
42. As an employee, the plaintiff was required to diligently perform all his assigned duties and to account for any absence from the workplace by obtaining leave in advance or by explaining absences from Transport Canada that had not been approved previously.
43. As all public servants must, the plaintiff had sworn an oath that he would not, without due authority, disclose or make known any matter that comes to his knowledge by reason of such employment. The extent of these obligations is prescribed for public servants in the *Government Security Policy*, adopted by Treasury Board pursuant to s. 7 of the *Financial Administration Act*, R.S.C. 1985, c. F-10 and section 54 of the *Public Service Employment Act*, 2003, c. 22 (PSEA).
44. While employed in the Marine Security Directorate, the plaintiff always reported to more senior members / officials at Transport Canada. Decisions regarding overall marine security policy, strategic planning, regulatory direction, the drafting and implementation of all regulations and other instruments including any marine security regulations were made at levels above the plaintiff, based upon the considered opinions of more senior members and officials at Transport Canada.
45. As an employee of Transport Canada, the plaintiff was subject to the terms and conditions of two different collective agreements. At the PM classification level, the plaintiff was subject to the *Agreement between the Treasury Board and the Public Service Alliance of Canada – Program and Administrative Services*. At the ES classification level, the plaintiff was subject to the *Agreement between the*

*Treasury Board and the Social Science Employees Association- Group:
Economics and Social Science Services.*

46. Subject to section 91 of the *Public Service Staff Relations Act*, R.S.C. c. P-35 (PSSRA), and section 208 of the *Public Service Labour Relations Act*, S.C. 2003, c. 22 (PSLRA), the plaintiff was entitled to present a grievance in situations where he felt that he had been treated unjustly or where he considered himself aggrieved by any action or lack of action by the Employer as a result of any occurrence or matter affecting his terms and conditions of employment.
47. Further and in the alternative, the plaintiff was entitled to rely upon the provisions of the *Public Servants Disclosure Protection Act*, 2005 c. 46 (PSDPA). The PSDPA creates a complete scheme aimed at allowing public servants to report perceived wrong-doing or gross mismanagement. It also prohibits retribution for the making of a report, creating an exclusive mechanism for the adjudication of these types of disputes.

The Plaintiff is not a Whistle-Blower

48. The plaintiff is not a whistle-blower. The essential character of the plaintiff's allegations in the statement of claim are about alleged wrongs that have been perpetuated against him personally and not about institutional wrong doing that have a public interest component. The plaintiff has embarked on an escalating campaign of making ever more serious retrospective allegations of wrongdoing, most of which directly contradict his own stated views at the times in question.
49. Fifteen months following his secondment to a new Directorate, the plaintiff released an unsolicited report concerning the management of Transport Canada's Marine Transportation Security Framework (the "Report"), his former directorate. The plaintiff made serious allegations of mismanagement, misconduct and harassment; none of which are admitted, all of which are denied.

50. Contrary to statement of claim and in particular paragraph 11, the defendants deny that there are "serious security concerns", such that Canadians, the economy and the environment are at risk. In fact, Canada has been consistently recognized as a respected world leader in marine security, from the time of the development of ISPS Code to the present date.
51. Contrary to paragraph 12 of the statement of claim, the plaintiff never raised with each or any of the defendants any of the alleged serious security concerns at any time prior to the distribution of the Report. Most, if not all, of the concerns raised with St-Onge, Frappier and Kinney were of a personal nature.
52. The plaintiff has chosen to self-identify as an alleged whistle-blower in an attempt to circumvent the dispute resolution mechanisms that guide labour disputes in the Federal Public Service. In the alternative, the plaintiff is attempting to use this Honourable Court to gain exposure for an improper purpose.

Chronology of Key Events

53. Contrary to paragraphs 16 to 19 of the statement of claim, the defendants have no knowledge of the identities of the alleged employees who share the plaintiff's concerns and no other grievances or harassment complaints have been filed from employees with the Marine Security Directorate, with the exception of those noted below.
54. The defendants are aware of the identity of another TC employee who initially appeared to be in agreement with some of the plaintiff's concerns. However that employee unreservedly rejected on at least two occasions the plaintiff's continued attempts to include her in his actions without her permission.
55. In the spring / early summer of 2005 the plaintiff brought forward to St-Onge some minor issues about management and workload issues allegedly on behalf of other employees. Few details were provided and no issues of a security nature

were raised. St-Onge investigated the plaintiff's concerns and concluded that they were in large part based on his interpersonal working relationship with her.

56. A conflict resolution process was sought to address the concerns raised by the plaintiff in June 2005. Contrary to paragraph 21 of the statement of claim, the plaintiff refused to participate. On June 16, the plaintiff approached St-Onge and asked if she would attend mediation. St-Onge agreed to mediation even though she was not aware of the subject matter of the mediation. Some time later, St-Onge later learned from the mediator that the plaintiff had "cancelled" the mediation.
57. While St-Onge was away on annual leave, and while the plaintiff was formally off work due to illness, the plaintiff and another TC employee met with Frappier on August 9, 2005 to discuss workload and work management issues. During the meeting, concerns were expressed for the workload, the changing priorities and the distribution of work. The plaintiff also indicated that he felt he was being harassed by St-Onge. The other TC employee disagreed with the plaintiff's characterizations of harassment and felt that the issues had more to do with workload and a need for more resources. Frappier then met with St-Onge and reviewed in detail the applicable policies on harassment. St-Onge denied the allegations of harassment.
58. The plaintiff provided Frappier with a summary of his concerns by e-mail. It was suggested that the matter could be resolved through a re-assignment to another directorate. The plaintiff did not file a complaint of any kind at this time, nor did he raise any security concerns.
59. On or about September 2, 2005, the plaintiff, who was much taller than St-Onge, entered St-Onge's office, closed the door, sat on her desk and peered down at her in a threatening matter, while arguing that they had an agreement regarding his leave entitlements. The plaintiff was condescending and ridiculed St-Onge's linguistic and management skills. St-Onge reported this situation to Frappier who

in turn met with the plaintiff. The plaintiff became visibly distraught and referred to a prior unrelated incident from his youth. Frappier offered the plaintiff access to the Employee Assistance Program and discussed the avenues available for the filing of a formal complaint, if necessary.

60. The plaintiff did not pursue the matter further. In fact, shortly prior to his re-assignment through secondment in September 2005, the plaintiff sent an email to Frappier thanking him for facilitating his secondment and stating that while not completely satisfied, he considered the matters discussed in August closed and dealt with.
61. At no time during these meetings did the plaintiff raise any allegations of security concerns in respect of the Marine Security Transportation framework.
62. Grégoire first became aware of a situation involving management issues primarily against St-Onge and Frappier in Marine Security on or about November 14, 2005 through Transport Canada's Integrity Officer (TCIO). The TCIO did not disclose the identity of the employee that had raised these issues at this time. Around the same time, the TCIO also contacted Frappier. Grégoire met with Frappier to discuss the alleged management issues.
63. At the request of Grégoire, a staff meeting was convened by Frappier to discuss any and all management issues with the employees in the Marine Security Directorate. None of the employees present at that meeting raised any concerns and Frappier reported this information back to Grégoire and the TCIO. The plaintiff did not participate in the meeting as he was on secondment to another Directorate. St-Onge participated in only a portion of the meeting but not during the discussion of potential issues.
64. On or about December 5, 2005 the TCIO advised Grégoire that the same anonymous employee alleged the existence of an affair between St-Onge and Frappier although he had no direct evidence of this. Grégoire confronted Frappier

given the serious nature of the allegations and perception of a possible conflict of interest. Frappier denied the existence of the affair.

65. On December 22, 2005, the TCIO advised the plaintiff that he had been in touch with both Grégoire and Frappier, and that the management issues raised did not constitute wrongdoing within the remit of the TCIO and should be addressed through other appropriate internal processes. The plaintiff did not pursue these matters further with the TCIO.
66. On May 24, 2006, the plaintiff, now an employee in another Directorate, emailed Kinney to request a meeting to discuss concerns he had dating back to August 2005, including some personal concerns with St-Onge. Kinney and the plaintiff met on May 31, 2006.
67. By email dated June 5, 2006, Kinney summarized the plaintiff's concerns raised during the meeting of May 31, 2006. In particular, Kinney confirmed that she had been informally made aware of the plaintiff's concerns, that the plaintiff did not wish further involvement with these issues, and that no further action was required on her part. She provided the plaintiff with the name of the Group HR Advisor for advice as to official steps open to him.
68. By email dated June 5, 2006, the plaintiff provided a summary of his concerns, advised Kinney that he was appreciative of her concern for his well-being and that he would consider pursuing the issues he had raised through other internal avenues.
69. By email dated June 7, 2006, Kinney encouraged the plaintiff to follow up appropriate avenues with Human Resources.
70. On June 12, 2006, Kinney met with the other TC employee referred to in paragraph 57, who requested advice and support in preventing the plaintiff from misrepresenting her position and views.

71. By letter dated June 23, 2006, Kinney summarized the plaintiff's concerns, confirmed the plaintiff's intention to pursue an official complaint and advised the plaintiff of the resources and avenues available to him to pursue his complaint. Contrary to paragraph 33 of the statement of claim, Kinney advised the plaintiff not to contact her staff in the event that he chose to pursue an official complaint in light of her privacy, confidentiality and other obligations to ensure due process to all parties involved in any complaint. Her comments were in part to address another TC employee's concerns about the plaintiff's continued attempts to include her in his actions without her permission.
72. At no time during this meeting, or in any other meeting or emails with Kinney, did the plaintiff raise any allegations of security concerns in respect of the marine security transportation framework.

The Plaintiff's Grievance and Harassment Complaints

73. On July 27, 2006, the plaintiff lodged a formal harassment complaint against Kinney. The complaint also included St-Onge, but stated that Kinney could provide the substance of the plaintiff's complaint against St-Onge. The issues raised in the harassment complaint are similar, if not identical, to the issues raised in the statement of claim.
74. On July 28, 2006, the plaintiff's union, on behalf of the plaintiff and two other employees lodged a formal harassment grievance against management, which made passing reference to Kinney, St-Onge and Frappier. The issues raised in the grievance are similar, if not identical, to the issues raised in the statement of claim.
75. On September 26, 2006, Grégoire responded to the union and to the plaintiff seeking to determine the most appropriate avenue to address the issues being brought forward, and advised that he was reviewing the harassment complaint to determine its receivability.

76. As a result of a Joint Union Management Workplace Health Initiative, being developed with the assistance of the Public Service Labour Relations Board, Dispute Resolution Services Group, the parties agreed to hold the grievance and harassment complaints in abeyance.
77. On January 16, 2007, the plaintiff's union advised that all grievances/complaints filed by the plaintiff would be dealt with by CAPE due to the plaintiff's change of occupational group and representation.
78. On January 18, 2007, Grégoire wrote to the plaintiff requesting that he choose which avenue of recourse he wished to pursue to resolve the issues raised in the grievance and harassment complaint. The plaintiff did not respond to this letter.
79. On February 19, 2007, the plaintiff's union request that the grievance be taken out of abeyance and that a formal grievance hearing be scheduled.
80. On February 21, 2007, Grégoire advised the plaintiff that the harassment complaint file had been closed since he had not responded to the letter of January 18, 2007 and that the issues would be pursued through the grievance.
81. On May 17, 2007, the plaintiff's union requested to proceed with a second level hearing for the grievance.
82. The second level hearing took place on May 28, 2007. Grievances at the first and second level are routinely heard by managers responsible for the particular issues raised in a grievance. Kinney presided over the grievance in her capacity as Director General, Marine Security. One of the employees withdrew from the grievance before the hearing and the other employee did not attend.
83. On July 9, 2007, the grievance was transmitted to the third level with a hearing scheduled for October 3, 2007. On September 28, 2007, the plaintiff's union requested a deferral of the hearing. The third level hearing took place on November 15, 2007. A decision is pending.

The Distribution of the Report

84. On December 12, 2006, the plaintiff distributed a copy of his Report to a number of recipients, including the Auditor General of Canada and the Chair of the Standing Senate Committee on National Security and Defence. In an internal email sent to certain employees in the Marine Security Directorate, the plaintiff characterized the Report as a "parting gift" and wished them all the best "in the coming storm".
85. The plaintiff had never raised the security concerns outlined in his Report with each or any of the defendants, and in particular Grégoire, prior to the distribution of the Report on December 12, 2006.
86. The Report included no security classification and there was no evidence of efforts made by the plaintiff to limit its distribution or to prevent other employees from further circulating it.
87. On December 15, 2006, Kinney sent an email to all internal recipients of the Report instructing them not to disseminate the Report further. She also invited them to bring forward any issues or complaints with their managers, raise a grievance or harassment complaint or raise any issues independently with the TCIO.
88. On December 21, 2006, Grégoire wrote to the plaintiff acknowledging receipt of the Report, advised him that further investigation was underway to determine appropriate next steps and any potential violation of applicable legislation and policies, warned against the further dissemination of the Report which could result in administrative and/or legal action and outlined options available to pursue his personal concerns. Grégoire was concerned that the contents of the Reports should have been classified as SECRET. Grégoire was equally concerned that the plaintiff has used his access to privileged and other information inappropriately.

89. Also on December 21, 2006, Grégoire, as part of Transport Canada's standard practice, wrote to Karen Walker, the plaintiff's supervisor at PWGSC, advising that Transport Canada had commenced an investigation in relation to the distribution of the Report and requesting that she take steps to ensure that the plaintiff has no access to any documents or materials provided to or relating to Transport Canada. A copy of this letter was provided to the plaintiff on December 22, 2006.
90. On December 22, 2006, the plaintiff responded to Grégoire's letter. Among other things, he acknowledged that he was fully aware of the implications of his actions, suggested that he was the subject of reprisals and that he was compelled to make a further disclosure to the Public Service Integrity Commissioner (PSIO). On December 22, 2006 and January 2, 2007, the plaintiff wrote similar letters to the Minister of Transport, Infrastructure and Communities.
91. On January 22, 2007, Grégoire wrote to the plaintiff seeking to contain the further dissemination of the Report and pledging Transport Canada's cooperation to the PSIO.
92. On February 15, 2007, the Deputy Minister wrote, on behalf of the Minister, to the plaintiff acknowledging receipt of his letters, advising that Transport Canada took his concerns seriously and advising that a detailed review was underway to determine what, if any, corrective action was required.
93. A detailed review of the appropriate classification of the Report was completed and the classification of the Report was set at the PROTECTED B level.
94. On May 8, 2007, Grégoire wrote to Karen Walker clarifying the classification of the Report as PROTECTED B and reiterating his request that the plaintiff not be given access to documents or materials provided to or relating to Transport Canada pending the completion of the investigation. A copy of this letter was sent to the plaintiff.

The Harassment Complaint against the Plaintiff

95. On December 19, 2006, St-Onge and two other employees filed a harassment complaint against the plaintiff for certain allegations made in the Report. In addition, St-Onge's complaint includes allegations of harassment dating back to the Fall of 2005.
96. On December 22, 2006, Grégoire acknowledged receipt of the harassment complaint and raised the prospect of mediation. Grégoire also advised the plaintiff of the existence of a harassment complaint made against him.
97. In January 2007, Transport Canada engaged the services of an independent investigator to address the issues raised in the harassment complaint. On March 5, 2007, Grégoire advised the plaintiff that an independent investigator has been hired to investigate the harassment complaints made against him.
98. At a meeting on July 6, 2007, the plaintiff met with the independent investigator and refused to participate in an interview as he questioned the independent investigator's competency and impartiality.
99. To date, the harassment complaint remains outstanding. Transport Canada is attempting to accommodate the plaintiff's concerns by engaging the services of two other independent investigators. No report is pending.

The Department Entrusts to Deloitte the Task of Investigating the Allegations

100. On February 1, 2007, Kinney put the plaintiff, and a number of other Transport Canada employees, on notice that an internal investigation was being conducted as a result of the contents of the Report.
101. On May 17, 2007, Kinney advised that Transport Canada had retained the services of Deloitte and Touche to conduct an administrative investigation and

that, in order to ensure the impartiality of the process, the investigation was being managed by the Audit and Advisory Services Group of Transport Canada, a group that report through the Assistant Deputy Minister, Corporate.

102. The objectives of the administrative investigation are to:
- Determine the material facts and associated timelines of the events described in the Report and determine the validity of the issues raised;
 - Assess whether Transport Canada responded appropriately to the issues raised in the Report; and
 - Determine whether there was any evidence of misconduct or wrongdoing on the part of either Transport Canada or relevant employees.
103. The Deloitte and Touche administrative investigation is ongoing.
104. To date, no disciplinary or administrative actions have been taken against the plaintiff.

The Possibility of Litigation

105. In February 2007, Frappier's personal lawyer wrote to the plaintiff seeking corrections to sections of his Report. The corrections concerned the suggestion of an intimate affair and the suggestion that Frappier was unqualified. Frappier raised the possibility of litigation if a reasonable compromise could not be reached.
106. The plaintiff's former lawyer responded by letter dated March 17, 2007 suggesting that a compromise could be reached to remove the references to the affair and advising that the entire matter fell within the scope of the *Agreement between the Treasury Board and the Public Service Alliance of Canada – Program and Administrative Services* and that the Superior Court had no jurisdiction to entertain such an action.

Lack of Jurisdiction

107. The PSSRA, the PSLRA and/or the PSDPA contain comprehensive and exhaustive regulatory schemes for the resolution of employment-related disputes, including allegations of retribution involving alleged whistle-blowers.
108. Sections 91 of the PSSRA and sections 208 of the PSLRA allow an employee to grieve virtually all employment-related issues up and including the final level of the grievance process. The right of an employee to refer a grievance to a third party adjudication is limited by section 92 of the PSSRA and section 209 of the PSLRA to events arising out of a collective agreement, discipline that consists of suspension, financial penalty, demotion or termination of employment.
109. Section 236 provides that the right of an employee to seek redress by way of grievance for any dispute relating to his or her terms and conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute.
110. Further and/or in the alternative, the PSDPA establishes a procedure for the disclosure of alleged wrongdoings in the public sector, including the protection of persons who disclose such wrongdoings. Sections 12 to 16 address issues of disclosure. Section 19 and following outlines a procedure for the filing of a complaint relating to reprisals and the ability to apply to the Public Servants Disclosure Protection Tribunal. The Tribunal has the ability to award a broad range of remedies, including compensation. Finally, section 51 provides for a right of judicial review and limits a public servant's rights of action.
111. Section 51.2(2) of the PSDPA provides that nothing in the Act affects any right of action that a public servant may otherwise have in relation to any act or omission giving rise to a dispute that *does not* relate to his or her terms or conditions of employment.

112. Subject to paragraph 112 any matters raised by the plaintiff that occurred on or after April 1, 2005 should not be dealt with by this Honourable Court by virtue of, among other things, section 236 of the *PSLRA* and/or s. 51.2 of the *PSDPA*.

No Breach of Duty of Care

113. The defendants deny that each or any of them owed the plaintiff the alleged or any duty of care.
114. In the alternative, the defendants deny that each or any of them breached any duty of care, statutory or otherwise, owed to the plaintiff or that they were negligent as alleged in the statement of claim, or at all.

No Abuse of Power Occurred

115. The defendants deny that the conduct alleged in the statement of claim constitutes an abuse of power or that any abuse of power occurred. At all material times, the Four Named Defendants conducted themselves reasonably, within the scope of their authority, without malice and in the case of St-Onge only for the purposes of monitoring and supervising the work of the plaintiff and other administrative matters.

No Conspiracy Exists

116. The defendants deny that they have or that any of them agreed, explicitly or tacitly, to injure the plaintiff as alleged in the statement of claim or at all.
117. The defendants deny that each or any of them is guilty of any of the acts alleged in the statement of claim or of any wrongful act toward the plaintiff as alleged or in any circumstance rendering each or any them liable as alleged or at all. In particular, the defendants deny the allegations made in paragraphs 37 and 58 to 62 of the statement of claim.

No Intentional/Negligent Infliction of Mental Distress

118. The defendants deny that they have or that any of them engaged in any course of conduct, let alone conduct that was extreme, flagrant and/or outrageous, and that was calculated to injure the plaintiff as alleged in the statement of claim or at all.
119. In the alternative, the defendants deny that the plaintiff suffered any damages whatsoever as a result of the acts alleged in the statement of claim or at all.

No Interference with Economic Interests

120. The defendants deny that the conduct alleged in the statement of claim was undertaken with an intention to injure and/or to interfere in any manner whatsoever with the plaintiff's method of gaining a living. At all material times, the defendants conducted themselves reasonably, within the scope of their authority, without malice and only for the purposes of monitoring and supervising the work of the plaintiff and ensuring completion of the work assigned to him.

No Defamation

121. The defendants deny that Grégoire, Kinney and St-Onge made any defamatory remarks against the plaintiff as alleged in the statement of claim or at all.
122. Contrary to the statement of claim, and in particular paragraphs 39, 40, 74 and 75, the contents of Grégoire's letter to Walker are not reasonably capable of a defamatory meaning in relation to the plaintiff. Furthermore, Grégoire conducted himself reasonably and without malice, actual or express.
123. In the alternative, the truth of the contents of Grégoire's letter provides a complete justification to the alleged defamatory remarks.

124. In the further alternative, the contents of the letter are covered by the occasion of qualified privilege given, among other things, that the information was communicated in the course of Grégoire's duties as a servant of Her Majesty and in good faith. Grégoire conducted himself reasonably and without malice, actual or express.
125. Contrary to the statement of claim, and in particular paragraph 76, Kinney denies having made the statements attributed to her. In the alternative, the alleged statements are not reasonably capable of a defamatory meaning in relation to the plaintiff. In the further alternative, the truth of the statements is a complete justification to the alleged defamatory statements and/or her statements are covered by the occasion of qualified privilege as they were communicated in the course of her duties as a servant of Her Majesty. Kinney conducted herself reasonably and without malice, actual or express.
126. Contrary to the statement of claim, and in particular, paragraphs 38, 54 and 77, the alleged statements attributed to St-Onge were made primarily in the context of a harassment complaint commenced by her and others against the plaintiff.
127. The alleged statements were also part of an internal administrative process available to all of Her Majesty's employees pursuant to the Treasury Board *Policy on Harassment in the Workplace*. The alleged statements can not be construed in isolation and without proper context.
128. In the alternative, the alleged statements are not reasonably capable of a defamatory meaning in relation to the plaintiff. In the further alternative, the truth of the statements is a complete justification to the alleged defamatory statements and/or her statements are covered by the occasion of qualified privilege as they were communicated in the course of her duties as a servant of Her Majesty. St-Onge conducted herself reasonably and without malice, actual or express.

No Cause of Action against the Four Named Defendants

129. The defendants deny that the Four Named Defendants or any one or more of them,
- engaged in deliberate and unlawful conduct in their capacity and were aware that their conduct was unlawful and likely to cause harm to the plaintiff, as alleged or at all.
 - engaged in deliberate and unlawful conduct in their capacity for the express purpose of harming the plaintiff, as alleged or at all.
130. The defendants further deny that the Four Named Defendants or any one or more of them whatsoever acted in an improper manner, or exercised his or her powers for an improper purpose, with deliberate disregard for the plaintiff, knowing that his or her misconduct (which is expressly denied) was likely to injure the plaintiff as alleged or at all.

Damages

131. The defendants deny that the plaintiff sustained the injury, loss or damage alleged in the statement of claim, or any loss or damage whatsoever.
132. The defendants deny that the plaintiff was in any way forced out of his chosen career path, given that the plaintiff voluntarily sought out and accepted other internal positions at Transport Canada and an external position within the Government of Canada, which the plaintiff characterized as a promotion.
133. If the plaintiff suffered damages as alleged, which is not admitted, such damages were neither caused nor contributed to by any act or omission of the defendants or anyone for whom Her Majesty may, in law, be responsible. For that reason, the plaintiff is not entitled to recover damages against the Four Named Defendants and section 10 of the *Crown Liability and Proceedings Act* bars any recovery against Her Majesty.

134. The defendants are not responsible at all for any pre-existing medical conditions of the plaintiff.
135. In the alternative, the defendants plead that the loss or damage claimed is grossly exaggerated, excessive and too remote to be recoverable at law.
136. In the further alternative, the defendants plead that the plaintiff failed to mitigate the damage he allegedly has sustained. In particular, the plaintiff:
- refused or neglected to cooperate with an investigator appointed to inquire into harassment complaints brought against him;
 - refused or neglected to cooperate with the investigation into his grievance complaint;
 - submitted false or misleading complaints of mismanagement, misconduct and harassment with senior management at Transport Canada, the Auditor General, the Public Service Integrity Officer, the Transport Canada Integrity Officer and the Chair of the Standing Committee on National Security and Defence, in an effort to intimidate the Four Named Defendants; and,
 - pursued a course of conduct intended to frustrate the defendants in their efforts to assist him and ensure the proper performance of his duties.
137. The defendants deny that the circumstances entitle the plaintiff to recover aggravated or exemplary damages as alleged in the statement of claim.

Limitation

138. In answer to the statement of claim as a whole, the defendants plead that this Honourable Court has no jurisdiction over the subject matter of the action.
139. In the alternative, and in answer to the statement of claim as a whole, the defendants plead that:
- some or all the loss, injury and damage allegedly suffered by the plaintiff occurred more than two years before the plaintiff commenced this action and

therefore is barred against the Four Named Defendants pursuant to the provisions of the *Limitations Act*, R.S.O. 1990, c. L.15; and,

- as some or all of the claims advanced in this action are barred as against the Four Named Defendants, it is also barred as against Her Majesty by sections 3 and 10 of the *Crown Liability and Proceedings Act*.

140. The defendants plead and rely in particular on the PSDPA, FAA, PSSRA, PSLRA, PSEA and *Crown Liability and Proceedings Act*.
141. The defendants ask that this action be dismissed with costs on a substantial indemnity basis.

DATE: November 30, 2007

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ATTORNEY GENERAL OF CANADA et al
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at
Ottawa

STATEMENT OF DEFENCE

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