

1963

BETWEEN:

Oct 28, 29,
30, 31
Nov. 1

NETA L. PECKSUPPLIANT;

1964

AND

June 16

HER MAJESTY THE QUEENRESPONDENT.

Petition of Right—Civil Service Act, R S C 1952, c 48, ss. 5 and 19—Civil Service Regulations, s. 118—Crown Liability Act, S. of C. 1952-3, c. 30, ss. 3(1)(a) and 4(2)—Dismissal of Civil Servant—Proper dismissal procedure—Defamation of character—Qualified privilege—Malice.

The suppliant, a civil servant from September 18, 1940 to the date of her dismissal, September 1, 1960, claimed reinstatement, damages for defamation of character, damages for wrongful dismissal and damages for not having been given a proper opportunity, prior to her dismissal, to present her side of the case as provided for by s. 118 of the *Civil Service Regulations*.

The suppliant had been employed by the Department of National Defence until 1949 when she was transferred to the Department of Fisheries, where she remained until she was dismissed in 1960. She had started in the Civil Service as a stenographer Grade I and was a stenographer Grade IV, occupying the position of secretary to the Director of the Information and Education Service in the Department of Fisheries at the time of her dismissal. The reasons for her dismissal as stated in the Notice of Dismissal dated July 26, 1960 were her "failure to maintain the confidence which is essential in secretarial responsibility and lack of maintenance of satisfactory personal staff relations". The suppliant had an interview with the Deputy Minister of Fisheries on July 29, 1960, which purported to be in compliance with s. 118 of the *Civil Service Regulations*.

Held: That Section 19 of the *Civil Service Act* puts into statutory effect the long standing rule that servants of the Crown, in the absence of provision to the contrary, which does not avail the suppliant herein, hold office during pleasure, and the suppliant accordingly has no right to the relief sought by her that she should be reinstated in her employment, nor has this Court jurisdiction to order such relief.

2. That since the suppliant's appointment was at pleasure under Section 19 of the Act she could have been dismissed arbitrarily without cause or notice and, accordingly, she has no right to any damages for wrongful dismissal.
3. That the statements in Mr. Lamb's letter of July 26, 1960 to the suppliant and the reasons for dismissal given in the notice of dismissal, which are relied upon by the suppliant to support her claim to damages for defamation of character are, in their plain and ordinary meaning, clearly defamatory of the suppliant and there was publication of the letter and the enclosed notice of dismissal not only to the stenographer to whom it was dictated by Mr. Lamb but also to other employees in the filing room of the Department by reason of a carbon copy of the letter and the notice being made a matter of record. However, these statements were made in the discharge of a duty arising in the course of employment and result in qualified privilege.

4. That on an occasion of qualified privilege the presumption of malice is rebutted and the suppliant can succeed only if she can prove that the respondent was not using the occasion honestly for the purpose for which the law gives protection, but was actuated by some indirect motive not connected with the privilege, i.e. malice in the popular sense. By virtue of Secs. 3(1) and 4(2) of the *Crown Liability Act* the suppliant must prove that there was malice in fact on the part of those making the statements complained of, in that they were actuated by motives of personal spite or ill-will, independent of the occasion on which the communication was made, and this the suppliant has failed to do. Her claim for damages for defamation of character accordingly fails.
5. That the suppliant's claim for damages for not having been given a proper opportunity to present her side of the case prior to dismissal, as provided for by s. 118 of the *Civil Service Regulations* must also fail because the allegations against her were communicated to her beforehand in a degree of particularity which was adequate and commensurate with the informality of the hearing and further because the suppliant knew in advance the allegations against her.
6. That the necessity of notice of the impending proceeding is implicit in Sec. 118 of the *Civil Service Regulations* and the length of such notice must be reasonable, the Court having jurisdiction to review the adequacy of such notice. In this case, the suppliant had a maximum of two clear days' notice but she stated she was available any time and did not object to the length of notice so must be taken to have waived any inadequacy of notice if such existed.

PETITION OF RIGHT for reinstatement and damages resulting from alleged wrongful dismissal of a civil servant.

The action was tried before the Honourable Mr. Justice Cattanach at Ottawa.

David Scott for suppliant.

D. H. Aylen for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

CATTANACH J. now (June 16, 1964) delivered the following judgment.

In her petition of right the suppliant, who was employed as a civil servant with the classification of Clerk Grade IV in the Information and Educational Service of the Department of Fisheries at Ottawa, Ontario, but was dismissed from her employment, complains that her dismissal was improper and seeks in her prayer for relief:

(a) reinstatement with full pay, effective September 1, 1960, together with full benefits insofar as accumulated sick

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leave and other grounds are concerned on the ground that she was wrongfully dismissed;

(b) damages for defamation of character in that a letter accompanying the notice of dismissal, together with reasons given in the notice of dismissal contained statements falsely imputing that the suppliant is unfit to be a civil servant (which statements will be set forth in detail later) and which were published;

(c) damages for wrongful dismissal in the amount of \$15,000;

(d) damages in the amount of \$15,000 for not having been given, prior to her dismissal, a proper opportunity to present her side of the case to the Deputy Head or to a senior officer nominated by the Deputy Head.

The suppliant, who was one of a family of eleven, entered the Civil Service of Canada on September 18, 1940 at the age of twenty-one after having qualified by written examination held shortly before that date in Windsor, Ontario. Her first assignment was as a stenographer Grade I in personnel administration of the Department of National Defence. She was later transferred to the Legal Services of the Air Force in that Department. She remained in that Department from 1940 to 1949 and progressed through stenographic Grades I, II and III.

The suppliant, at her own request, was then transferred to the Department of Fisheries as a stenographer Grade III where she was first employed in the office of the Assistant Deputy Minister from where she was transferred to the Information and Educational Service of that Department and where she was continuously employed until her dismissal on September 1, 1960, except from January 1957 until October of that year when she served in the personnel section of the Department.

To the time of her dismissal she had served for a period of nineteen years, eleven months and fifteen days during which time she was never denied the annual efficiency increment. Her total service in the government was divided almost equally between the Department of National Defence and the Department of Fisheries. She was promoted to stenographer Grade IV effective April 1, 1955 while in the employ of the Department of Fisheries.

The suppliant at all material times, except for a brief interlude which will be described in detail later, occupied the position of secretary to the Director of the Information and Educational Service and served under a succession of persons occupying that position, the last of whom being T. H. Turner who recommended the suppliant's transfer and failing that her dismissal.

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Mr. Turner joined the Information and Educational Service of the Department of Fisheries in 1948, serving first as an information officer. From 1955 to 1957 he was Assistant Director and in 1957 he became Director. Therefore, the suppliant's and Mr. Turner's periods of service in the Department were coincident.

In the fall of 1956, when Mr. Wooding was Director, friction developed between him and the suppliant to the extent that remedial action was required. Accordingly, with the concurrence of the Deputy Minister, the suppliant was transferred to the personnel section of Administration Services under the direction of Mr. J. S. Forrest.

At that time the suppliant's source of grievance was her belief that certain duties performed by her were to be assigned to the position of Editorial Assistant classified as a Clerk Grade IV and held by Mr. Craig in order that such position might be reclassified as a Principal Clerk and this despite the fact that persistent and repeated attempts and representations of the suppliant to have the position she occupied reclassified to a higher status.

The Service was in the development stage with a small staff as a consequence of which there was some overlapping of responsibilities and as the volume of work increased it became desirable to clarify the functions of positions. No specific duties performed by the suppliant were identified as to be taken from her and assigned to Mr. Craig, with the exception of the supervision of the stock-room, which had been assumed by the suppliant, it being convenient for her to do so because of physical location of the stock-room. There was a further division of responsibility susceptible of conflict in the duties performed by the suppliant and the Editorial Assistant, Mr. Craig, with respect to files of reference material. There were two sets of reference files, one dealing with material for articles to be written which was

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under the supervision of Mr. Craig and another set concerning correspondence and work done in the office which was under the supervision of the suppliant. The reason for the reclassification of the position of Editorial Assistant was because of the increase in the volume of work.

Cattanach J. In July, 1958 a competition for this reclassified position was advertised. The applicants were limited to employees of the Department of Fisheries. There were several applicants including Mr. Craig and the suppliant. A selection board was held under the chairmanship of Mr. Forrest and Mr. Craig was the successful applicant. It was the opinion of the Board that the duties of the position had been performed by Mr. Craig in the past in an eminently satisfactory manner and that his qualifications were superior to those of any other applicant. It was also the opinion of the Board that the suppliant was not possessed of the necessary qualifications either by training or experience.

The suppliant disagreed with the Board's decision and expressed to Mr. Turner and Mr. Forrest her view that the conduct of the Board was "peculiar". She contemplated an appeal from the Board's decision. In discussing the matter with Mr. Turner and Mr. Forrest she was told by them, without denying or advising against the exercise of her right of appeal, that she did not have the requisite qualifications. The suppliant did not appeal.

The suppliant worked in the Personnel section under Mr. Forrest for approximately nine months in 1957, during which time she expressed to him her view that some of the writers employed in the Information service were neither competent nor qualified and that her own ability to perform these duties was superior. She also expressed to him her view that her own administrative ability was superior to that of the Assistant Director.

In order that she might demonstrate her ability in these fields, Mr. Forrest asked the suppliant to prepare a procedure to deal with suggestion awards which the Civil Service Commission had just inaugurated and with the view of the possibility of the suppliant undertaking the duty of supervising the suggestion awards which might entitle her to a promotion to a higher grade. He specifically instructed the suppliant that this task should be entirely on her own

initiative. Contrary to those instructions the suppliant forthwith telephoned other departments of government to learn how the plan had been implemented by them. Mr. Forrest testified that he then lost faith in the suppliant.

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From his personal observations of the suppliant Mr. Forrest became concerned about her health, particularly because of her constant disturbance about her status in the Department. In January, 1957 he, therefore, recommended and arranged for the suppliant to undergo a medical examination by the medical officers of the Department of National Health and Welfare. The suppliant reluctantly agreed to submit to such examination the result of which being that she was found to be in good physical condition.

The suppliant had been under comparatively constant medical care because of physical ailments known to her, but which were not such as to affect her ability to work. At no time during her service in the Department of Fisheries did she apply for or take sick leave, except for occasional minor complaints and once when her leg was broken in a skiing accident, although she was granted a month's sick leave by the Department of National Defence in 1949 because of low blood pressure and nervous tension.

Because of office rumours which came to the suppliant's attention and scraps of conversations between fellow employees which she overheard, the suppliant concluded that her physical condition was a subject of concern to her superiors. These facts, in addition to Mr. Forrest's recommendation that she undergo a medical examination, prompted the suppliant to write a letter dated July 16, 1958 to Dr. Davey, the Chief of the Civil Service Health Division of the Department of National Health and Welfare enclosing two medical certificates, one dated July 2, 1957 from Dr. Charteris of Chatham, Ontario, who had been attending the suppliant for many years, stating that he had always found the suppliant's physical health satisfactory and the second dated July 15, 1958 from Dr. Dunning of Ottawa, Ontario stating that he had examined the suppliant on July 14, 1958 and found her to be in excellent physical condition. The suppliant's covering letter dated July 16, 1958 stated that the above mentioned medical certificates were forwarded with the hope that

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they would prevent a recurrence of any events similar to those which had previously happened. The suppliant, in so writing, had in mind the medical examination she underwent at the recommendation of Mr. Forrest in January, 1957 and to preclude any advantage being taken of her physical state to thwart her promotion or being used in any other manner detrimental to her. She considered it in her interest to have these medical certificates placed on record.

By letter dated June 24, 1959 the suppliant forwarded to the Department of National Health and Welfare a still further certificate from Dr. Charteris dated June 19, 1959 repeating that after examination he found the suppliant's "general health in good physical condition". The suppliant stated in this letter that this additional medical certificate was being submitted for the same purpose as those forwarded under cover of her previous letter of July 16, 1958.

It had been the suppliant's view that the duties performed by her as secretary to the Director of the Service warranted reclassification to a higher grade. When she first assumed this post in 1950 the position was classified as a stenographer Grade III. On April 1, 1955 the position was reclassified as clerk Grade IV. In the Department of Fisheries there was a secretary assigned to each of the heads of six directorates. In the early fifties these positions were classified as Grade III. The Department, after prolonged negotiations with the Civil Service Commission, was successful in persuading the Commission that work performed by all six of the incumbents of the positions justified reclassification of each such position to Clerk Grade IV. The suppliant was included in this group of reclassifications which is the reclassification she received effective April 1, 1955. However, the Department's success was achieved over the argument advanced by the Commission that all directorates were not of equal status and accordingly the responsibilities of the secretaries of the directors of the junior directorates were less and did not warrant higher classifications.

In the 1959-60 fiscal year the Department repeated its efforts to reclassify the positions of the six secretaries, this time from Clerk IV to Secretary to Executive and was

again met with the adamant argument of the Commission that all the directorates did not carry equal responsibility.

The Department acceded to this argument in the belief that it would be futile to insist on all six positions being reclassified simultaneously and that it would be preferable to accept the reclassification of four of the six positions to Secretary to Executive and to attempt a reclassification of the two remaining positions being secretary to the Director of Administration and secretary to the Director of Information Service (the latter being the position held by the suppliant) at a later time. Accordingly, the 1959-60 estimates of the Department, which came to the attention of the suppliant, included a provision for reclassifying four of the six secretarial positions, but excluded the position of the suppliant.

In March, 1959 the suppliant spoke to her Director, Mr. Turner, pointing out that if the secretaries of the other directors were to be reclassified upward, there was no explicable reason why she should not be included as well. Mr. Turner agreed with the suppliant and suggested she should write a memorandum outlining her view that her position should also be reclassified which he, in turn, would pass to the Deputy Minister with his concurrence and recommendation endorsed thereon. This was done with the exception that the suppliant's memorandum, with her Director's endorsement was channelled to the Deputy Minister through Mr. Lamb, the Director of Administration.

Approximately a month later the suppliant enquired of Mr. Turner if any results had been forthcoming from her memorandum and his recommendation, whereupon she was advised that the memorandum had been passed to Mr. Lamb and that any enquiry should be directed to him. The suppliant forthwith enquired of Mr. Lamb as to any action or results, but received no immediate reply from him.

During the course of her examination of departmental files for the purpose of preparing her memorandum to the Director supporting her view that her position should be reclassified, the suppliant came across a letter from the Civil Service Commission which she construed as confirmation of her belief that duties of her position had been

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assigned to Mr. Craig to justify a reclassification of the position held by him to that of Principal Clerk which, of course, revived the suppliant's sense of grievance and prompted her to make still further enquiries.

Cattanach J. With the concurrence of her Director, the suppliant wrote to the Civil Service Commission in May, 1959 as to the possibility of including her position with those of the secretaries of the other directors for reclassification. The suppliant received a reply from the Commission dated June 16, 1959 to the effect that upon review the Commission could not concur in the Department's recommendation that higher classification for the secretarial positions was warranted and that accordingly the recommendations reflected in the 1959-60 estimates were refused.

The Department did repeat its recommendation for reclassification of the positions of the secretaries of the Directors exclusive of the position held by the suppliant and the secretary to the Director of Administration in the estimates for the next ensuing fiscal year which was approved and implemented. However, the position of secretary to the Director of the Information and Consumer Service remained at Clerk Grade IV and after the dismissal of the suppliant on September 1, 1960 the position was filled at the stenographer Grade III level subject to the position of the succeeding incumbent being reviewed for the purpose of eventual reclassification to Clerk Grade IV.

In September 1959, the suppliant, in discussion with her Director, raised the matter of the letter from the Civil Service Commission with respect to the transfer of duties from her position to the position held by Mr. Craig. He did not agree with her interpretation of that letter. Immediately following this discussion the suppliant wrote her Director a memorandum on the subject, which memorandum was very shortly thereafter discussed with the suppliant by Mr. Turner and Mr. Lamb during which the suppliant was informed that the Civil Service Commission had no intention of reclassifying the suppliant's position and that the Commission had been under no misapprehension whatsoever in connection with the duties of the suppliant and those of the position of Mr. Craig which had

been reclassified as a Principal Clerk. The suppliant expressed the wish to write to the Commission concerning the matter to which Mr. Turner and Mr. Lamb expressed no objection. The suppliant then wrote the Commission by registered letter dated September 24, 1959, the envelope being marked personal. Following receipt of this letter by the Civil Service Commission, Mr. Forrest received a telephone call from an employee of the Commission in which mention of the receipt of the letter was made and enquiry was also made as to who the suppliant was. Mr. Forrest, as chief of personnel, was conscious of his responsibility for harmony in staff relationships, therefore felt that he should have an informal and personal conversation with the suppliant, which was arranged during lunch hour. He introduced the subject, which he knew would be a difficult one, by an enquiry of what was the suppliant doing to the Department and by advising her he had learned of her letter to the Commission and forecast the nature of the reply as being confirmation of the information already given the suppliant by Mr. Turner and Mr. Lamb. The interview terminated very shortly having deteriorated into generalities.

Thereafter the suppliant complained to officers of the Commission that the receipt of her letter should not have been brought to the attention of the Chief of Personnel of her Department.

The suppliant, whose excellence in taking and transcribing shorthand notes was acknowledged, aspired to more responsible and higher paid work in the Department, particularly that of an information officer. In 1958 the Civil Service Commission advertised for competition of a position as Information Officer Grade I in the Information and Educational Service at Ottawa open to all employees of Federal Government Departments. One of the qualifications for eligibility was graduation from a university of recognized standing. Shortly before this advertisement, positions of Information Officer Grade IV and Information Officer Grade III in Halifax and Vancouver were advertised and subsequent thereto the position of Information Officer Grade IV in Newfoundland. All three of such positions were senior to the position in Ottawa, but in none of them

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was graduation from a university a qualification. The suppliant assumed that the qualifications for the post in Ottawa were so drafted as to preclude her eligibility.

The Department, in consultation with the Civil Service Commission, sought to fill the positions in Halifax, Vancouver and Newfoundland from persons in that area with experience in the writing field by competition open to all persons. The likelihood of finding a person with a university degree was remote, but such lack of academic qualification was to be compensated for by long practical experience. On the other hand, the qualifications of the position in Ottawa were designed to attract persons already in the government service employed in more junior positions who were possessed of academic training but who lacked practical experience for training on the job.

The disparity in educational qualifications for the respective positions, though apparent, is thus explainable and the qualifications were not designed with the intention of eliminating the suppliant as a potential applicant for the post in Ottawa.

This disparity in educational qualifications was the subject matter of a letter from the suppliant to the Chairman of the Civil Service Commission.

Still further incidents arose which are illustrative of the relationship between the suppliant and her superiors in the Department.

The suppliant was asked by officers of the Department, with the consent of her director, Mr. Turner, to record the proceedings of a conference on fishing gear. This she did, but she transcribed her notes at home because she felt that this additional work interfered with her normal work during regular office hours. Her director gave his permission to do this. The suppliant then claimed two days leave credit for overtime work which was not immediately forthcoming from the Director of Administration because it was contrary to the applicable regulations which require that overtime work shall be done upon a written request from the Director of Administration, the suppliant's director not being authorized to so permit. After a lengthy exchange of memoranda the suppliant was eventually granted two days

leave credit. Her director supported and recommended the suppliant's request.

In July 1959 a model fishing boat costing \$750 was mislaid. Mr. Turner asked the suppliant to check correspondence to ascertain if the model had been loaned to anyone. Within the next day Mr. Turner learned that the model had been placed on loan by the Deputy Minister to a former Deputy Minister who had been responsible for putting this particular class of boat into the patrol service of the Department. He thereupon told the suppliant to discontinue her check. The suppliant then demanded to know where the model was, it being her feeling that having spent two days in checking she had a right to know. The suppliant, during this conversation, persisted in her enquiry which was terminated in the suppliant being told by her director that the matter was none of her business.

The question of conflict of duties having arisen, the suppliant made numerous requests for clarification and a formal statement of the duties of her position directed to her Director, the Director of Administration and the Civil Service Commission, but despite these repeated requests no formal statement was ever produced to her. It was conjectured in evidence that a statement of the suppliant's duties would have been in existence or compiled when the position occupied by the suppliant was reclassified to Grade IV on April 1, 1955.

In the organizational and functional chart of the Information and Educational Service as at October 17, 1952 (Exhibit R14) the clerical section, shown to be under the direct responsibility of the Assistant Director, consisted of four persons, a Clerk Grade III, a Typist Grade II, a Stenographer Grade II and a Stenographer Grade I. The typist and clerk had no relationship to the suppliant, they being engaged in other work in another office. However, the suppliant did exercise a supervisory function over the Stenographer Grade II and the Stenographer Grade I who were Miss Dignan and Mrs. Besack, respectively. Miss Dignan, whose position is included in the clerical section also filled the position of secretary to the Assistant Director.

The suppliant, Miss Dignan and Mrs. Besack occupied the same office. It is certain from the evidence that the

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suppliant in part functioned as an office manager and as being in charge of a stenographic pool consisting of Miss Dignan and Mrs. Besack. When other employees of the Service required typing to be done they would bring the work to the suppliant who would assign it to either Miss Dignan or Mrs. Besack and check the completed work before returning it to the person asking it to be done. I think the evidence has established beyond any doubt that the suppliant was an exacting taskmaster and that she was equally unsparing of herself. While the direct responsibility for the supervision of the clerical section was that of the Assistant Director, nevertheless, the suppliant did exercise a supervisory function over the two junior employees as above described.

The relationship between the suppliant and her director and between the two junior employees under the suppliant's supervision was undoubtedly strained. When the suppliant returned to the Information and Educational Service after working in the Personnel section under the direction of Mr. Forrest from January to October 1957, she was aware that the then Director, Mr. Turner, was not anxious to have her back. She returned to her original place of employment at the direction and with the concurrence of the Deputy Minister who specifically directed that bygone difficulties should be forgotten and a fresh and improved start made. At that time he also advised the suppliant if there was a recurrence of previous difficulties the suppliant would be "out".

The suppliant did not entertain a high regard for either the competence or industry either of Miss Dignan or Mrs. Besak. She objected to what she considered an inordinate waste of stencils which could have been corrected rather than retyped and failure to read over copy before typing to ascertain if all words were decipherable.

In the suppliant's view Miss Dignan took an excessive amount of sick leave which the suppliant believed to be because of a goitre and thyroid condition and to which condition the suppliant attributed Miss Dignan's propensity to become upset and burst into tears when subjected to correction by her.

In May 1960 the Department arranged the transfer of Miss Dignan to the Industrial Development Service, to avoid the friction that was prevalent between her and the suppliant, and her replacement by Miss Brophy.

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The suppliant's appraisal of Mrs. Besack was that she was somewhat contrary, was unable to follow directions either written or oral and when asked to do one thing she wished to do something else. It was the suppliant's understanding that Mrs. Besack was over-burdened by her family responsibilities and that she too was suffering from a thyroid disorder which accounted for her tendency to cry frequently and easily.

At Mr. Turner's request, Mr. Ronayne, the Assistant Director, who was responsible for the clerical section, conducted an investigation and concluded that both these employees were competent and capable of carrying out their duties in an adequate manner.

On October 14, 1959, a conversation took place during office hours between the suppliant and Mrs. Besack concerning a press announcement of the government's decision not to grant an overall increase to civil servants. The suppliant expressed the view that the proposed increase was not apposite because of unemployment in private industry and that many civil servants did not work as hard as persons in industry nor could they hold a job in industry. Apparently Mrs. Besack interpreted the suppliant's remarks as being directed at her.

Mrs. Besack went to Mr. Turner forthwith to complain of what she considered unbearable working conditions. Mr. Turner, because of Mrs. Besack's extremely agitated state, was unable to determine the precise cause of her disturbance other than to elicit that the suppliant had been rude to her. He calmed her by advising she should not permit herself to be upset and that efforts would be made to make working conditions more pleasant.

The next day, October 15, 1959, Mr. Turner called the suppliant into his office and informed her that effective forthwith she was relieved of all supervisory duties because she was not temperamentally suited to discharge them and henceforth they would be actively assumed by Mr. Ronayne.

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Mr. Turner thereupon recommended to the Deputy Minister that the suppliant should be transferred to a position elsewhere in the government service and failing arrangements to effect her transfer she should be dismissed from her employment.

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It was Mr. Turner's view that the suppliant was overly officious, unduly inquisitive and inordinately rude which characteristics gave rise to continual tension, conflict and agitation with a consequent diminution in the efficiency of the Information and Educational Service for which he was responsible. He attributed such difficulties solely to the attitude of the suppliant.

While the suppliant was informed she was relieved of her supervisory duties on October 15, 1959 she was not effectively relieved of them until much later. The accommodation occupied by the Service did not permit of a separation of the staff and all three girls continued to occupy the same office. The suppliant continued to assign work to the two junior employees and to check the accuracy thereof. It was not until the Department moved to a new building in the spring of 1960 that it was possible to segregate the employees.

When Miss Dignan was transferred to other duties and replaced by Miss Brophy as described above, Miss Brophy came under the direct supervision of the suppliant. Miss Brophy testified that her relationship with the suppliant was most amicable.

On November 15, 1959 Mr. Turner in the presence of Mr. Ronayne dictated a memorandum to the suppliant advising her that she was to report to the Civil Service Commission for an interview. The suppliant testified she was not informed of the purpose of the interview either by her director or by the officers of the Civil Service Commission who composed the interviewing board.

On November 17, 1959 the suppliant was interviewed by a board of the Civil Service Commission, consisting of Mr. Grant, Mrs. Farley and Miss Henry. The purpose of this board was to assess the ability and personal suitability of the suppliant to perform supervisory duties with the possibility of recommending her transfer to another department of government.

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Subsequent to the suppliant's interview with the Board, the suppliant not having heard any report, again attempted to obtain a written statement of her duties and on January 27, 1960 she wrote to the Chairman of the Civil Service Commission to enquire whether her duties would be changed when the Department moved to its new accommodation. She received a reply dated February 29, 1960 to the effect that her duties would neither be increased or decreased, but that it was the suppliant's duty to perform the duties assigned to her in a competent and cooperative manner.

In the meantime the suppliant had a further interview with Mr. Turner and Mr. Forrest concerning her duties and the possibility of promotion. The suppliant was asked to submit her conception of the duties of her position which she did by a document dated April 1, 1960 which was introduced in evidence as Exhibit S.28 consisting of a minute and detailed review of everything the suppliant did. She did not receive an official statement of duties in reply, nor any written comments on the statement prepared by herself.

It was the suppliant's avowed purpose to undertake and have assigned to her a number of duties to ensure that her position would be upgraded. Whatever the duties of the suppliant may have been or what she conceived them to be, she therefore took steps to guard against any intrusion on or diminution thereof.

When the Department moved to its new quarters the suppliant considered her duties as being reduced. Instead of having a telephone with a two line key switch and one of the lines with three extensions as she had before, she then had only a single line to answer.

The suppliant promptly wrote another letter dated June 12, 1960 to the Chairman of the Civil Service Commission complaining that contrary to the assurance in his letter of February 29, 1960 her duties were being diminished, she had only one telephone to answer, she was being relieved of her supervisory functions and the like, but that her prime objection was that duties performed by her would be assigned to other positions which would be upgraded and hers was not even with those duties.

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Prior to writing her letter of June 12, 1960 to the Chairman of the Civil Service Commission, the suppliant sent a memorandum in similar terms to the Assistant Deputy Minister on what the suppliant termed a private basis as to the advisability of discussing these matters with the Civil Service Commission. In an oral discussion the Assistant Deputy Minister, who disavowed his responsibility in personnel matters, recommended against the suppliant adopting such a course because it would constitute an impediment to the Department recommending a transfer for her if one should become available. The suppliant saw fit to disregard this advice.

On July 26, 1960 Mr. Lamb, Director of Administration, wrote a letter to the suppliant which was delivered to her by hand the same day in a sealed envelope. However, Mr. Lamb dictated the letter to his secretary and a carbon copy was placed upon the Departmental files. The content of such letter, together with the reasons given in a notice of dismissal enclosed therewith constitute the basis of the suppliant's claim for damages for defamation of character. The letter, introduced in evidence as Exhibit S5, reads as follows:

July 26th, 1960

Miss N. L. Peck,
 Department of Fisheries,
 Ottawa, Ontario.

Dear Miss Peck:

It is clearly evident because of your actions over the past two or three years that you are not satisfied to accept duties prescribed by the Department as those of Secretary to the Director of the Department's Information and Educational Service. As a Secretary, the Department acknowledges your ability in what might be termed the manual or mechanical function of the position but you have displayed a total lack of the confidence essential in secretarial responsibilities. There is also a proven lack of ability on your part to have satisfactory personal relations with members of the staff of the Information and Educational Service. Because of this, there has been a fairly constant agitation and aggravation to those concerned including the Director.

Sometime ago the Department took up with the Civil Service Commission, partly at your suggestion, the possibility of a transfer for you to another Department of Government. In order that your case might be fully and fairly dealt with, the Commission arranged that you be interviewed by a Board in order that a full appraisal of your situation, qualifications and possible moves might be made. The Commission has informed the Department that it was so obvious to its officers that you possessed in full measure the defects of temperament to which this Department had

referred that it was felt to be inadvisable to transfer you to another Department and so create a similar situation there. For this reason consideration could not be given to an internal transfer when positions of Clerk 4 (Secretarial) in the Department were being considered in recent weeks.

Despite discussions with you and the opportunity you have had to appear before the Civil Service Commission, no apparent improvement has taken place in your attitude nor in your relationship with supervisory and other staff. The Department has no alternative in the circumstance than to recommend your release from its service effective September 1st, 1960.

You will, no doubt, be aware of the provisions of Section 118 of the Civil Service Regulations. I attach the form prescribed by the Civil Service Commission to enable compliance with this Section. If you plan to take advantage of the provisions thereof, the Deputy Minister himself will hear your side of the case. He expects to be away from the Department for some time after August 1st. It will therefore be necessary that any discussion take place before July 29th.

Yours truly,

J. J. Lamb,
 Director,
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The notice enclosed therewith was in the following language:

NOTICE TO MISS NETA L. PECK UNDER SECTION 118 OF THE CIVIL SERVICE REGULATIONS

As you have already been informed, the Department proposes to take the appropriate steps to dismiss you, effective September 1st, 1960.

This is to advise you that you may present your side of the case to the Deputy Minister or to a senior officer of the Department nominated for that purpose by the Deputy Minister.

If you intend to take advantage of having your case heard in this manner, the Deputy Minister will hear any representations you may wish to make.

Reasons for dismissal:

Failure to maintain the confidence which is essential in secretarial responsibility and lack of maintenance of satisfactory personal staff relations.

J. J. Lamb,
 Director,
 Administrative Service,
 DEPARTMENT OF FISHERIES.

Dated at Ottawa, this 26th day of July, 1960.

The concluding paragraph of Mr. Lamb's letter to the suppliant clearly indicated that if the suppliant wished to avail herself of section 118 of the Civil Service Regulations

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which permit of an employee, prior to dismissal, being given an opportunity to present her side of the case to the Deputy Head or to a senior officer nominated by the Deputy Head, then the matter would be heard by the Deputy Minister himself and it was imperative that the hearing take place on July 29, 1960 or before because the Deputy Minister would be absent for a prolonged period thereafter.

Accordingly the suppliant wrote Mr. Lamb a letter dated July 27, 1960 which was introduced in evidence as Exhibit S6 and reads as follows:

DEPARTMENT OF FISHERIES

Ottawa

772-P-426
 27 July, 1960.

Mr. J. J. Lamb,
 Director,
 Administrative Service,
 Department of Fisheries,
 Ottawa, Ontario

Dear Mr. Lamb:

This is to acknowledge receipt of your letter of 26 July and to advise you that I propose to take advantage of Section 118 of the Civil Service Regulations. Would you, therefore, please make an appointment for me with the Deputy Minister. I am available any time.

However, would you be good enough to see that there will be available at the time of my appearance the following information:

- (a) Statement of any confidence that I have divulged, together with approximate date and the name of the person or persons to whom I divulged the confidence.
- (b) The names of any fellow members of the staff with whom I have been unable to establish working relationships.
- (c) Details of the lack of confidence essential in secretarial responsibilities.

You will appreciate that in order for me to answer intelligently any accusations made, I should have full particulars of them.

Depending on the constitution of the meeting, it may be that I should be afforded the opportunity of having a representative present. If such is the case, will you please let me know the time of the meeting sufficiently in advance to allow me to make any arrangements that may be necessary.

Yours very truly,
 Sgd. N. L. Peck
 (Miss) N. L. Peck
 Information Service

This letter bears an undated handwritten endorsement thereon initialled by Mr. Lamb as follows:

Appt.mt arranged for 9.30 AM—Jul 29 and Miss Peck so advised.

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Other than being verbally informed by Mr. Lamb that the appointment with the Deputy Minister had been arranged for the morning of July 29, 1960 no answer was made to the suppliant's letter of July 27, 1960.

However Mr. Lamb requested Mr. Turner to obtain the names of any fellow members of the staff with whom the suppliant was unable to establish a satisfactory working relationship.

Mr. Turner thereupon conducted a survey of the staff to make a list of the persons who could not get along with the suppliant and to ensure that no person was incorrectly included. There were some employees who were good friends of the suppliant who were not canvassed as well as some who indicated that they had no complaint about the suppliant, but on the contrary entertained a high regard for her ability and cooperation. James Kiwlock, Mrs. Mary Hathaway, Miss Kathleen Stewart, James Steen and Mrs. Hopper (formerly Miss Brophy) each testified that they had received the utmost assistance and courtesy from the suppliant.

As a result of the canvass so conducted Mr. Turner supplied to Mr. Lamb, pursuant to his request, the names of, Mr. Ronayne, the Assistant Director, Mr. Boulden, Radio Information Officer, Mr. Craig, Miss Dignan, Mrs. Besack and his own. While Mr. Lamb did not give this list of names to the suppliant he did place the list before the Deputy Minister.

The interview took place on the morning of July 29, 1960 as arranged, the only persons present being the suppliant and the Deputy Minister. The duration of the meeting was approximately five minutes. The suppliant, as was her habit when discussing such matters with her senior officers, took a notebook with her and recorded in shorthand whatever the Deputy Minister said. She subsequently transcribed her notes and reconstructed her own answers and remarks. This transcript of the interview with the suppliant's interpolations, I am satisfied is accurate and reads as follows:

Interview with Mr. C. R. Clark, Deputy Minister of Fisheries—

29 July, 1960

Mr. Clark—Sit down, Miss Peck.

Miss Peck—Thanks.

Mr. Clark—Well, Miss Peck, what have you to say for yourself?

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Miss Peck—Could I see the Information I requested in my letter to Mr. Lamb.

Mr. Clark—I want to hear what you have to say.

Miss Peck—There isn't much I can say. When I returned to the Information Branch you said everything that happened previously was to be forgotten, to which I agreed. I have had difficulty ever since. I worked hard, attended meetings, helped everyone. I had to quibble for four months to get two days leave for typing all the minutes of the Vessel-Gear Conference at home—96 pages. I thought I should be entitled to a promotion when the other secretaries were being promoted. When I asked why my name was not included, I couldn't get an answer.

Mr. Clark—You finally did get your leave, didn't you?

Miss Peck—Yes.

Mr. Clark—You have upset too many of the staff.

Miss Peck—Could I have the names of the individuals with whom I can't establish working relationships.

Mr. Clark—Mr. Turner, Mr. Ronayne, Mr. Boulden, V. Craag, E. Dignan and Mrs. Besack.

Miss Peck—I have never argued with any of them. (Was surprised at the names given to me).

Mr. Clark—No, Miss Peck! This memorandum here doesn't indicate that.

Miss Peck—I was only comparing my temperament with that of other staff.

Mr. Clark—This here (referring to memorandum again) certainly reflects how bad your temperament is. You should take a look at yourself.

Miss Peck—I have a couple of times I have been taking courses to try to improve, but it's rather difficult to correct my faults by myself until someone tells me what is wrong with me.

Mr. Clark—Why just the other day somebody reported something about you and it was awful. I have never dismissed anyone before. In view of your temperament, I have no other alternative than to dismiss you.

Miss Peck—Is it possible for me to have a copy of the report submitted by the Civil Service Commission officials who interviewed me last November?

Mr. Clark—I will look into that. You will hear from Mr. Lamb.

Miss Peck—Fine. I intend to institute some sort of appeal. Thanks.

The suppliant did not meekly submit to the Deputy Minister's announcement that he had no alternative but to dismiss her.

On August 13, 1960 she wrote a further letter to the Chairman of the Civil Service Commission, introduced in evidence as Exhibit S.17, enclosing a copy of Mr. Lamb's letter to her dated July 26, 1960 and the enclosure therewith (Exhibit S.6) as well as a copy of her reply dated

July 27, 1960 (Exhibit S.7) complaining that her shortcomings were never discussed with her by her superiors so that she could correct them, nor was she made aware of the substance of the staff's complaints about her so she could state her side of the case. Particularly since Mr. Lamb's letter of July 26, 1960 referred to an expression of the view of the Commission that "it was so obvious to its officers that you possessed in full measure the defects of temperament to which this Department has referred that it was felt to be inadvisable to transfer you to another Department and so create a similar situation there", the suppliant requested a copy of the transcript of the interview she had with officers of the Commission on November 17, 1959.

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The Chairman replied by letter dated August 17, 1960 advising the suppliant that no transcript had been taken, but confirmed as a result of the interview, the Commission, while fully conscious of the suppliant's competence and skill as a clerk and stenographer, was not prepared to recommend her transfer to a position in any other department involving the supervision of staff.

On Saturday, July 30, 1960, the day following her interview with the Deputy Minister, the suppliant went to her home in Chatham, Ontario, where she consulted Dr. Charteris, her physician.

The suppliant had been Dr. Charteris' patient for thirty-five years. He had treated her occasionally prior to 1956 and continuously since then.

On January 4, 1956 he first observed an indication of menopause syndrome, the symptom being a cessation of menstruation. This condition in the suppliant produced irritability, fatigue and nervous tension which in the doctor's opinion persisted until 1961. In his view the suppliant's physical ability to work was affected only by fatigue, the balance of the manifestations of the suppliant's condition being primarily mental disturbance, tension and anxiety affected her personality which the Doctor testified from his personal knowledge of the suppliant had been a sunny disposition prior to 1956.

The suppliant consulted her physician in January, twice in April, on July 30, four times in November and four times in December all in the year 1960.

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The treatment prescribed by Dr. Charteris was rest for a minimum period of six months and hormone therapy. In his opinion the suppliant's physical condition, including the menopause state, was responsible for any ill disposition the suppliant may have felt towards her fellow workers and resulted in a persecution complex and state of anxiety.

Dr. Charteris also testified that he received a long distance telephone call at his office, prior to the suppliant's dismissal, from some male person whom he understood to be an officer of the Department of Fisheries. This unknown person enquired concerning the suppliant's health and the necessity for her having time off from work. Dr. Charteris advised the caller that the suppliant was ill, her duties should be lightened, a period of rest was required and she must of necessity consult a physician. He did not explain the nature of the suppliant's illness. No such telephone call emanated from any responsible officer of the Department of Fisheries and an exhaustive check of the Departmental records did not disclose that any call had been placed from the Department in Ottawa to Dr. Charteris in Chatham.

Dr. Charteris did not provide the suppliant with a written certificate concerning her condition, nor did he write to her employer advising leave of absence presumably because the suppliant did not ask him to do so. Dr. Charteris explained that the two certificates he provided to the suppliant dated July 2, 1957 and June 19, 1959 were of a routine nature and related exclusively to the state of her physical well being.

On August 24, 1960 a minute of a meeting of the Treasury Board was approved by the Governor-in-Council being P.C. 1960—8/1154 whereby the suppliant was dismissed from the government service, effective August 31, 1960. By an amending Order-in-Council being P.C. 1960—5-1322, the effective date of dismissal was changed to September 1, 1960.

In November the suppliant consulted Mr. C. N. Beauchamp, a solicitor who made representations by personal interviews and by mail to the Chairman of the Civil Service Commission and the Minister of Fisheries the substance of which were that because of the suppliant's state of health she should be reinstated, given a period of sick leave to regain her nervous balance and if following which there was no improvement in the suppliant's relations with the staff

she should be permitted to resign. The Minister declined to intervene since he considered the matter to be one of Departmental administration, nor did the Civil Service Commission intervene. Mr. Beauchamp was supported in his representations to the authorities mentioned by a letter from Dr. Charteris dated September 1, 1960 in which he outlined his diagnosis of the suppliant's condition as recited above, but added a further contributing factor to her nervous tension. Her father became gravely ill and had to be hospitalized for a long period of time until he eventually died. Her mother had to be hospitalized for surgery on two occasions and had become an invalid. The suppliant bore the medical expenses of both her parents, which fact Dr. Charteris felt explained her unremitting attempts to better her position. He also added that if the suppliant's employer had consulted him he would have recommended a period of sick leave in order that the suppliant might regain her nervous balance from a menopause syndrome and home nervous tensions.

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On January 7, 1961 Dr. Charteris wrote a similar letter to Dr. E. L. Davey of the Department of National Health and Welfare expressing the hope that his diagnosis of the suppliant's condition were sufficient to warrant rescision of the suppliant's dismissal and her reassignment to another department.

At the date of her dismissal from the government service, the suppliant had to her credit twenty-seven days special leave and one hundred and fifty-two days sick leave. Further, if the suppliant had continued in her employment until September 18, 1960 she would have become entitled to four weeks furlough leave on completing twenty years of service.

The suppliant elected to take a deferred pension, payable to her at the age of sixty, based on the number of years of her service and on the average salary for the six highest paid years of her service.

Since the representations made on her behalf were to no avail, the suppliant initiated the proceedings herein without the assistance of counsel. Later she retained counsel who amended the pleadings extensively, but the claim for reinstatement with full pay and other attendant benefits

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effective from September 1, 1960 was left in at the suppliant's insistence.

Section 19 of the *Civil Service Act*, R.S.C. 1952, c. 48, provides in part as follows: "Except where otherwise expressly provided, all appointments to the Civil Service shall be upon competitive examinations under and pursuant to this Act, and shall be during pleasure."

This section puts into statutory effect the long standing rule that servants of the Crown, in the absence of provision to the contrary, which does not avail the suppliant herein, hold office during pleasure. Consequently, the suppliant has no right to the relief sought by her that she should be reinstated in her employment, nor has this Court jurisdiction to order such relief. Her claim in this respect must, therefore, be dismissed.

I am likewise of the opinion that the suppliant has no right to any damages for wrongful dismissal since such claim connotes in its ordinary sense a breach of contract. In this case the suppliant did not have any contract of employment and certainly not a contract that was not terminal at pleasure. The fact that her appointment was at pleasure under section 19 of the Act, means that she could have been dismissed arbitrarily without cause or notice.

Therefore, the suppliant has no right to any damages for wrongful dismissal in the ordinary sense of that term and her claim for damages therefor must also be dismissed.

There remains the suppliant's claims for damages in an unspecified amount, for defamation of character and for damages in the amount of \$15,000 for not having been given a proper opportunity, prior to her dismissal, to present her side of the case to the Deputy Head or to a senior officer nominated by the Deputy Head.

With respect to the suppliant's claim for damages for defamation of character, the statements relied upon are those set out in Mr. Lamb's letter to the suppliant dated July 26, 1960 (Exhibit S5) together with the reasons given in the notice of dismissal therein to the effect that the suppliant has "displayed a total lack of the confidence essential in secretarial responsibilities" and a "proven lack of ability . . . to have satisfactory personal relations with members of the staff of the Information and Education Service", as

well as the statement that "The Commission has informed the Department that it was so obvious to its officers that (the suppliant) possessed in full measure the defects of temperament to which this Department had referred that it was inadvisable to transfer (the suppliant) to another Department and so create a similar situation there."

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There is no doubt that the foregoing statements tend to lower or degrade the suppliant in the eyes of society and are calculated to disparage her in her vocation. Accordingly the words complained of are in their plain and ordinary meaning clearly defamatory of the suppliant. Further there was inadvisable to transfer (the suppliant) to another other than the person to whom the letter was written. There was a publication of the letter and its enclosure not only to the stenographer to whom it was dictated by Mr. Lamb, but also to other clerks and employees in the filing room of the Department by reason of a carbon copy of the letter and enclosure being made a matter of record and to those persons before whom the matter would come in the course of effecting the suppliant's ultimate dismissal.

However, there are occasions upon which, on the grounds of public policy and convenience, a person may, without incurring legal liability, make statements about another which are defamatory.

In the present instance the statements complained of were made in the discharge of a duty arising in the course of employment and result in a qualified privilege.

Where a defamatory statement is published on an occasion of qualified privilege, as is my view in the present case, the presumption of malice which arises from the publication, is rebutted and the suppliant can only succeed if she can prove that the respondent was not using the occasion honestly for the purpose for which the law gives protection, but was actuated by some indirect motive not connected with the privilege i.e. malice in the popular acceptance of the term.

Section 3(1)(a) of the *Crown Liability Act* provides as follows:

3. (1) The Crown is liable in tort for the damages for which, if it were a private person of full age and capacity, it would be liable

(a) in respect of a tort committed by a servant of the Crown, . . .

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and section 4(2) provides,

4. (2) No proceedings lie against the Crown by virtue of paragraph (a) of subsection (1) of section 3 in respect of any act or omission of a servant of the Crown unless the act or omission would apart from the provisions of this Act have given rise to a cause of action in tort against that servant or his personal representative.

Therefore, in order for the suppliant to succeed in tort for damages for libel it is incumbent upon her to prove that there was malice in fact on the part of Mr. Lamb or conceivably Mr. Turner in that either of them was actuated by motives of personal spite or ill-will, independent of the occasion on which the communication was made.

This, in my opinion, the suppliant has failed to do.

Mr. Lamb, as Director of Administration, had been instructed by the Deputy Minister to take the necessary steps leading to the suppliant's dismissal. He was the author of the letter and its composition was his own. No one told him what to say in it. His sources of information were his instructions from the Deputy Minister, and his conversations with Mr. Turner and Mr. Forrest from which he knew their views. In addition he would have a departmental file on the suppliant and he had some acquaintance with her.

I am convinced that Mr. Lamb firmly believed all statements in his letter to be true, well substantiated and documented and neither do I think that the language thereof is so unnecessarily strong or disproportionate to the exigency of the occasion as to constitute any evidence of malice.

Neither do I construe Mr. Lamb's failure to reply to the suppliant's letter of July 27, 1960 (Exhibit S6) as evidence of malice. He did arrange for an appointment for the suppliant with the Deputy Minister. He turned the suppliant's letter over to the Deputy Minister who had decided to deal with the matter himself. It was the suppliant's specific request that three items of information enumerated in her letter should be available at the time of her appearance. He did obtain and supply to the Deputy Minister the information requested by the suppliant in one such item, viz. the names of the members of the staff with whom the suppliant was unable to establish working relationships. He did not supply information respecting the other two items of

information which the suppliant requested which may have been already known to the Deputy Minister, nor did he answer the suppliant's enquiry as to the constitution of the meeting and the consequent propriety of the suppliant being represented thereat. The language of such request was so couched as to be susceptible of the interpretation that no reply was needed.

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All of such factors, in my opinion, fall far short of establishing malice on the part of Mr. Lamb.

It was submitted by counsel for the suppliant that she is entitled to rely upon a state of malice existing in the mind of Mr. Turner and as authority for such proposition he relied upon a principle of law expressed by Cartwright J. in *Lacarte v. Board of Education of Toronto*¹ as follows:

The applicable principle of law may, in my opinion, be stated as follows. Where a corporation is under a duty, whether of perfect or imperfect obligation, to publish a statement about X, and in the preparation of that statement relies on information furnished by one of its employees within the scope of whose employment it is to furnish the information, the malice of that employee in furnishing false and defamatory information which is made part of the statement published will in law be treated as the malice of the corporation, although all members of the board of directors or of trustees which authorizes the publication are individually free from malice.

Because of the view I take of Mr. Turner's state of mind, it is not necessary for me to decide whether in the circumstances of the present case Mr. Turner falls within the principle so outlined.

There were three factors relied upon by the suppliant as indicative of malice on the part of Mr. Turner being that (1) in response to a question on cross-examination Mr. Turner said he did not like the suppliant, (2) the relation between the suppliant and Mr. Turner was strained and (3) the canvass of employees by him to determine those who were unable to establish a satisfactory relationship with the suppliant was conducted unfairly and with an ulterior purpose in mind.

Mr. Turner's statement that he did not like the suppliant in response to a direct question on cross-examination was truthful and in the circumstances quite understandable. However, on re-examination Mr. Turner stated that while

¹ [1959] S.C.R. 465 at 476.

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he did not like the suppliant he did not dislike her or bear any hatred towards her and in my view this latter statement was equally true. The relationship between Mr. Turner and the suppliant was undoubtedly strained and her conduct was a source of irritation to him, but that irritation did not ripen into active dislike resulting in a desire to get rid of the suppliant for that reason. From my observation of Mr. Turner I concluded that he was a conscientious civil servant cognizant of his responsibility for the smooth and efficient operation of the service of which he was the director. His honest belief was that the suppliant's attitude towards himself and other employees disrupted that operation which was the motivating factor in his recommendation to the Deputy Minister that the suppliant be transferred and failing transfer that she be dismissed. The very fact that he recommended transfer first and dismissal as a last resort indicates to me that he bore the suppliant no malicious spite.

The canvass of the staff which Mr. Turner conducted was the direct result of a request from Mr. Lamb to be furnished with the names of those who did not get along with the suppliant and Mr. Lamb's request of Mr. Turner was in consequence of a specific enquiry by the suppliant in her letter of July 27, 1960. While Mr. Turner knew, with certainty, who some of those persons were, yet there were others whose feelings towards the suppliant were not known to him. Therefore, it was reasonable that he should enquire to ensure that no name was incorrectly included. It was equally reasonable that he should not approach those members of the staff whom he positively knew had no complaint concerning the suppliant since the request was for the names of those with whom the suppliant had unsatisfactory relationships.

Therefore, it is my view that these circumstances do not establish malice on the part of Mr. Turner, but rather that they are more consistent with a proper motive.

It follows accordingly that the suppliant's claim for defamation of character must be dismissed.

There remains for consideration the suppliant's claim for damages for not being given, prior to her dismissal, a proper opportunity to present her side of the case to the Deputy Head or to a senior officer nominated by the Deputy Head.

The suppliant's case, in this respect, is based on section 118 of the Civil Service Regulations providing as follows:

No employee shall be dismissed, suspended or demoted without having been given an opportunity to present his side of the case to the Deputy Head or to a senior officer of the department nominated by the Deputy Head.

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The Civil Service Regulations were made by the Civil Service Commission and approved by the Governor General in Council under the authority of section 5 of the *Civil Service Act*, Chapter 48, R.S.C. 1952 providing as follows:

- 5 (1) The Commission may make such regulations as it deems necessary or convenient for carrying out this Act, including regulations governing the performance by the Commission of its own duties hereunder.
- (2) All such regulations are subject to the approval of the Governor in Council.

In *Zamulinski v. The Queen*¹ Thorson P. in considering whether failure to give a civil servant an opportunity to present his side of the case as required by section 118 of the Regulations aforesaid, which he found to be *intra vires*, gives rise to a cause of action, had this to say at page 697:

So I find that s. 118 of the Regulations was *intra vires*. That being so, it follows that the provisions of the Civil Service Act and the Regulations made under it, having the force of law, must be read together and effect given to each. Section 118 of the Regulations ought not, therefore, to be construed as inconsistent with s. 19 of the Act. In that view of s 118 of the Regulations all that it does is to give the civil servant whom it is proposed to dismiss an opportunity, prior to his dismissal, to present his side of the case to a senior officer of the Department nominated by the deputy head. When that opportunity has been given the right to dismiss at pleasure provided by s 19 of the Act is in full force and effect. The intendment of s 118 of the Regulations is plain, namely, that before the right of dismissal at pleasure under s. 19 of the Act is exercised the employee proposed to be dismissed should be given the opportunity prescribed by the section. To the extent that it is of importance in the matter of interpretation it may properly be said that if it is not contrary to the public policy that a civil servant may be dismissed at pleasure that before his dismissal goes into effect he should be given the opportunity prescribed by s. 118 of the Regulations.

I, therefore, find that an employee of the Civil Service of Canada has the right under s. 118 of the Regulations to be given the opportunity, prior to his dismissal, of presenting his side of the case to a senior officer of the Department nominated by the deputy head. This gives him a claim under s. 118 of the Regulations and brings him within the jurisdiction of

¹ (1957) 10 D.L.R. (2d) 685.

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this Court under s. 18(1)(d) of the Exchequer Court Act, R.S.C. 1952, c. 98, which provides:

"18(1) The Exchequer Court also has exclusive original jurisdiction to hear and determine the following matters:

(d) every claim against the Crown arising under any law of Canada or any regulation made by the Governor in Council."

Cattanach J.

In my opinion, the suppliant has a claim arising under a Regulation made by the Governor in Council, namely, a claim under s. 118 of the Civil Service Regulations. He had a right under that section to be given the opportunity, prior to his dismissal, to present his side of the case to a senior officer of the Department nominated by the deputy head. I find as a fact that this right was not given to him. It is a fundamental principle that the violation of a right gives a cause of action: vide *Ashby v. White et al.* (1703), 2 Ld. Raym. 938, 92 E.R. 126. Here there was a denial of a right to which the suppliant was legally entitled and he has a right to damages therefor. . . .

In *Zamulinski v. The Queen (supra)*, the suppliant was not given the opportunity, prior to his dismissal to present his side of the case to a senior officer of the department nominated by the deputy head in accordance with the right afforded him under section 118 of the Civil Service Regulations whereas in the present case, the suppliant did have an interview with the Deputy Minister.

Therefore, the question to be determined is whether the opportunity afforded the suppliant in the circumstances as outlined herein constituted compliance with Section 118 of the Regulations.

To paraphrase Lord Loreburn's expression in *Board of Education v. Rice*¹ there must be an opportunity to present the case and a fair opportunity to controvert statements prejudicial to the suppliant's point of view.

Such an opportunity may be denied where the adverse case is not made known. The nature of the allegations against the suppliant must have been clearly specified beforehand so that she may have had a proper opportunity to prepare her defence, but the degree of particularity may vary according to the degree of informality with which the proceedings are conducted and even when they are inadequately specified, the defect may not be fatal if the suppliant was not thereby prejudiced, e.g. because she was already conversant with their general nature.

In applying these basic principles to the circumstances of the present case, the allegations against the suppliant

¹ [1911] A.C. 179.

were outlined in Mr. Lamb's letter to her dated July 26, 1960, one such allegation being, "you have displayed a total lack of the confidence essential in secretarial responsibilities", and this phraseology is repeated in the notice of dismissal appended to that letter. This language, removed from its context, is lacking in precision and is susceptible of the possible interpretation that the suppliant divulged confidences which came to her knowledge in her capacity as secretary to the director. This interpretation undoubtedly prompted the suppliant to request in her letter of July 27, 1960 to Mr. Lamb the particulars of any confidences which she is alleged to have divulged. However, it would appear that the suppliant was not unduly misled because in her letter of July 27, 1960 she also requested details of the lack of confidence essential in secretarial responsibilities. At no time was it suggested that the suppliant divulged confidential information.

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The other reason for dismissal outlined in Mr. Lamb's letter and the notice enclosed therewith was the suppliant's proven lack of ability to have satisfactory personal relations with members of the staff. The language in which such allegation was expressed was clear and unequivocal. In her letter of July 27, 1960, the suppliant asked for the names of those members of the staff.

The letter written by Mr. Lamb, which has been reproduced herein, was of considerable length and in addition to the two extracts above, which were also set forth in the notice of dismissal, contained explanatory features. It made mention of the efforts to effect her transfer which were to no avail. While it is true that there were generalizations therein, the subject matter was such that particularization was difficult within the short scope permitted by a letter. The letter in question left no doubt as to the reasons why the suppliant was to be dismissed. Neither do I think that this letter came to the suppliant as a complete surprise. The strained situation was one of long duration and the suppliant herself had made the suggestion of her transfer.

Therefore, the suppliant was aware of the allegations against her beforehand expressed in sufficiently specific terms when she received Mr. Lamb's letter of July 26, 1960 on that date and had cause to suspect them well before that time.

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In her letter of July 27, 1960 she asked for what amounts to a statement of particulars, but her letter of that date did not demand that they be delivered to her before the interview with the Deputy Minister, but was a request that the information be available at the time of the hearing.

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The names of the members of the staff were supplied to her at the time of her appearance when she requested them. Presumably, the Deputy Minister was in a position to furnish whatever other information the suppliant desired. The suppliant did ask, in general terms, for the information she had so requested and although she specifically asked for the names of the staff, which were given, she did not persist in her enquiry as to the additional information.

The proceeding was most informal and in my view, the allegations against the suppliant were communicated to her beforehand in a degree of particularity which was adequate and commensurate with the informality of the hearing and further the suppliant knew in advance the allegations against her.

By section 118 of the Regulations the necessity of notice of the impending proceeding is implicit therein. It follows that the length of notice must be reasonable and the Court may review the adequacy of the notice so given. The letter of Mr. Lamb's was received by the suppliant on July 26, 1960. It stated that the Deputy Minister would hear the suppliant's side of the case himself should she wish to avail herself of her right under section 118 of the Regulations, but that, because of the Deputy Minister's contemplated absence after August 1, 1960 the hearing should take place on or before July 29, 1960, i.e. the suppliant had a maximum of two clear days.

The suppliant immediately replied by letter dated July 27, 1960 stating that she wished to take advantage of her right under section 118 of the Regulations. She requested that the appointment with the Deputy Minister be made for her and also stated, "I am available any time". The appointment was made for July 29, 1960 and the suppliant was so informed verbally on July 27, 1960. She did not request an adjournment or complain in any way of the inadequacy of the length of notice, and, therefore, must be

taken to have waived any inadequacy of notice if such existed.

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In her letter of July 27, 1960 the suppliant raised the question of the possibility of having a representative present depending on the constitution of the meeting and accordingly requested to be informed of the time of the meeting sufficiently in advance to make any necessary arrangements to be represented. She was so informed of the time of the meeting and she had been informed the Deputy Minister would hear her, but she was not represented at the interview.

Where there is a right to appear in person there is some authority for the proposition, there is also a right to be represented by an agent or by counsel, but in any event the suppliant did not insist on that right, nor was that right denied her. She did not ask for an adjournment to procure a representative.

The actual hearing was very short, but the Deputy Minister did comply with what was required of him by the Civil Service Commission Regulations. The purpose of Section 118 thereof is to ensure that a civil servant shall not be dismissed until after the matter has been considered by the Deputy Minister or senior officer nominated by him and the civil servant whom it is proposed to dismiss has been given the opportunity to state her side of the case to that officer who may then decide to recommend or not to recommend dismissal.

The suppliant was invited to state her side of the case and the Deputy Minister expressed his willingness to hear her to which the suppliant replied that there was not much she could say other than despite her best efforts she was met with difficulties. She was not denied the opportunity to say anything she wished. She did not raise the matter of her ill-health as an extenuating factor as was done subsequently on her behalf, although her condition was known to her.

However much one may tend to sympathize with the suppliant, nevertheless, she was accorded her rights under Section 118 of the Regulations from which it follows that her claim for damages for not being given, prior to her dismissal, a proper opportunity to present her side of the case

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to the Deputy Head or to a senior officer nominated by him, must also be dismissed.

Therefore, the suppliant is not entitled to the relief sought by her petition of right herein and the respondent is entitled to costs herein to be taxed.

Judgment accordingly.
