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Nature of Proceedings

[1] There are several themes that permeate this case – ambition and competition being two; and aspects of the facts touch on tensions relating to gender, age and military rank. The case involves basically good people and reputable organizations on all sides who, unfortunately, exhibited poor judgment in their dealings with one another. There should be many regrets in the roles each played in this unfortunate chain of events.

[2] The case relates to the removal of Leona Alleslev-Krofchak as the Senior Project Manager on a contract which Valcom Limited had with the Federal Government for the provision of professional services to assist the Department of National Defence to move to systems support contracting for the servicing of its air fleets. The project was called Optimized Weapon System Management (“OWSM”). Leona Alleslev-Krofchak, and her company, Temagami Outfitting Company Canada Inc., through which she contracted her services, are suing Valcom Limited, Greg Poulin (one of its principals), and Brian Lewis (the person who took over from Alleslev-Krofchak as the Senior Project Manager) for inducing breach of contract, intentional interference with economic relations and defamation.

Context

Downsizing and Outsourcing at DND

[3] During the nineties, the Department of National Defence (“DND”) and the Canadian Military saw major changes in the way business was conducted and resourced. As a result of reduced budgets and government workforce reduction programs, DND became more reliant on external support services to meet its needs – especially in situations involving specialized expertise no longer available within either DND or the Canadian Military. Initially, DND simply hired back personnel into contract positions within DND in order to get the same work done that previously had been done by military personnel. This did not result in any true cost savings. In the context of the aerospace engineering (“AERE”) sector, DND incurred significant costs managing countless service contracts for the maintenance of the four air force fleets: the fighter group (CF-18 “Hornet”), the maritime group (CP-140 “Aurora”), the transport group (CC-130 “Hercules”), and the helicopter group (CH-146 “Griffin”).

[4] Within DND, the office of Director General Aerospace Equipment Program Management (“DGAEPM”) was responsible for overseeing air fleet maintenance. By the late nineties, DND, and more specifically DGAEPM, had decided to move in the direction of a small number of large, long-term, performance-based contracts with major industry players such as Bombardier, Boeing, Lockheed Martin, Industrial Marine Products and GE Aircraft Engines. The idea was that there would be three contracts per fleet: one for the air frame structure, one for the avionics and one for the engine. The company that won the contract, rather than DND, would decide how the stipulated outcomes under the contract would get done; DND would simply specify the product to be delivered and would pay an overall contract price. The program pursuant to which performance-based contracts were to be created for the aerospace sector was

referred to as System Support Contracting (“SSC”). This project was run out of a division of DGAEPM called the System Support Contracting Project Management Office (“SSC-PMO”).

[5] This move to large, performance-based contracts represented a monumental shift in how business would be conducted in regard to DND’s aerospace engineering needs. First, instead of managing hundreds of small contracts, DND would have to manage only twelve large contracts in order to have its air force fleets maintained. Second, the contracts would no longer be time and materials contracts – they would be performance-based contracts with payments made based on predetermined deliverables. Third, small and mid-range companies within the aerospace sector, such as Valcom Limited (“Valcom”) and ADGA Systems International Ltd. (“ADGA”), might not have the capacity to bid directly on DND’s contracts but might, instead, have to provide subcontracting services through a large aerospace company.

[6] From DND’s perspective, this shift offered several advantages. First, there were significant savings in terms of DND personnel required for contract management. Second, private industry, instead of DND, would be responsible for training personnel within the aerospace engineering field. Third, private industry had access to a larger pool of trained employees than DND, in part due to the inability of the Canadian Military to hire people at a senior level. It was hoped that this access to more specialists could improve quality of service. DND anticipated saving 25-30% of the cost of maintaining a fleet.

[7] Senior management within the government and more specifically at DND was supportive of the move to performance-based contracts. Middle management was less supportive due to anticipated job losses and career progression limitations within DND. As well, those within DND who would oversee the new performance-based contracts with industry would be subject to more scrutiny regarding deliverables.

[8] Large players in the aerospace industry were supportive of the move as an opportunity to get a larger slice of the contract work put out to tender by DND. The small to mid-sized consulting companies previously providing services under contract to DND were nervous about the introduction of a small number of large performance-based contracts, because they might not be in a position to bid on such large contracts, except as subcontractors.

Aerospace Community

[9] In Canada, the aerospace engineering (“AERE”) community is small, and the military aerospace support engineering community is even smaller. In 1998, there were approximately 2000 AERE officers in Canada, between the ranks of second-lieutenant and general.¹ It was a tightly-knit community with most members knowing or knowing of other members. By 2002-2004, of the AERE officers working for the office of the DGAEPM, 60% were located at 400 Cumberland Street, Ottawa. The rest were in small groupings of three or four at the various bases throughout Canada. Of the approximately 800 AERE officers in the

¹ The ranks of officers within the Canadian Air Force in descending order are General, Lieutenant General, Major General, Brigadier General, Colonel, Lieutenant Colonel, Major, Captain, Lieutenant, Second Lieutenant.

DGAEPM offices, about 300 were military personnel, 250 to 300 were DND civilians and 200 to 250 were contractors provided by such companies as Valcom or ADGA.

[10] The evidence was that, within the Canadian Air Force, there is an entrenched hierarchy in terms of the functions that are most valued. In descending order, they are pilots and navigators, aerospace engineers, logisticians, administrative personnel, and then medical personnel. This is reflected in the ranks to which members of these different groups can aspire. Most of the AERE officers whose names will arise in this case were majors, lieutenant colonels or colonels. The two individual Defendants, Poulin and Lewis², were former AERE officers. By contrast, the Plaintiff, Alleslev-Krofchak, was a former logistician occupying the lower rank of captain.

Parties and Players

Leona Alleslev-Krofchak

[11] In 2002, Alleslev-Krofchak (DOB March 16, 1968) had a B.A. in history and politics and one year of a Masters in Business Administration. She started her career in the Canadian Military in 1991, as a second lieutenant, logistics officer at Comox. By 1994, Alleslev-Krofchak had risen to the rank of captain. She joined a small team, made up mostly of majors and lieutenant colonels, who traveled to various bases and made recommendations on cost-saving measures. By 1995, Alleslev-Krofchak was an analyst working on alternative service delivery, business transformation and change management activities for the Canadian Military – all cost-saving initiatives. Alleslev-Krofchak became known for her excellent work and was recruited to work at the DGAEPM office in Ottawa as the alternative service delivery coordinator. She was responsible for advising on and managing the move to global outsourcing of maintenance of the various air fleets under performance-based contracts. The CF-18 fleet was the first tackled, through a pilot project.

[12] In April 1996, Alleslev-Krofchak retired from the Military under the Force Reduction Program. From 1996 to 2003, Alleslev-Krofchak worked predominantly as a consultant with DND, assisting DGAEPM in planning the steps to move to performance-based contracting for air fleet maintenance. She did this through various companies that had professional and engineering support services (“PESS”) contracts with DND. Two such companies were Valcom, the corporate Defendant, and ARINC, through which Alleslev-Krofchak was contracting her services at the time the events leading to this litigation unfolded. Both before her retirement from the Forces, and subsequently while she was working on the SSC project, Alleslev-Krofchak was recognized as a leader in managing change to performance-based contracting.

² Individuals will be referred to by their surnames, without reference to rank or former rank.

Temagami Outfitting Company Canada, Inc.

[13] When Alleslev-Krofchak retired from the Canadian Military in 1996, she and her husband started Temagami³ as a canoe outfitting business in Northern Ontario. Alleslev-Krofchak and her husband were equal shareholders, with Alleslev-Krofchak being the Secretary-Treasurer and her husband being the President. Their intention was to work in their separate fields (she as a consultant and he as a pilot) and build up Temagami so that they could enjoy it in their retirement. Alleslev-Krofchak's services on the OSWM project were contracted through Temagami, and all revenues generated by Alleslev-Krofchak's work on the project flowed through Temagami.

Valcom Limited

[14] In 2002-2003, Valcom was a consulting company that, for the most part, placed engineers and other consultants on contract with the Federal Government. It had approximately 400 consultants, 80% of whom were stationed in the Ottawa area, and approximately 125 of whom were working on aerospace contracts. In 2002-2003, Valcom had revenues of about \$15 million.

[15] At all material times, Jean Thivierge was the General Manager of Valcom. Greg Poulin and Len Burke managed Valcom's 40-50 aerospace contracts. Although one was identified as being the lead on any given contract, both were familiar with all contracts and were interchangeable.

[16] Valcom was awarded the Prime Contract for the OWSM project and provided the Group 1 personnel for the project.

Greg Poulin

[17] In 2002, Poulin (DOB 1960) had his Bachelor of Engineering from Royal Military College. After working as an AERE officer with DND from 1984 to 1999, he joined Valcom as a manager of the Aerospace Systems Group. He was responsible for developing Valcom's bid to provide professional and engineering support services for the OWSM project and he went on to manage the contract for Valcom.

Len Burke

[18] Burke (DOB 1950) retired as a lieutenant-colonel from the Canadian Military in 1994, having been an AERE officer. In 2001, he became a manager for the Aerospace Systems Group at Valcom. Burke worked closely with Poulin in developing Valcom's bid for the OWSM project, recruiting personnel for the project (including Gilles Fortin, Dwight Hopkins, Lyle Best, Thomas Wall, Scott Ferguson, and Brian Lewis), and managing the contract.

³ Initially called Lady Evelyn Outfitting.

Brian Lewis

[19] Lewis (DOB 1961) took over Alleslev-Krofchak's position as Senior Project Manager on the OWSM project after Alleslev-Krofchak was removed in August 2003. He had a Masters of Engineering (Aeronautical) and a Masters of Business Administration, and had been an AERE officer with the Canadian Military from 1984 to 1999. From 1999 to 2003, Lewis had been the Chief Financial Officer for Mxi Technologies Ltd.

ADGA Systems International Ltd.

[20] In 2002, ADGA was Valcom's main competitor in the Ottawa area and had a somewhat larger contingent of consultants than Valcom. ADGA won the bid to provide the Group 2 personnel for the OWSM project. At all material times, Ed Mitchell was President of ADGA, and Alf Engelbretson was the ADGA manager responsible for the Group 2 contract. Personnel whom ADGA placed on the project included Joanne French and Alanna O'Brien.

ARINC

[21] ARINC is an American company with offices in more than 70 locations around the world. In 2002-2003, its revenues were approximately \$750 million. About 60% of ARINC's revenue is derived from contracting support to the U.S. Military, including aerospace engineering support. It has been involved in performance-based contracting in the U.S. for many years. Nevertheless, when in 2002 the Canadian Military was placing contracts to move into performance-based contracts for its aerospace engineering needs and ARINC was interested in the work, ARINC was at a disadvantage because it did not have a presence in Canada. The Canadian government required 70% or more of the personnel servicing the fleets to be Canadians working in Canada.

[22] Alleslev-Krofchak facilitated ARINC's expansion into Canada by opening up discussions between ARINC and Valcom about combining forces to submit a bid on the SSC contract. ARINC had the performance-based contracting experience that Valcom lacked and DND set as a pre-requisite for a successful bid for the Group 1 work, and Valcom had the Canadian personnel that ARINC lacked.

[23] Adelle Pierce was the Vice-President of ARINC Engineering Services at all relevant times and was responsible for oversight of ARINC's involvement on the OWSM project. Jim Flanders was the ARINC Contract Authority and Lee Mackey was the ARINC unit manager in regard to the OWSM project. Both reported to Pierce. Unfortunately, Flanders, who had the greatest involvement at the critical times, died prior to trial.

Adelle Pierce

[24] Pierce is an aerospace engineer who worked for ARINC, from 1987 to 2007, working her way up from project level engineer to director of ARINC's defensive systems

engineering business unit generating \$300 million in annual revenue. In June 2007, Pierce left ARINC to establish her own engineering consulting business.

DGAEPM Division SSC Organization

Need for Professional and Engineering Support Services

[25] The task of transforming the aerospace division within DND fell to the DGAEPM SSC- PMO. It required professional and engineering support services to develop and implement the new business model for the four fleets because it did not have the requisite expertise internally. Each aircraft fleet's Weapon System Management ("WSM") organization within DND had to be redesigned and system support contracts with industry had to be developed and implemented to support the new approach.

[26] On January 21, 2002, Public Works and Government Services Canada ("PWGSC") on behalf of DND issued a Request for Proposal ("January/02 RFP") in regard to the following requirement:

The Aerospace Equipment Program Management (AEPM) Division, System Support Contract (SSC) Project Management Office (PMO) has a requirement for Professional and Engineering Support Services (PESS) to develop and implement a new in-service support business model for the Canadian Forces CF-188, CP-140, CC-130 and CH-146 aircraft fleets and specific Aircraft Life Support Equipment (ALSE). The new business model includes the redesign and transition of each of the aircraft fleet Weapon System Management (WSM) organizations to a new posture and the development and implementation of the System Support Contracts to support the new approach.

[27] The January/02 RFP stipulated that the professional and engineering support services being sought had to have demonstrated experience in (1) developing, implementing, management and/or support of an SSC-type contract or concept for military weapons systems (preferably aerospace); (2) providing both strategic and operational advice and significant guidance in organization redesign; and (c) providing both strategic and operational advice and significant guidance in human resources management. An SSC-type concept was defined as: "a concept that envisioned a long-term government/industry agreement to provide engineering, logistics, maintenance and material support for a weapon system of a military organization throughout the remainder of its weapon system life cycle and will possess the characteristics of an SSC-Type contract". An SSC-type contract was defined as: "a contract that is performance-based, with incentives designed to encourage the Prime Contractor (Prime) (and sub-contractors if necessary) to institute cost reductions...".

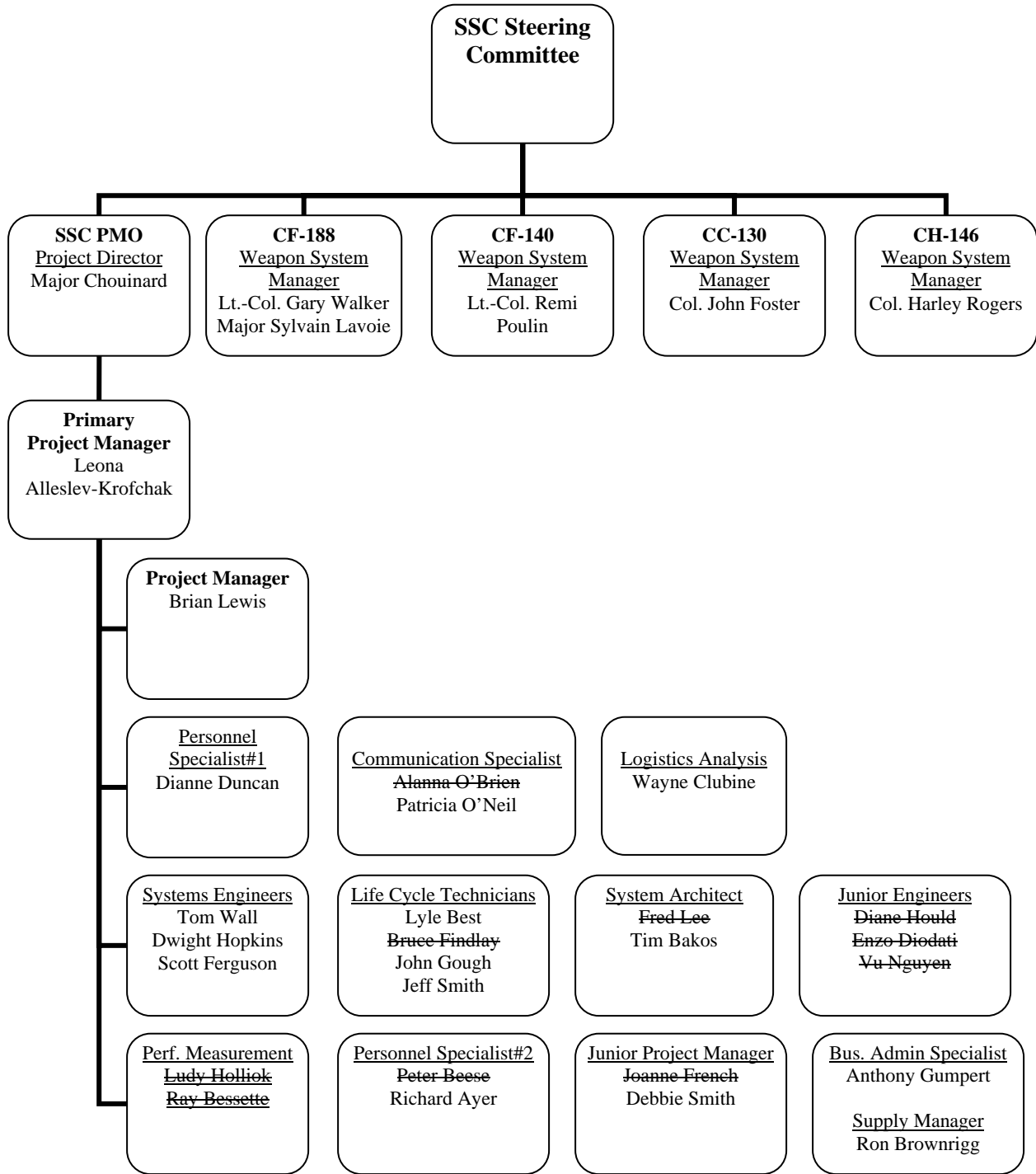
[28] The successful bidder had to provide services in the areas of business management and administration, project management, logistics, IM/IT, human resources, engineering and technical, and the implementation of support system contracting. In regard to

the last requirement, it was acknowledged that there was limited Canadian experience with the SSC concept. For this reason, the work to be done under the contract was divided between two organizational groups, with SSC experience being required under Organization Group 1, but no such experience required under Organization Group 2.

[29] At the time, Brigadier General Dwayne Lucas was the Director General of the AEPM Division SSC-PMO and he established the vision and direction for the project. Lucas' second in command on the project was Lieutenant Colonel Bernie Boland. Under him was the AEPM Division SSC-PMO Project Director, Major Roger Chouinard, who was responsible for the day-to-day operations of the SSC-PMO. The DGAEPM Division SSC-PMO consisted of five project teams, one for each fleet and a fifth for Aircraft Life Support Equipment ("ALSE"), all led by colonels. Lucas and the colonels made up the SSC-PMO's Steering Committee. Lucas, with the guidance of his Steering Committee, instructed Chouinard on the requirements for the project.

[30] Under the January/02 RFP, it was anticipated that Chouinard, as SSC-PMO Project Director, would pass on directions to the Senior Project Manager ("SPM#1") and the SPM#1 would then ensure that all personnel working under the contract delivered what was required of them. This was to be done by the successful bidder putting together a centralized team under the leadership of the SMP#1 to support the work of all fleet project teams. It was anticipated that the SPM#1 would interact with all of the project teams, would report to the SSC-PMO Project Director, and would have overall responsibility for all deliverables under the contract.

[31] The following chart shows the chain of command within the DGAEPM SSC-PMO, and the individuals who eventually occupied different positions:



PESS Contract as a Performance-Based Contract

[32] Not only was the goal of the January/02 RFP to eventually put into place performance-based contracts for the maintenance of the Canadian Forces' aircraft, but the contract to be bid under the January/02 RFP was a performance-based contract itself. Chouinard described the PESS contract as a first of its kind. As a performance-based contract, it was driven from the top and was very demanding. People were well paid on the contract and DND wanted to make sure that they were subject to tight control mechanisms in terms of their time and deliverables. Lucas was under pressure from DND and industry to make progress under the OWSM project. He set the deliverables and the deliverable dates, after consultation with the Steering Committee. Expectations were high and the timeframes were tight. Chouinard issued specific directives to Alleslev-Krofchak, the SPM#1, regarding deliverables and timeframes which she had to ensure were followed. If a deliverable was not ready when it was supposed to be, she had to explain in precise terms why not. Chouinard did not tell Alleslev-Krofchak how to achieve these goals – that was left to her to figure out.

[33] Pierce, who has 20 years of experience managing people in all sizes of performance-based contracts in the military context in the U.S., described a typical performance-based contract as involving projects that are structured with a clear line of authority through a single project manager. The project manager is responsible for ensuring that every deliverable is met on time, is within budget, and meets quality standards; in other words, she is responsible for the end product to be delivered. The project manager is usually responsible for the day-to-day oversight of the team, the resourcing of the team, ensuring that personnel have the appropriate experience and are a good fit for their assignments. The program manager is typically expected to be the single point of contact as it relates to communications both to the government client and then back to the project team.

SPM#1 Job Description under the January/02 RFP

[34] Under the January/02 RFP, the SPM#1 was tasked with the overall management of SSC-PMO Contract Support, and this responsibility included:⁴

3.2 Management of SSC PMO Contract Support

3.2.1 The SPM #1 shall plan, manage, co-ordinate, and administer all aspects relating to Work performed by Organization Group 1 and 2 and any other Work performed under applicable contracts issued to other firms for this project including its personnel and its subcontractors.

...

⁴ Exhibit 1 Tab 4, p. 6/20.

3.2.3 The SPM #1 will be the primary interface between the Contractor(s) and the Project Authority and shall be responsible for the planning, control, management and co-ordination of all Work duly authorised by the SSC PMO Project Authority.

3.2.4 The SPM #1 contract management's responsibilities will be to:

- a. Prepare the Work task management methodology;
- b. Provide support for DND/Contractor meetings, briefings and visits;
- c. Co-ordinate the Contractor Security Clearances as per the Security Requirement Check List and DND building passes for the Contractors' resources provided for SSC PMO Contract Support;
- d. Prepare estimates for proposed tasks;
- e. Ensure each authorised task from the Project Authority is completed within the prescribed time, the established price and the described requirement or performance parameters;
- f. Ensure that quality assurance is provided and maintained throughout the life of the SSC PMO unless otherwise agreed to by the Crown;
- g. Provide monthly task activity reports to SSC PMO;
- h. Attend monthly contract progress review meetings with SSC PMO Staff; and
- i. Update the Contractors' Management Plan (CMP) when agreed to by the Crown.

[35] The Statement of Work in Annex A of the January/02 RFP set out in detail the scope of work expected under the contract and the deliverables arising from the tasks assigned to each of the 23 personnel categories. The task description for the SPM#1 position was the following:⁵

Task Category For Group 1	Task Description
SPM #1 – Primary Project Manager	A. Assist SSC PMO and WSM Project Teams with the development, implementation,

⁵ Exhibit 1 Tab 4 Annex A, p. 10/20. See also Appendix 1 to Annex A, p. 1/33.

	<p>management and/or support of an SSC-Type contract;</p> <p>B. Assist SSC PMO with development and update of the Master AEPM Division SSC Project plan;</p> <p>C. Develop, maintain and update the Contract Management Plan (CMP);</p> <p>D. Assist SSC PMO with the development and update of the human resources plan to SSC Project Teams;</p> <p>E. Assist SSC PMO with the generic AEPM SSC specifications, SOWs and RFP documents; and</p> <p>F. Assist SSC PMO with the development and update of the AEPM transition plan to a SSC environment including AEPM internal redesign, communications & stakeholders relation, and business management support.</p>
--	--

[36] The SPM#1 was to be afforded considerable flexibility in performing her responsibilities. In the event that two separate bidders were successful for Organization Groups 1 and 2 (which in fact turned out to be the case), the personnel working within Group 2 were required to cooperate with and respond to taskings from the SPM#1. It is clear from the various tasks assigned to the SPM#1 position that the expectation was that the person filling the position would have experience in this new outsourcing contracting model referred to as SSC. In the aerospace maintenance community in Canada, there was no one, other than Alleslev-Krofchak, with such experience. She had been working with DND for five years developing experience in SSC. In essence, the terms of reference for the SPM#1 position were developed with her in mind.

SPM#2 Job Description under the January/02 RFP

[37] The task description for the SPM#2 position was the following:⁶

Task Category For Group 1	Task Description
SPM #2 – Support Project Manager	<p>A. Assist assigned SSC Project Team(s) with development and update of its SSC Project Team plan;</p> <p>B. Identify to SPM #1 the resources required to support his/her assigned project teams;</p>

⁶ Exhibit 1 Tab 4, p. 10/20. See also Appendix 1 to Annex A, p. 2/33.

	<p>C. Assist assigned Project Team(s) with SSC Project Teams specifications, SOWs and RFP documents, and related negotiation with Industry;</p> <p>D. Assist assigned SSC Project Team(s) with the development and update of its Project Team EPM transition plan to a SSC environment including EPM internal redesign, communications & stakeholders relation, and business management support.</p>
--	--

[38] One of the SPM#2's responsibilities was to prepare the monthly progress reports that the SPM#1 had to submit to DGAEPM detailing for the month all major activities performed by each occupational category under each assigned task, the number of days charged against each task for each occupational category, the status of all actions or decisions flowing from each task, any problems requiring the Director's attention, and any recommendations relating to the conduct of work. This was a very onerous and time-consuming reporting requirement.

Pre-Contract Events

[39] In the fall of 1996, after Alleslev-Krofchak had left the Canadian Military, she became an employee of DMR (now Fujitsu), a company that provided restructuring or transformation consulting services to companies striving to change their way of doing business. DMR was approved as an alternative service delivery consultant on one of the government contract lists. Alleslev-Krofchak knew that DGAEPM would be putting out contracts for consulting services in regard to outsourcing functions in the aerospace field. Between October 1996 and May 1998, Alleslev-Krofchak was able to secure a number of those contracts for DMR due to her knowledge of the players at DGAEPM and the intricacies of alternative service delivery projects. In 1998, Alleslev-Krofchak decided to become an independent consultant through different consulting companies that were approved to receive government contracts, and she continued to work on the transformation project for DND through contracts she obtained for those companies.

[40] Alleslev-Krofchak met Poulin when she was working at the DGAEPM Division and he was a major in the Canadian Military. Their paths crossed again when she was working on a Valcom contract at DGAEPM in the fall of 2001, assisting with the CF-18 SSC initiative. When it became clear that DND would be issuing an RFP for professional and engineering support services in the SSC field that could involve up to 25 contract positions over a five-year period, Valcom retained Alleslev-Krofchak's services to assist it in the preparation of Valcom's bid.

[41] While assisting Valcom with its bid, Alleslev-Krofchak, Poulin and Burke put in many hours of tedious, detailed preparation, during the course of which Valcom assumed that

Alleslev-Krofchak would be bid for the SPM#1 position as a Valcom resource. It was important to Valcom, as the company that would have the primary contract with the government, to have one of its personnel filling the SPM#1 position. That was the normal procedure: the primary contractor provided the senior management personnel on a contract. In that Valcom was responsible for the overall success of the contract, it wanted direct access to the senior manager on the contract so that it would be kept informed of what was occurring, would have some direct control over the senior manager, and would have some corporate visibility on the project.

[42] It was clear to Valcom that the requirements for the position of SPM#1 in the anticipated January/02 RFP had been drafted with Alleslev-Krofchak in mind. As part of its strategy to be awarded the SSC contract, Valcom actively pursued Alleslev-Krofchak for the role of SPM#1. In the fall of 2001, Valcom and Alleslev-Krofchak discussed the specific terms pursuant to which she could be proposed for the SPM#1 position as a Valcom resource. Valcom was confident that Alleslev-Krofchak would accept those terms and agree to be a Valcom resource. That, however, did not happen.

[43] Alleslev-Krofchak knew that a requirement for the successful bidder for the Group 1 work under the SSC contract was that the company have experience in the SSC field. There were no Canadian companies with that experience in the aerospace context. Therefore any Canadian company bidding for the contract would have to team with a foreign company with such experience, likely an American company, to meet the bid's mandatory requirements. Alleslev-Krofchak had a pre-existing relationship with ARINC. Alleslev-Krofchak facilitated Valcom and ARINC entering a teaming agreement to pursue a joint bid in response to the January/02 RFP, and she assisted in bringing about an agreement pursuant to which ARINC became Valcom's subcontractor on the bid. During December 2001 and January 2002, Alleslev-Krofchak assisted ARINC in the preparation of its joint proposal with Valcom.

[44] During the course of this work, ARINC offered Alleslev-Krofchak the SPM#1 position under its teaming agreement with VALCOM. ARINC also advised Alleslev-Krofchak that it would like to have a corporate office in Canada and there would be an opportunity for Alleslev-Krofchak at some point in the future to help ARINC develop its Canadian capability in the aerospace sector. ARINC anticipated that Alleslev-Krofchak's excellent connections both within DGAEPM and within the aerospace industry in Canada would help to bring business its way.

[45] In mid-December 2001, Alleslev-Krofchak advised Poulin that she was allowing her name to be submitted for the SPM#1 position as an ARINC resource under the Valcom/ARINC Subcontract, rather than a direct Valcom resource. Valcom felt blind-sided. Poulin and Burke were frustrated and angry at both Alleslev-Krofchak and ARINC, not only because Alleslev-Krofchak was an ARINC and not Valcom resource, but also because they were notified that this was going to be the case on the eve of the Valcom proposal being submitted to PWGSC. Valcom was basically told that Alleslev-Krofchak would be bid as an ARINC resource, or ARINC would not be involved. Valcom needed ARINC, and Alleslev-Krofchak, in order to submit the successful bid, so its choice was to accept Alleslev-Krofchak as an ARINC

resource or to not submit a bid. In spite of misgivings, Valcom proceeded with its bid because it was very important for it to gain expertise in performance-based contracting and to position itself to transition services from government to industry.

[46] Poulin and Burke acknowledged that, if it had not been for Alleslev-Krofchak being available as part of the team being proposed by Valcom, likely Valcom would not have been given the SSC contract because the requirements for the SPM#1 position were very specific. Poulin and Burke were unaware at the time of anyone else in the country with the necessary qualifications. They were aware that Alleslev-Krofchak knew a lot about the SSC contract and what needed to be done under the contract. She was very articulate in presenting this to senior DGAEPM staff. The senior staff knew her and they loved her work.

[47] Valcom and ADGA both submitted technically compliant bids in regard to the January/02 RFP; however, PWGSC determined that none of the technically compliant bids reflected fair and reasonable value for the work stipulated. PWGSC asked all technically compliant bidders to consider resubmitting bids with lower *per diem* rates. Valcom resubmitted its bid with its prices being significantly reduced. ARINC would only agree to a minor reduction of its prices for the resources (including Alleslev-Krofchak) that it was providing. Poulin was unhappy that ARINC refused to transfer Alleslev-Krofchak's *per diem* to Valcom so that a further reduction could be achieved. Poulin told Alleslev-Krofchak that Valcom could have made its bid even better if ARINC had agreed to a further reduction of its *per diem* for Alleslev-Krofchak or if she had agreed to be a Valcom rather than an ARINC resource. At this point no one knew whether Valcom would win the bid. Poulin reassured Alleslev-Krofchak that he was keeping her in mind for other Valcom contracts in case Valcom was unsuccessful.

[48] Valcom learned on May 14, 2002 that it had won the Group 1 bid and ADGA the Group 2 bid. Thereafter, there was a delay in PWGSC and Valcom signing the actual Supply Arrangement Contract ("the Prime Contract"). As well, problems arose between Valcom and ARINC in regard to their respective workshares under the Prime Contract. Valcom was concerned because not all of the Valcom resources identified for the contract were going to be called up right away by DND. This resulted in the division of resources being closer to 60/40% in favour of ARINC, rather than the reverse, as had originally been agreed to by Valcom and ARINC. At this point, ARINC released Alleslev-Krofchak from her commitment to be an ARINC resource and she reopened negotiations with Valcom about her becoming a Valcom resource to fill the SPM#1 position. Negotiations led to a June 2, 2002 offer by Valcom to Temagami whereby Temagami would receive a *per diem* of \$850, even though Alleslev-Krofchak's quoted *per diem* in the Valcom/ARINC bid was \$1,212. The terms of Valcom's offer were less favourable to Alleslev-Krofchak than those proposed in an earlier offer (90% of the *per diem* paid by the government) and in those proposed by ARINC. Alleslev-Krofchak set 90% of the rate paid under the contract for her services as the minimum Temagami would accept from Valcom. When ARINC and Alleslev-Krofchak worked out another proposal that would have generated an acceptable *per diem* for Alleslev-Krofchak as an ARINC resource without decreasing the revenue Valcom would have received if Alleslev-Krofchak was a Valcom

resource, Poulin responded in a June 11, 2002 e-mail to Alleslev-Krofchak and ARINC that Valcom's main concern had been workshare and its role as prime contractor, not revenue.

[49] Eventually, ARINC, Valcom and Alleslev-Krofchak came to an agreement whereby initially Alleslev-Krofchak would assume the SPM#1 position as a Valcom resource but once the SPM#2 position (a Valcom resource) was called up, Alleslev-Krofchak would revert to being an ARINC resource.

[50] During her negotiations with Valcom, Alleslev-Krofchak advised Poulin that at some point in the next five years, she might have the opportunity of working in the aerospace industry, and she wanted to keep open the possibility of her transitioning into industry. Valcom and Poulin relied on this message to justify some of their subsequent actions.

Contractual Framework

[51] The contractual framework that resulted in Alleslev-Krofchak providing consulting services to the SSC-PMO at DGAEPM is complicated and will be reviewed in chronological order.

April/99 RFSA and August/99 Valcom SA

[52] A Supply Arrangement ("SA") is a non-binding agreement between PWGSC and suppliers to provide a range of services and related deliverables on an "as and when requested" basis, in accordance with the terms and conditions set out in the Supply Arrangement. Through use of the Supply Arrangement system, PWGSC simply pre-approves potential suppliers who may subsequently bid on RFPs issued by PWGSC pursuant to the Supply Arrangement. The potential supplier still has to win the contract based on its response to the specific RFP.

[53] On April 23, 1999, PWGSC issued a Request for Supply Arrangement ("the April/99 RFSA")⁷ in regard to the acquisition of professional, engineering and technical support services in order to support all defence systems and equipment managed by the army, navy and air force within DND. Both Valcom and ADGA were approved as suppliers under the April/99 RFSA. Valcom's SA was dated August 1, 1999 ("August/99 Valcom SA")⁸. Paragraph 9.0 read:

9.0 PROPOSED PERSONNEL

Once awarded a contract pursuant to a SA, the Contractor must offer the services of the individual(s) proposed by the Contractor in its proposal. Availability of such individual(s) shall be consistent with the anticipated workload stated in the SA Request For Proposal. If, at any time during the contracted period of service, the Contractor is unable to provide the

⁷ Exhibit 6 Tab 1.

⁸ Exhibit 6 Tab 2.

specific individual(s) originally proposed and does not have adequate back-up services available (see art. 11.0), the Contractor may propose new personnel. Before acceptance and approval by Canada, the Contractor must provide the responsible Contracting Authority with the following documents for evaluation:

- 1) a detailed explanation of the reason(s) for proposing new personnel;
- 2) CV(s) following the cv format example (Appendix 1 to ANNEX “E” of the RFSA) for any new personnel identifying their educational background and work experience that meet the mandatory requirements (as stated in ANNEX “B” of the RFSA) or the occupational category for which the Contractor intends to qualify them for;
- 3) detailed information demonstrating that the proposed new personnel meet all special additional requirements as stated in the SOW of the applicable SA Request For Proposal;
- 4) revised list of Contractor personnel assigned to provide the required services of the SA contract; and
- 5) security clearance(s) information for the new personnel in accordance with the security requirements as stated in the SOW of the applicable SA Request for Proposal.

9.1 This provision to propose new personnel in order to provide contracted services shall be used by the Contractor only in exceptional circumstances.

9.2 The Contractor must provide the Contracting Authority with written notice at least five (5) working days in advance of such personnel change and concurrently provide the necessary documentation for the Contracting Authority’s evaluation and acceptance.

9.3 Proposed new personnel cannot commence providing contracted services until the Contracting Authority has evaluated the necessary documents and has provided the Contractor with written authority to proceed.

9.4 Under no circumstances are services to be provided by any SA Contractor personnel who are not qualified in accordance with the

pertinent SA Request For Proposal, SOW and/or the related SA contract.

[54] The August/99 Valcom SA was amended effective October 2, 2000 by Supply Arrangement Amendment 1 (“SA Amendment 1”)⁹ which replaced the terms and conditions, the statement of work, the description of occupational categories and other annexes in the Valcom August/99 SA with those set out in an amended RFSA. The only document tendered in evidence to show what the new terms and conditions were was an RFSA dated May 16, 2002 (“the May/02 RFSA”)¹⁰. The document made reference to the Standard Acquisition Clauses and Conditions Manual (“SACC Manual”) issued by PWGSC and revised up to December 10, 2001 as binding any company submitting a bid under the May/02 RFSA. The terms and conditions in the SACC Manual were reproduced in the document.

[55] Paragraph 11.0 of the May/02 RFSA read:

11.0 PROPOSED PERSONNEL AND REPLACEMENT

- 11.1 Once awarded a Contract pursuant to a SA, the Contractor must offer the services of the individual(s) proposed by the Contractor in its proposal. Availability of such individual(s) shall be consistent with the estimated level of effort stated in the SA RFP.
- 11.2 If, at any time during the contracted period of service, the Contractor is unable to provide the specific individual(s) originally proposed for reasons outside of its control, the Contractor *must* propose new personnel. Relocation of the individual(s) to other activities of the Contractor will not be considered as “reasons outside of its control”. The replacement proposed must achieve a total weighted candidate score equal or superior to the resource being replaced. Any cost associated with such replacement shall be to the Contractor’s own account.
- 11.3 This provision to propose new personnel in order to provide contracted services shall be used by the Contractor only in exceptional circumstances.
- 11.4 The Contractor must provide the Contracting Authority with written notice at least five (5) working days in advance of such personnel change and concurrently provide the necessary documentation for the Contracting Authority’s evaluation and acceptance.

⁹ Exhibit 6 Tab 3.

¹⁰ Exhibit 7 Tab 7; Exhibit 1 Tab 2.

- 11.5 Before acceptance and approval by Canada, the Contractor must provide the responsible Contracting Authority with the following documents for evaluation:
- (1) a detailed explanation of the reason(s) for proposing new personnel;
 - (2) CV(s) following the CV format example (Appendix 1 to ANNEX “D” of the RFSA) for any new personnel. The CV(s) shall fully identify their educational background and work experience and demonstrate that they meet all mandatory requirements (as stated in Annex “A” of the RFSA) of the occupational category for which the Contractor intends to qualify them for;
 - (3) detailed information demonstrating that the proposed new personnel meet all special additional requirements as stated in the applicable SA RFP.
 - (4) proof that the person has the required security clearance granted by Canada, if applicable, to the level stated in the SOW of the applicable SA RFP.
- 11.6 Proposed new personnel cannot commence providing contracted services until the Contracting Authority has evaluated the necessary documents and has provided the Contractor with written authority to proceed. **Canada shall have no obligation to pay for services and related deliverables provided by the Contractor personnel who have not previously been approved in writing by the Contracting Authority.**
- 11.7 Under no circumstances are services and related deliverables to be provided by any SA Contractor personnel who are not qualified in accordance with the pertinent SA RFP, SOW and/or the related SA Contract.
- 11.8 **Failure to provide acceptable new personnel in the required time frame will result in the Contractor being in default and may result in Canada invoking para. 7.3 above.**

[56] In Supply Arrangement Amendment 2 (“SA Amendment 2”)¹¹ issued August 22, 2002, PWGSC and Valcom agreed to amend the terms and conditions in their SA with the terms and conditions in the May/02 RFSA. There is nothing in this document stipulating that the terms

¹¹ Exhibit 6 Tab 12.

and conditions were to apply to contracts already entered between Valcom and PWGSC, such as the May/02 Valcom SA.

January/02 RFP and May/02 Valcom SA (“Prime Contract”)

[57] As referred to in paragraph 26 above, on January 21, 2002, PWGSC issued an RFP (“the January/02 RFP”)¹² for professional and engineering support services to develop and implement a new in-service support business model for the Canadian Forces CF-18, CP-140, CC-130 and CH-146 aircraft fleets. The new business model was to include the redesign and transition of each of the aircraft fleet WSM organizations to a new model and to develop and implement the system support contracts to support the new approach. The January/02 RFP was open to companies having SAs pursuant to the RFSA solicitation no. E60BQ-000SAD/A, and the terms and condition in the SAs issued under that RFSA were incorporated into the January/02 RFP. The January/02 RFP provided for two organizational groups, and companies could bid on one or both groups, Group 1 being the group requiring some SSC experience and Group 2 being the group not requiring such experience. Valcom was the successful bidder for the Group 1 work and entered a SA with the government dated May 14, 2002 (“the May/02 Valcom SA” or “Prime Contract”)¹³. The value of the contract awarded to Valcom was \$4,694,030. ADGA was the successful bidder for the Group 2 work.

[58] The period of service under the May/02 Valcom SA was from May 15, 2002 to May 14, 2004 with the government having the option to extend the period of service for a maximum of three additional one-year options periods. Alleslev-Krofchak was listed as the Senior Project Manager (“SPM#1”) and Gilles Fortin as the second Senior Project Manager (“SPM#2”) for the initial period and each option period. Chouinard was named as the Technical Authority and Glenn McDougall from PWGSC as the Contracting Authority.

[59] The terms and conditions set out in the August/99 Valcom SA were incorporated in the Prime Contract. The hierarchy of documents forming the contract was the Prime Contract itself, then the January/02 RFP and finally Valcom’s February 4, 2002 proposal as amended on April 30, 2002.

Teaming Agreement and Valcom/ARINC Subcontract

[60] Valcom was able to name Alleslev-Krofchak as the proposed SPM#1 in the May/02 Valcom SA due to its February 4, 2002 Teaming Agreement with ARINC (“the Teaming Agreement”).¹⁴ Pursuant to the Teaming Agreement, Valcom was to be the prime contractor and ARINC the subcontractor on any bid submitted by Valcom in response to the January/02 RFP. The allocation of positions on the project was to be approximately 60% to Valcom and 40% to ARINC. ARINC was to second Alleslev-Krofchak to Valcom for the duration of the project, with ARINC paying her annual salary and benefits.

¹² Exhibit 6 Tab 4.

¹³ Exhibit 6 Tab 6.

¹⁴ Exhibit 6 Tab 5.

[61] Once Valcom entered the May/02 Valcom SA with PWGSC, Valcom and ARINC signed a subcontract agreement dated July 11, 2002 (“Valcom/ARINC Subcontract”)¹⁵ to run from May 15, 2002 to May 14, 2004 with three one-year options to extend, which ARINC was obliged to perform if PWGSC extended the Prime Contract during the option periods. The Valcom/ARINC Subcontract included the following clause regarding termination:

12. Termination

This Agreement may be terminated for: “Unsatisfactory Performance” or for the other reasons or pursuant to the following:

- A. Unsatisfactory Performance. In the event the Corporation’s performance is determined, at the sole discretion of Valcom, to be unsatisfactory to Valcom or Valcom’s client and in the sole opinion of Valcom the reasons cannot or will not be corrected by reasonable means, the engagement of the Corporation or any person assigned by the Corporation to Valcom or its client shall be terminated by giving the other party 15 working days notice in writing.
- B. Termination on Notice. Either party may terminate this Agreement by giving the other party 30 working days notice in writing, or as mutually agreed in writing.
- C. Adjudication of either party as bankrupt, filing by either party for a voluntary petition in bankruptcy, the filing of any petition against either party under any federal or state bankruptcy law, or the filing of a petition or answer seeking the appointment of a receiver of either party’s assets or an arrangement with creditors under any such laws.
- D. Termination for VALCOM’s Convenience. This Agreement may be terminated whole or in part by VALCOM whenever VALCOM shall determine that such termination is in its best interest. Any such termination shall be effected by delivery to ARINC of a written Notice of Termination for Convenience specifying the extent to which performance of work under this Agreement is terminated, and the date upon which termination becomes effective. After the receipt of a written Notice of Termination, and except as otherwise directed by VALCOM, ARINC shall:

¹⁵ Exhibit 7 Tab 10, Exhibit 2 Tab 1.

- (1) Stop work under the Agreement on the date and to the extent specified in the above Notice of Termination;
- (2) Place no further subcontracts or Orders with lower-tier suppliers for materials, services or facilities, except as may be necessary for completion of such portion of the Agreement that is not terminated;
- (3) Terminate all subcontracts and Orders with lower-tier suppliers to the extent that they relate to the performance of work terminated by the above Notice of Termination;
- (4) Complete performance of such part of the Agreement as shall not have been terminated by the above Notice of Termination; and
- (5) Take such action as may be necessary, or as VALCOM may direct, for the protection and preservation of the property related to the Agreement which is in possession of ARINC and in which VALCOM has or may acquire an interest.

F. Termination for Default. In the event ARINC materially breaches its obligations under this Agreement, VALCOM may terminate this Agreement in whole or in part. The termination process shall start upon receipt by ARINC of VALCOM's written notice of its intent to terminate for default. Said notice shall contain a detailed statement of the basis for the termination claim and provide ARINC thirty (30) days to cure or provide a plan to cure that is to be approved by VALCOM which approval may not be unreasonably withheld. If ARINC fails to cure or provide a plan, VALCOM shall provide written notice of the same to ARINC (Second Notice of Termination). Termination shall become effective five days after receipt of the Second Notice of Termination. No new work will be undertaken five days after the date of the second notice. In the event of such termination, ARINC shall be paid for the work performed as of the date of termination. ARINC's maximum liability shall not exceed the Agreement price.

G. VALCOM's Default for Other Than Non-Payment: In the event VALCOM materially breaches its obligations under this Agreement, ARINC may terminate this Agreement in whole or in part. The termination process shall start upon receipt by VALCOM of ARINC's written notice of its intent to terminate for default.

Said notice shall contain a detailed statement of the basis for the termination claim and provide VALCOM thirty (30) days to cure or provide a plan to cure that is to be approved by ARINC which approval may not be unreasonably withheld. If VALCOM fails to cure or provide a plan, ARINC shall provide written notice of the same to VALCOM (Second Notice of Termination). Termination shall become effective five days after receipt of the Second Notice of Termination. No new work will be undertaken five days after the date of the second notice. Upon receipt of the above notice, this Agreement shall be immediately terminated.

- H. VALCOM's Default for Non-Payment: If VALCOM fails to pay ARINC any moneys due to ARINC under the terms of this Agreement ARINC may immediately terminate this Agreement for VALCOM's default.

[62] Annex A to the Valcom/ARINC Subcontract set out the scope of the project, the organizational framework, and the management role of the SPM#1 position that ARINC would be filling with Alleslev-Krofchak.

ARINC/Temagami Subcontract

[63] ARINC was able to provide Alleslev-Krofchak for the SPM#1 position because it had entered a Time and Material Subcontract with Temagami dated July 25, 2002 ("ARINC/Temagami Subcontract")¹⁶ under which Temagami undertook to provide the SPM#1 services under the May/02 Valcom SA for the period from July 22, 2002 to August 9, 2002, subject to extension by mutual consent. An extension to May 14, 2004 was agreed to on August 16, 2002¹⁷ and a further extension to May 14, 2005 was agreed to on May 4, 2004.¹⁸

Temagami/Alleslev-Krofchak Contract

[64] No evidence was adduced as to any contractual arrangement between Alleslev-Krofchak and Temagami pursuant to which Alleslev-Krofchak was to provide the SPM#1 services under the Prime Contract on behalf of Temagami (and ARINC).

Getting the Prime Contract Operational

[65] Alleslev-Krofchak started work at DND as a Valcom resource under the Prime Contract on June 11, 2002. Initially she was located on the eleventh floor at 400 Cumberland, close to Lucas, Boland and Chouinard. In August/September 2002, when the full SSC-PMO

¹⁶ Exhibit 7 Tab 9, Exhibit 2 Tab 2.

¹⁷ Exhibit 7 Tab 11.

¹⁸ Exhibit 7 Tab 13.

team was being assembled, Alleslev-Krofchak and the rest of the team moved down to the eighth floor. It was an open office concept with cubicles – many of which were shared.

[66] On June 18, 2002, Chouinard called up the SPM#2 position, that was being filled by Fortin, a Valcom resource. By July 12, 2002, a total of 11 positions had been called up, including the SPM#1 position. On July 25, 2005, ARINC and Alleslev-Krofchak concluded an agreement for her to fill the SPM#1 position as an ARINC resource; Alleslev-Krofchak’s short-term contract with Valcom was terminated.

[67] Over time, more people were called up under the Group 1 and Group 2 contracts, and some of those initially filling different positions left or were terminated and others were recruited. The individuals filling the various positions were shown in the chart in paragraph 32 above.

Personnel Issues

[68] At trial, much evidence was adduced about the personnel who had left the project or who were threatening to leave the project while Alleslev-Krofchak was the SPM#1. The loss of personnel was blamed on Alleslev-Krofchak’s conduct. Valcom took the position that its actions in suspending and then removing Alleslev-Krofchak from the SPM#1 position were done in good faith due to its concerns about Alleslev-Krofchak’s mismanagement of the OWSM project personnel. Due to the focus on this topic at trial, I am obliged to review each of the individuals who left or who, according to Valcom and Poulin, were threatening to leave. The individuals who left were:

Joanne French	August 2002
Alanna O’Brien	August 2002
Bruce Finley	December 2002
Gilles Fortin	February 2003
Ludy Hollick	March 2003
Peter Boese	March 2003
Diane Hould	March 2003
Ross Embree	April 2003
Fred Lee	June 2003
Enzo Diodati	June 2003

[69] The individuals whom Valcom and Poulin claimed in August 2003 were planning on leaving were Dwight Hopkins, Lyle Best, Tom Wall and Brian Lewis.

Joanne French

[70] Joanne French, an ADGA resource, was the first Junior Project Manager for the OWSM project. On July 23, 2002, Fortin sent Alleslev-Krofchak a memo regarding French’s performance and compartment deficiencies since she joined the team on July 2, 2002. French had not taken steps to set up a Program Office focal point to monitor the allocation and

movement of resources, track taskings and deliverables, and establish a program library – all as directed by Fortin. She was reluctant to help out with diversified tasks within her job description and was late on deliverables. She spent excessive amounts of time on the telephone, being particularly loud and disruptive in the open office environment. French had not improved her performance or comportment, despite being advised of these deficiencies by Fortin on July 19, 2002. Fortin recommended that appropriate actions be initiated to re-assign French, in other words, to have her removed from the project.

[71] Alleslev-Krofchak accepted this recommendation and asked for direction from Boland and Chouinard. Boland offered to meet with French to discuss her deficiencies, but then decided that personnel matters were best left to the PESS team to deal with. After speaking with Alleslev-Krofchak, Boland decided simply to ask McDougall, the Contracting Authority, to re-assign French. Fortin was advised accordingly. On Boland's instructions, French was terminated immediately and was escorted from the building.

[72] ADGA expressed its concern to Valcom about how French had been removed from the project. In September 2002, after Alanna O'Brien, another ADGA resource, had also left the project, representatives from ADGA, Valcom, PWGSC and the Technical Authority met to discuss the two departures. The Technical Authority agreed that the French situation should have been handled differently – with ADGA and Valcom first being informed and given an opportunity to consider the situation before the Contracting Authority on the direction of the Technical Authority terminated French's participation on the project. Although the way French had been escorted from the premises was seen as unnecessary, it was recognized as having been handled as it had by direction of the Technical Authority, not Alleslev-Krofchak. As well, the fact of French's removal from the OWSM project was not of particular concern to Poulin, Burke or Valcom.

[73] In its pleadings, Valcom blamed Alleslev-Krofchak for mishandling the French situation, a theme reinforced by Poulin at trial. However, this was not a message given by Valcom to Alleslev-Krofchak at the time. It was only after O'Brien's departure, her threat of litigation against ADGA, and the meeting just mentioned, that Poulin discussed how Alleslev-Krofchak could handle personnel situations in the future so as to avoid any threat of litigation against Valcom or ADGA. It is of interest to note that no one at Valcom had previously set out for Alleslev-Krofchak how she was expected to handle personnel problems under the contract and, more particularly, Valcom's expectation that she would first discuss such issues with Valcom and, where relevant, ADGA, prior to seeking instructions from the Technical Authority about the removal of any personnel. Poulin assumed no responsibility for this absence of directions to Alleslev-Krofchak.

[74] Finally, I note that, following her removal from this project, French was placed on another contract through Valcom and, after this litigation had commenced, Poulin personally spoke with French about her recollection of events. French was not called to testify.

[75] In July 2002, Alleslev-Krofchak's office was on the eleventh floor and French's office was beside Fortin's office on the eighth floor. Alleslev-Krofchak had virtually no contact with French. Aside from passing on Fortin's concerns to Boland and then following Boland's instructions, Alleslev-Krofchak had no involvement in French's departure. Alleslev-Krofchak was aware that French and another team member, Diane Duncan, had some skirmishes, but she left sorting those out to Fortin, who was her second-in-command.

[76] In no way could French's departure or the method of her removal be blamed on Alleslev-Krofchak and, at all material times, Poulin and Burke, on behalf of Valcom, realized that.

Alanna O'Brien

[77] Alanna O'Brien, another ADGA resource, was hired as the Communications Specialist for the PESS team. Her responsibility was to put together a communications plan and the corresponding documentation. O'Brien reported directly to Duncan, the lead consultant for organizational change. Fortin also dealt with O'Brien in terms of deliverables, taskings and timetables. Both Duncan and Fortin reported to Alleslev-Krofchak that O'Brien was not taking direction regarding the limited scope of the initial communications strategy wanted by Boland; namely, to focus on a strategy internal to DGAEPM and only later broaden the strategy to the rest of DND and beyond. Boland reaffirmed this strategy with Alleslev-Krofchak and Fortin and, when testifying, confirmed that this had been his plan and instructions.

[78] Fortin advised O'Brien of the restrictions on her communicating with those beyond the DGAEPM Division in developing her communications strategy. O'Brien did not believe she could operate under those constraints, and she quit her position. O'Brien consulted a lawyer, alleging that she had felt intimidated and harassed at the work environment at the SSC-PMO. She testified that she had felt under constant scrutiny and she had not been allowed to do the job as she believed it should have been done. In her view, the atmosphere was almost toxic. Discussions ensued between O'Brien, ADGA and Valcom as to whether O'Brien could return to the job and report directly to Fortin, as there were some disagreements between O'Brien and Duncan, and O'Brien found Fortin fair and reasonable to deal with. Alleslev-Krofchak did not want O'Brien bypassing Duncan in the reporting structure because Duncan was the organizational change expert on the project and neither O'Brien nor Fortin had worked previously in the SSC-PMO within the DGAEPM Division. In the end, O'Brien decided not to return to the project. Poulin acknowledged that that had been **her** decision.

[79] Alleslev-Krofchak had very few face-to-face encounters with O'Brien. Alleslev-Krofchak left the management of O'Brien to Duncan and Fortin, in whom she had confidence. Poulin, and therefore Valcom, was aware of that. Alleslev-Krofchak's only involvement in O'Brien's departure was to confirm with Boland that he wanted communications to remain internal for the time being and to advise Fortin and Duncan accordingly.

[80] In the Defendants' pleadings, Valcom alleged that it received a complaint from O'Brien and ADGA to the effect that Alleslev-Krofchak's overbearing conduct and the unreasonable work environment at the SSC-PMO led to O'Brien refusing to work for Alleslev-Krofchak and ultimately leaving the OWSM project. This was one reason used to justify Valcom's ultimate treatment of Alleslev-Krofchak.

[81] Poulin testified that Valcom understood that O'Brien left due to her dismay as to how French had been removed from her position. But Valcom knew that Alleslev-Krofchak had neither initiated nor determined French's departure or how it was conducted. Therefore Valcom knew that any attempt on O'Brien's part to lay blame on Alleslev-Krofchak for that departure was not justified. Despite the concerns raised by O'Brien, her threat of legal action against ADGA, and the discussions that ensued between AGDA, Valcom and the Contracting Authority, according to Burke, no one at Valcom was particularly concerned about the departure of O'Brien or French. Certainly when Poulin met with ARINC representatives later in the fall of 2002, he did not raise any concerns on Valcom's part about the departure of French and O'Brien or Alleslev-Krofchak's role in those departures.

[82] I find that, at all material times, Poulin, Burke and Valcom realized that the real reason why O'Brien left the OWSM project was because there was a poor fit between the person and the position, and she was unwilling to take direction from those entitled to provide her with direction.

Bruce Findlay

[83] Bruce Findlay, an ADGA resource and former chief warrant officer, worked on the OWSM project from September to December 2002 as the Life Cycle Technician. He left to take another contract with Notra. There was no evidence that Findlay left the project for any reason relating to Alleslev-Krofchak. The Defendants pleaded that Valcom had received the message that Findlay had left due in part to Alleslev-Krofchak's leadership and management style. When testifying, all Poulin could say was that Findlay had not been forthcoming as to his reasons for departing, and Poulin had understood that Findlay had been unhappy in the OWSM environment. Burke testified that he did not know why Findlay had left the project. This is not evidence supporting a concern on Valcom's part that Alleslev-Krofchak was not properly managing the OWSM project.

Dwight Hopkins

[84] Dwight Hopkins (DOB 1960), a Valcom resource and former major and AERE officer who retired from the Military after 20 years, worked on the OWSM project from July 2002 to August 2006 in the role of Senior Engineer. Hopkins came to the OWSM project with some experience in SSC-type contracting through work on the Cormorant program.

[85] According to Burke, Hopkins was the first person who indicated that he was having problems working with Alleslev-Krofchak. His initial concerns were a lack of respect and a lack of trust regarding what he was doing. Those complaints started a couple of months after Hopkins was on the job. By March 2003, Hopkins was telling Burke that he would be interested in another position if one could be found for him so that he would not have to work with Alleslev-Krofchak.

[86] Hopkins confirmed these observations in his testimony. He described the work environment within the OWSM project as being dysfunctional, and Alleslev-Krofchak's leadership as being inadequate. He observed that no one knew what they were supposed to be doing. The instructions seemed to change during the course of each task, and it was impossible for individuals to know if their work would be found acceptable or not. He found the work environment so stressful that it impacted his health and he asked Burke if he could find him another contract.

[87] Fortin described Hopkins as a good engineer, but observed that he had difficulty producing high quality deliverables to the extent that both Fortin and Alleslev-Krofchak had to get involved with the final product. The content was good, but the formatting could be inadequate. Alleslev-Krofchak believed that Hopkins struggled with the environment of change and the new work environment within the project.

[88] I find that Hopkins' level of stress on the OWSM project, and his criticisms of Alleslev-Krofchak's management, were valid causes of concern to Burke and Poulin by February 2003. However, to the knowledge of Burke and Poulin, the reason for Hopkins' stress could not simply be blamed on Alleslev-Krofchak. When testifying, Hopkins presented as an extremely

high-strung, anxious, and stressed individual who would have had difficulty with an environment where everyone, including the senior management, was feeling their way in terms of what needed to be done to meet the expectations of their clients. To the knowledge of Valcom, Hopkins was someone who required a high level of support in order to be able to function in an environment of change.

[89] When testifying, Hopkins presented as someone who continued to harbour ill-will toward Alleslev-Krofchak, despite their not having any contact for five years. This related to two episodes that occurred well after Hopkins had already asked Valcom to look for other work for him due to his discomfort with the OWSM work environment.

[90] The first occurred in March 2003, when Diane Hould, a junior engineer who worked closely with Hopkins, did not have her contract renewed after the first year. Hopkins believed that Alleslev-Krofchak had misunderstood something that he had said regarding Hould's work, and that had resulted in Hould being fired. Hopkins used this event as an example of how there was a climate of distrust on the OWSM project, with individuals not knowing if they were performing up to expectations or were targeted for dismissal. He believed that a process should have been put into place whereby people who were not performing adequately were warned and mentored, rather than being summarily terminated.

[91] The second episode occurred in July 2003 when, after being pressured by Alleslev-Krofchak about whether he could guarantee a particular tasking would be done on schedule, Hopkins decided to forego a family vacation that was scheduled to start that evening. It was clear at trial that Hopkins had still not forgiven Alleslev-Krofchak for putting that pressure on him. No doubt his antipathy to Alleslev-Krofchak was fuelled by the fact that he and his wife had been having marital difficulties in 2003 and eventually separated that summer – a reality that no doubt added in untold ways to the stress Hopkins was feeling at work.

[92] I find that on a couple of occasions from February to August 2003, Hopkins asked Burke to look out for other contracts for him because he was unhappy at the OWSM project; however, at no time did Hopkins state that he was quitting the OWSM project unless Alleslev-Krofchak was removed as SPM#1. As Burke acknowledged, due in part to Hopkins' marital difficulties, that simply was not an option for him.

Gilles Fortin

[93] Gilles Fortin (DOB 1946), a Valcom resource, a 27-year veteran of the Canadian Military, a former lieutenant colonel in the army, and a communications electronics engineer, joined the SSC-PMO on June 18, 2002, a week after Alleslev-Krofchak started. He had no previous experience in performance-based contracting, or the SSC program, aside from some exposure to this type of arrangement while working at NATO. As well, he had never worked in the aircraft maintenance and logistics support or engineering world.

[94] According to Burke, when Fortin was recruited for the SPM#2 position, Burke warned him that personnel management was a problem for Alleslev-Krofchak, and Fortin would

have to assume responsibility in that regard. When Fortin joined the OWSM team, he understood that part of his role was to act as a mentor for Alleslev-Krofchak. No evidence was adduced as to why, in June 2002, when Alleslev-Krofchak had only been in the SPM#1 position for one week, Burke knew that she had difficulty with personnel management.

[95] Burke's evidence was that initially Fortin seemed happy on the OWSM project; however, as time progressed, he became more distressed and wanted to leave. I accept the evidence of Burke and Poulin that by November/December 2002, Fortin was telling them that he was going to leave the OWSM project due to his concerns about how the OWSM team was being organized, tasked and administered. Burke prevailed upon Fortin to stay; however, by February 2003, from Fortin's perspective, matters had not improved, his health was suffering, and he felt he had to leave. In his view, Alleslev-Krofchak did not respect what he could bring to the role of SPM#2. His experience was not being taken advantage of and his opinion was not valued. He was simply a timekeeper for the project.

[96] Fortin's responsibility on the project was to manage the day-to-day activities on the team while Alleslev-Krofchak assumed responsibility for the overall management of the project and for any interaction with the client. Fortin was worn out trying to patch up the wounds being inflicted on team members. Fortin considered the tandem team of Alleslev-Krofchak and Duncan to be toxic. He felt that they talked on their own, came to decisions, and only asked his opinion for appearances, all the while making it clear to him that they were not really interested in it. He had a number of one-on-one discussions with Alleslev-Krofchak to discuss her management style during which he told her that morale was down, that Alleslev-Krofchak's close relationship with Duncan was problematic, that people felt Duncan was observing them and reporting back to Alleslev-Krofchak, that Alleslev-Krofchak could be abrasive and very demanding at times, and that Alleslev-Krofchak could be over-controlling with the personnel. His evidence was that these meetings were to no avail.

[97] At a meeting before Christmas 2002, Fortin, Duncan and Wayne Clubine attempted to discuss management issues with Alleslev-Krofchak. Fortin said that they had to start managing people by reason, not emotion. They had to focus on important issues, and not minor issues such as the time people arrived or left and how loudly they spoke on the telephone. I accept the evidence of Fortin and Clubine that Alleslev-Krofchak closed down the conversation.

[98] The catalyst leading to Fortin's departure was that he had taken forward to Alleslev-Krofchak a report prepared by Ludy Hollick, the Performance Measurement Specialist, that Fortin was not very impressed with. When speaking with Fortin, Alleslev-Krofchak was critical of the report; however, during a subsequent meeting with Fortin and Hollick, Alleslev-Krofchak said the report was acceptable and she would send it to ARINC for review. Fortin felt that his input had been ignored. He had lost faith in his own ability to be a manager on the project.

[99] Alleslev-Krofchak's evidence was that at no time did Fortin, Poulin, Burke or anyone else advise her that Fortin was leaving the OWSM project because he could not cope with her management style. Alleslev-Krofchak understood that Fortin was leaving the project to get back to engineering work and to get away from the personnel management and reporting aspect of the SPM#2 position. Alleslev-Krofchak felt that she and Fortin worked well together in order to complete tasks; however, she acknowledged that there had been some tension between them. She attributed this to his having difficulty having a woman as his superior, working in an environment of change, and working in the aerospace engineering environment. She understood that there might be other environments that might be a better fit for him.

[100] The issues Fortin raised between November 2002 and February 2003 understandably gave cause for concern to Burke, Poulin and Valcom as to Alleslev-Krofchak's ability to manage the personnel on the OWSM team and foster good morale.

Ludy Hollick

[101] Hollick, a Valcom resource and former AERE officer and major prior to retirement from the Canadian Military, had a Masters in Engineering. From the summer of 2002 until March 2003, he was the Performance Measurement Specialist on the OWSM project.

[102] As the Performance Maintenance Specialist, Hollick was responsible for developing a performance framework for the engine used on the Hercules and Aurora aircraft. The approach Hollick wanted to take in this regard differed from the approach that Chouinard and Colonel Rob Foster, the WSM manager, wanted the PESS group to take. Alleslev-Krofchak had difficulty persuading Hollick to adopt the different approach. A further issue was that Hollick was supposed to work half-time on the OWSM project, but by February 2003, due to other work commitments, Hollick was only devoting two days a week to the project, and sometimes not even that.

[103] On February 20, 2003, Hollick advised Alleslev-Krofchak that his ability to take on OWSM work would be reduced until March. He also told Alleslev-Krofchak that he did not believe he could work effectively under her "microscopic style of management". He suggested that, considering his background and capability, he was perfectly capable to deliver on a project plan that he had agreed to, and Alleslev-Krofchak needed to trust him to get the work done and keep her apprised of issues or risks when necessary.

[104] Alleslev-Krofchak did not respond to Hollick regarding her management style. In a reply to his e-mail which she sent as well to Poulin, Burke, Mackey (ARINC), Chouinard and others, Alleslev-Krofchak advised that the OWSM project required a full-time performance measurement specialist, something both Chouinard and Poulin considered reasonable at the time. Valcom considered getting another specialist on a part-time basis so that Hollick could continue on the project; however, this did not unfold. Eventually, Hollick left the OWSM project to work full-time for the Marine Helicopter Project.

[105] Hollick did not testify at trial. It is clear from his e-mails to Alleslev-Krofchak, that by February 2003, he was taking an aggressive tone with her. Alleslev-Krofchak attributed that to bad feelings Hollick harboured after his division at DND was outsourced to industry in part as a result of recommendations made by Alleslev-Krofchak when she was a consultant to DGAEPM. According to Alleslev-Krofchak, Hollick did not see Alleslev-Krofchak as a credible source to review his program in that she was not an aerospace engineer and did not have his level of education in the area of reliability and maintenance. Shortly after this recommendation was made, Hollick left the Canadian Military. Alleslev-Krofchak also attributed some of Hollick's antagonism to unwillingness on Hollick's part to take direction from a woman and a former subordinate of his in the Military. Accepting quotes attributed to Hollick by Alleslev-Krofchak, and not contradicted in the evidence, it was reasonable for Alleslev-Krofchak to draw these conclusions.

[106] That being said, Poulin and Valcom understood from Hollick that he did not like working under Alleslev-Krofchak's micromanagement style. He wanted more flexibility in terms of when he produced assigned work, and more autonomy in regard to how he produced it. I accept that this factored into Valcom's concerns about Alleslev-Krofchak's personnel management style.

February/March 2003 Interventions

[107] Burke recalled that he and Poulin were first concerned about Alleslev-Krofchak's personnel management in the fall of 2002, after both Hopkins and Fortin had spoken to him about Alleslev-Krofchak's management style and about her not valuing what both brought to the table. According to Burke, Valcom did not think in October 2002 that it had a serious problem with Alleslev-Krofchak and that she required any counselling. No one spoke to Alleslev-Krofchak at that time about any concerns.

[108] I find that, as a result of the complaints Burke and Poulin were hearing from Hopkins, Fortin, and Hollick, on February 24, 2003, Poulin told Flanders that Alleslev-Krofchak was lacking in personnel management skills resulting in the OWSM project experiencing too many losses. According to Poulin, he advised Flanders that Alleslev-Krofchak needed some mentoring and direction from Flanders in an attempt to stem the bleeding. Poulin also claimed to have advised Flanders that if this was a problem they could not get by, Valcom and ARINC should consider other options such as replacing Alleslev-Krofchak. According to Poulin, Flanders undertook to speak to Pierce and bring Alleslev-Krofchak to Annapolis to deal with the issue. During the same conversation, Poulin advised Flanders that the Technical Authority was very pleased with Alleslev-Krofchak. She had a clear corporate understanding of the project, an excellent capacity to work, and an obvious ability to perform in a strategic position.

[109] Pierce acknowledged that both she and Flanders from time to time in 2003 had been involved in conversations with Valcom representatives about Alleslev-Krofchak's management of the OWSM project. During some of those conversations, concerns were raised about the number of personnel that had left the project and the difficulty Alleslev-Krofchak

appeared to be having managing the personnel on the project. That being said, Pierce had no recollection of being told directly by Poulin or indirectly through Flanders, in February 2003, that Valcom was raising the possibility of Alleslev-Krofchak being replaced. Pierce also had no recollection of Alleslev-Krofchak ever being brought to Annapolis so that this issue could be discussed or she could receive mentoring to correct her management style. This supports Alleslev-Krofchak's evidence that this never happened.

[110] Poulin's evidence was that he arranged to speak with Alleslev-Krofchak on February 25, 2003 to discuss concerns about her management style. He claimed to have reassured Alleslev-Krofchak that the clients were very happy with her work; however, he told her that it was imperative that she work on her "soft skills" and her personnel management to ensure that they could maintain a cohesive group under her management. According to Poulin, he warned Alleslev-Krofchak that if they were unable to resolve the internal problems relating to her personnel management, Valcom would have no option but to replace her. Although Alleslev-Krofchak recalled a telephone conversation with Poulin in which some of the issues attested to by Poulin were discussed, she was adamant that at no time did he, or anyone else at Valcom, ever warn her that if she did not change how she was managing the OWSM project, she would be removed.

[111] Burke's evidence was that on one occasion in March/April 2003, Poulin and Burke met with Alleslev-Krofchak at the Honest Lawyer. Poulin mentioned problems with respect to Alleslev-Krofchak's management style. Alleslev-Krofchak became a bit agitated. Burke stepped in to say that they were not trying to put her down; they were just trying to get things back on track. Although Alleslev-Krofchak recalled having lunch with Poulin at the Honest Lawyer, she did not recall any such lunch during which issues regarding her management style were raised. Burke confirmed that, despite the concerns he and Poulin had about Alleslev-Krofchak's management style, nothing was put in writing to Alleslev-Krofchak and she was not counselled in any formal respect about her management style.

[112] I am satisfied that Poulin did raise with Alleslev-Krofchak, both in a telephone conversation in February and at a subsequent lunch in March or April, the concerns he and Burke had regarding her management of personnel; however, I find that at no time during these communications did either Poulin or Burke mention to Alleslev-Krofchak that they were considering removing her from the position. I am satisfied that Alleslev-Krofchak attempted to explain the difficulties she was experiencing with some of the ex-military personnel on the project and the general challenges associated with trying to get a team of people operating in an environment very different and much more stressful than what they were used to. I find that Alleslev-Krofchak had difficulty hearing the extent of Valcom's concerns due, in great measure, to the feedback she was receiving from Lucas, Boland, Chouinard and others that she was delivering exactly what they wanted. Her responsibility was to deliver the product Valcom had undertaken to deliver under the Prime Contract; and by all indications, she was doing exactly that.

[113] After Fortin and Hollick left and Hopkins was expressing dissatisfaction, Valcom felt it needed to investigate the situation in a more formal fashion. In order to elicit direct feedback from the DGAEPM leadership and the various WSM managers, Poulin spoke to Boland, Chouinard, Lieutenant-Colonel Rémi Poulin (CF-140), and Colonel Harley Rogers (CH-146), and Burke spoke to Colonel Doherty, Colonel John Foster (CC-130), Lieutenant-Colonel Gary Walker (CF-18) and Major Sylvain Lavoie (CF-18). Poulin and Burke advised these individuals that Valcom was having some internal issues on the project, with some personnel losses. Valcom was considering its options. Poulin and Burke asked each person what his reaction would be if Valcom was to replace Alleslev-Krofchak in the SPM#1 position. With one exception (presumably Lavoie), all were categorical – Alleslev-Krofchak was highly regarded. All found her engaging, knowledgeable, and energetic. All but one considered her just the right person to undertake this activity.

Diane Hould

[114] Hould (DOB 1964), an ADGA resource, worked on the OWSM project from May 2002 to March 2003 as a junior engineer. She worked almost exclusively on the Griffin helicopter under direction of Hopkins. Her previous experience had been in industry, not the Military.

[115] According to Alleslev-Krofchak, Hopkins and Clubine reported to her that Hould's technical work was not up to the calibre required and that her writing skills were not good. After reviewing a report prepared by Hould, Alleslev-Krofchak agreed. Alleslev-Krofchak's evidence was that she asked Hopkins and Clubine to do what they could to help Hould get her report to a stage where it could be released, but Clubine was not sure this was possible. Hould acknowledged that at least one of the reports she worked on was returned to her to be rewritten, and that she possibly had worked on some sections a number of times.

[116] As well, according to Hopkins, Hould was difficult to work with; she had an attitude. Hould wanted to communicate directly with Rogers, the CH-146 WSM manager, rather than through Hopkins. In accordance with Alleslev-Krofchak's directions, Hopkins had told Hould that all communications with Rogers should be authorized by Hopkins, the lead of that fleet team, but he was meeting with resistance from Hould. Hould also was resistant when it came to properly storing her work product so that others could access it on-line. Hopkins had brought these matters to Alleslev-Krofchak's attention. Alleslev-Krofchak was told that Hopkins, Clubine, Fortin and Duncan had all spoken to Hould about these issues.

[117] On October 23, 2002, Alleslev-Krofchak reported on this state of affairs to Engelbretson (ADGA), Poulin, and Flanders. She copied the e-mail to Hopkins, Clubine and Duncan. In the e-mail she emphasized that nothing should go to the client (*i.e.* Rogers) before it had been reviewed for quality and timeliness through the chain of command, namely Hopkins, Clubine and Alleslev-Krofchak. As well, all communication with military and civilian personnel outside of the Griffin team should be authorized by the fleet-team lead, in this case Hopkins, and the fleet-team lead should participate in any discussions with Rogers. Hopkins had

communicated this to Hould, without much success. Alleslev-Krofchak asked for recommendations to deal with this issue.

[118] In her evidence, Hould acknowledged that she did not report to Alleslev-Krofchak; nevertheless, she felt that Alleslev-Krofchak kept tabs on her, telling her who she could and could not speak to, preventing her from going to other floors in the building to speak to DND personnel, and keeping a file on her. Hould said that she felt harassed and bullied by Alleslev-Krofchak and complained to ADGA about her management style. In searching for a document that she had authored, Hould came across a memo written by Alleslev-Krofchak that was quite critical of Hould. This sealed Hould's dislike of Alleslev-Krofchak.

[119] After consultations between the Technical Authority, Valcom and ADGA, a decision was taken not to renew Hould's contract at the end of March 2003, despite Hould's desire to stay on the project. To Poulin and Valcom's knowledge, this result could not be blamed on Alleslev-Krofchak. She had merely advised the decision-makers of legitimate concerns about Hould that others had brought to her attention.

Peter Boese

[120] Peter Boese was the Personnel Specialist#2 on the OWSM project, reporting to Duncan who in turn reported to Fortin. On March 18, 2003, Chouinard, after consultation with Alleslev-Krofchak, advised Poulin that there was no longer a need for Boese and his contract was not renewed on March 31, 2003. According to Alleslev-Krofchak, the OWSM project at the time required more engineering to get statements of work for each of the aircraft fleets completed. At this point, Alleslev-Krofchak and Chouinard were shifting resources so that two additional senior engineers, Scott Ferguson and Tom Wall, and an additional life cycle manager, Lyle Best, could be retained under an additional contract, which Valcom also succeeded in getting.

[121] Boese's departure could in no way be blamed on Alleslev-Krofchak's management style. It was anticipated under the Prime Contract that resources would be called up and released as needs changed. Poulin and Valcom realized that.

Ross Embree

[122] Ross Embree (DOB 1949), a Valcom resource, a certified project management professional, a former AERE major with 25 years in the Military, NATO experience and a Masters in Systems Engineering, occupied the SPM#2 position for mere days in April 2003.

[123] Burke encouraged Embree to consider the SPM#2 position. At an initial exploratory meeting, it was made clear to Embree that the position was to manage the program office, the team, the deliverables, the timetables and the reporting. It was not a position that would make use of Embree's considerable technical engineering abilities. Embree quickly concluded that the position of SMP#2 was not of interest to him. Subsequently, Burke got back to Embree and advised that there was some opportunity for an expanded role for the SPM#2

position. He gave Embree the impression that he would have meaningful participation in the management of the project. On that basis, Embree took the job.

[124] Embree was present on the project for four days when Alleslev-Krofchak was away. Upon her return, there was a meeting attended by Alleslev-Krofchak, Embree, Smith and Duncan. According to Embree, Alleslev-Krofchak did not introduce or welcome him. When he expressed his interest in having some dialogue about his participation in the project, she said that his terms of reference were really as an office manager. He expressed his hope that he could put his experience with performance-based systems to work through input into project goals and objectives. According to him, Alleslev-Krofchak said that his terms of reference were as she had set out; if he did not like that, he could leave. The most she allowed was that, if he proved himself to her, she might bring him into an expanded role. This was of no interest to Embree. He had proven his skills over the previous 25 years working in program management, and did not need to prove himself to anyone. He left immediately and advised Burke and Poulin that he could not work in that environment.

[125] Alleslev-Krofchak's version of the meeting was significantly different. Alleslev-Krofchak spoke of engineering and organizational change taskings and then of the monthly reporting that was required. This did not interest Embree. Alleslev-Krofchak advised that for the first month the reports could be abridged and Smith could help Embree. Embree was furious. He stood up and yelled at Alleslev-Krofchak that she could not lead her way out of a wet paper bag, that she did not know what she was doing, that he did not have to take "this shit" and that he certainly was not going to take this from her. He stormed out of the office and quit. I note that Embree denied that he had acted in this fashion; his evidence was that he had simply and politely left. Neither Duncan nor Smith was called to testify.

[126] Whatever the accurate version of events is, in no way can Embree's departure from the SPM#2 position after attending part of one meeting with Alleslev-Krofchak be blamed on Alleslev-Krofchak's management style, and from the feedback that Embree gave Poulin and Burke, they realized that. As Embree himself testified, he had the training and experience to manage the OWSM project and be the SPM#1. Clearly, he was not going to be satisfied in the SPM#2 position. Following Embree's departure, nothing was put in writing to Alleslev-Krofchak concerning her personnel management shortcomings, and she was not provided with any counselling in this respect.

[127] I find that by this time, Poulin, Burke and Valcom were already actively strategizing about how they could move Alleslev-Krofchak out of the SPM#1 position and replace her with a Valcom resource. Their strategy was to move into the SPM#2 position a candidate obviously overqualified for that position and have him ready to take over management of the project as soon as Alleslev-Krofchak could be removed. This finding is supported by the fact that Burke had reviewed with Embree all of Alleslev-Krofchak's perceived shortcomings with personnel management and, as a way of enticing Embree into the position, had held out that he would be given an enhanced management role over and above what was contained in the various job descriptions for the SPM#2 position in the Statement of Work.

Fred Lee

[128] Fred Lee was the Systems Architect on the OWSM project responsible for information technology/management until June 2003. By early 2003, Alleslev-Krofchak, after consultation with her team, had come to believe that Lee did not have sufficient expertise to handle the complex computer systems and programs that maintained the aircraft maintenance management information system and that would allow the interface of DND's computer systems with industry's computer systems to support the move to outsourcing. This was not his background, and when the Statement of Work had originally been drafted, no one had realized the complexity of what would be required from a computer expert. Alleslev-Krofchak advised Poulin that someone with greater expertise was required. Poulin recruited Tim Bakos, who took over from Lee and was still working at the OWSM project office when Alleslev-Krofchak left the project. Alleslev-Krofchak did not work directly with Lee. He reported either to Duncan or to the SPM#2 position. Neither Lee nor Poulin ever advised Alleslev-Krofchak that Lee had any management issues with Alleslev-Krofchak. Burke acknowledged at trial that as far as he was aware no one was alleging that Lee's departure had anything to do with Alleslev-Krofchak's management.

Enzo Diodati

[129] Enzo Diodati, an ADGA resource occupying the position of Junior Engineer #2, was hired off the contract in June 2003 by Valcom, who placed him on another contract in a better position with a better income. According to Alleslev-Krofchak, he had been doing a great job on the OWSM project. Burke acknowledged that in no way was Alleslev-Krofchak responsible for Diodati's departure. Poulin and Valcom were aware of that. Burke also acknowledged Valcom hiring staff away from the OWSM project would have been disruptive to the project to some extent.

Lyle Best

[130] Lyle Best (DOB 1958), a former non-commissioned member of the Canadian Military and aircraft technician, had lengthy experience working at DGAEPM. Best met Alleslev-Krofchak in 1999, when both were working on the same project in Ottawa. Later both worked in the SSC field through temporary help services contracts with Valcom. Alleslev-Krofchak had been instrumental in getting Best the Senior Life Cycle Material Manager position when three additional positions were added to the OWSM project team in the summer of 2003. Best stayed in this position as a Valcom resource until September 2007.

[131] Best described Alleslev-Krofchak as a friend and confidante when they first started on the OWSM project. They would meet on their own approximately once a month and talk about what was or was not working and how each was performing on the project. Over time, these one-on-one meetings diminished and then stopped, to be replaced by meetings where Alleslev-Krofchak, Duncan, Smith and Best would all be present. Best described these meetings as having an inquisitorial nature to them, and he felt threatened by them.

[132] Best's observation was that Alleslev-Krofchak was totally focused on the end product and on doing a good job for Lucas. She did not focus on the personnel working under her, and instead left all personnel issues to Fortin. Best understood that Alleslev-Krofchak's plan was to stay on the project for a limited time and then become the director of ARINC's operations in Canada.

[133] Best described a number of situations in which he found himself in conflict with Alleslev-Krofchak, and Alleslev-Krofchak pulling rank and instructing him that things would be done in a particular way, regardless of whether Best was being asked to do things differently by members of the Military responsible for the particular fleet project on which he was working. Alleslev-Krofchak held herself out as having the only correct interpretation of what Lucas wanted, and she insisted that this interpretation be acted upon. In the past, Best had worked as Lavoie's right-hand man. Lavoie had a vision for the OWSM work required for the CF-18s that was very different from the instructions Alleslev-Krofchak said she was receiving from Lucas. Best felt caught in the middle and faulted Alleslev-Krofchak for not finding a resolution to this conflict in vision between Lucas and Lavoie.

[134] On June 20, 2003, Best e-mailed Alleslev-Krofchak to complain about a meeting the previous day that he had organized and that Alleslev-Krofchak and others had attended without first advising him that they would. In his opinion, Alleslev-Krofchak had demonstrated a lack of professional courtesy to himself, and the objective of the meeting had been de-railed. Of particular interest is that on June 23, 2003, Best forwarded this e-mail to Poulin and Burke asking them what they thought. It is clear that prior to this date, Best had been discussing with Burke and Poulin his concerns about Alleslev-Krofchak's management style.

[135] Alleslev-Krofchak's evidence was that she thought she and Best had a good working relationship. She apologized to Best about any misunderstanding as to her attendance at the meeting in question. She believed the misunderstanding had been resolved. Alleslev-Krofchak was clearly surprised that Best was as critical as he was concerning her management style.

[136] Alleslev-Krofchak shared with Best her observations of other OWSM team members. Best was aware that Alleslev-Krofchak felt that French was not the right person for the job, Boese was not needed and Hopkins was struggling. Best was threatened by the environment and worried that he might be the next person to be let go. In the summer of 2003, he asked Burke to start looking for other employment opportunities for him because he was considering a move; however, at no time did he threaten to leave if Alleslev-Krofchak was not removed as SPM#1.

Tom Wall

[137] Tom Wall (DOB 1947), a Valcom resource, a retired AERE officer with 30 years in the Military and years of experience on OWSM-like contracts (though not for aircraft fleets)

filled a newly created engineering position on the OWSM project from April 2003 to January 2005.

[138] Wall described his work experience from April to September 2003 at the OWSM project as being very frustrating. There did not seem to be any real direction. Having Harley Rogers on the project as the engineering manager after August 2003 helped to get things focused. As well, after Brian Lewis took over from Alleslev-Krofchak, he started having meetings to ensure everybody was on the same page. The PESS team continued to have their ups and downs, but at least it felt like they were moving forward. They got teams organized to work with the WSM managers, and the relationship with the managers improved. Wall did not need the work and had been happily retired. Had the frustrating conditions continued, things probably would have gotten to the point where he would have left, but it never did get to that stage, and he never told anyone at Valcom that he wanted to or would be quitting. I prefer Wall's evidence to that of Poulin.

Chronology Leading to Alleslev-Krofchak's Removal as SPM#1

ARINC Gaining More Presence in Canada

[139] On approximately May 18, 2003, at DND's request, senior managers and engineering staff from ARINC came to Ottawa to do a presentation to DND on ARINC's engineering and consulting capabilities. Lucas and some of the colonels who attended the meeting were impressed with ARINC's capabilities and were considering ARINC for some specific projects. Valcom was aware of this.

Brian Lewis Becoming SPM#2

[140] Shortly before or after May 30, 2003, Poulin and Burke discussed with Lewis over lunch the position of SPM#2. Poulin and Burke fully briefed Lewis about his predecessors and advised him that they had left the project due to Alleslev-Krofchak's management style and their inability to work with her. According to Poulin, Lewis advised them that he had worked with Alleslev-Krofchak in the past, had liked her and anticipated no problem working with her. On June 2, 2003, Lewis returned to Poulin the completed requirements matrix for the SPM#2 position. On June 4, 2003, Poulin conditionally offered Lewis the SPM#2 position. Alleslev-Krofchak was not aware of the discussions Poulin and Burke had been having with Lewis and was unaware that they had offered him the SPM#2 position on June 4, 2003. Alleslev-Krofchak first learned of this development through a voice-mail Poulin left on June 4 or 5, 2003. Burke agreed that it was unusual and inconsiderate for Alleslev-Krofchak not to have been consulted about Lewis' candidacy before the position was offered to him.

[141] On June 5, 2003, Alleslev-Krofchak, Duncan and Smith interviewed Lewis. All were concerned that he was overqualified for the SPM#2 position. There is no question that Lewis was overqualified for the position of SPM#2, and I find that that was evident to everyone. I find that Alleslev-Krofchak feared that Lewis would not be happy in the position and would either leave early or would try to get her position. Her reading of the situation was completely accurate.

[142] During the meeting, Lewis expressed his five-year goal as being to become the CEO of a high-tech firm. When reporting back to Poulin, Alleslev-Krofchak queried how Lewis' moving from CFO of an engineering company to the SPM#2 position would assist him in achieving this goal. It appeared to be a step backwards in his career. In a June 11, 2003 e-mail to Lewis, Poulin conveyed Alleslev-Krofchak's comments, which he interpreted as evidence that Alleslev-Krofchak was thwarting Lewis' candidacy. He believed that Lewis was entitled to know that. Poulin reported back to Alleslev-Krofchak that Lewis was very interested in the position and Poulin wished to discuss Lewis' candidacy with her as soon as possible. Lewis testified that when he learned that Alleslev-Krofchak was not supporting his candidacy for the SPM#2 position, it coloured his impression of her – though he quickly tried to reframe that.

[143] Despite Lewis' denial that he had not even been advised that Alleslev-Krofchak was the SPM#1 on the project prior to May 30, 2003, and there had been no discussions about

any issues on the job prior to June 4, 2003, based on the evidence of Burke and Poulin, I find that, prior to Lewis submitting an application for the SPM#2 position, they had spoken to Lewis about Alleslev-Krofchak's perceived deficiencies. Lewis was told that personnel management was a problem for Alleslev-Krofchak, and he would have to assume responsibility for that. Burke denied that these discussions were for the purpose of undermining Alleslev-Krofchak or preparing Lewis to take over from Alleslev-Krofchak. He claimed that his motivation was to help everyone on the project, including Alleslev-Krofchak. I reject that evidence.

[144] Over lunch on June 13, 2003, Poulin and Burke reviewed at length with Lewis all of the issues on the project relating to Alleslev-Krofchak's inadequate management and leadership. Poulin told Lewis that Alleslev-Krofchak's management style was controlling, not trusting, disrespectful to team members, autocratic and micro-managing. Poulin described the environment as being a revolving door with about half the team having departed because they could not work with Alleslev-Krofchak – a statement which I have found was not accurate. Poulin advised Lewis that he had already spoken to the WSM managers about any dissatisfaction they had with the support they were getting from the OWSM team. Lewis understood that Poulin wanted him to use his strong leadership skills to run the team, properly manage the project, and act as a buffer between Alleslev-Krofchak and the rest of the team. Lewis acknowledged that his learning of issues surrounding the management of the OWSM team coloured his impression of Alleslev-Krofchak.

[145] Poulin justified sharing with Lewis all of the negative comments about Alleslev-Krofchak's management and leadership style that he attributed to other personnel on the project by simply saying that Lewis needed to know what he was getting into. Poulin claimed not to appreciate how providing the level of detail he did to Lewis prior to Lewis assuming the position of SPM#1 would inevitably poison his relationship with Alleslev-Krofchak from the very beginning – a claim which I do not find convincing.

[146] According to Poulin, he and Burke told Lewis that ARINC was planning to open an office in Ottawa and Alleslev-Krofchak was planning to leave the OWSM project to manage that office. According to Poulin, they told Lewis that when Alleslev-Krofchak moved on, Lewis would be in the position to take over her role. More will be said of this meeting shortly.

[147] Poulin had no explanation as to why he and Burke would have led Lewis to understand that he would take over Alleslev-Krofchak's role when she left the project in the face of paragraph G in Attachment B to the Valcom/ARINC Subcontract which states:

G. *With the exception of the Senior Project Manager (SPM#1) position, Valcom reserves the right to fill one of the five other ARINC positions as identified in the table contained in this attachment or replace an incumbent candidate on fifteen (15) calendar days notice. [Italics added]*

[148] On June 18, 2003, without speaking further to Alleslev-Krofchak, Poulin submitted Lewis' candidacy to PWGSC – sending a copy of his e-mail to Chouinard, Burke and

Flanders, but not Alleslev-Krofchak. Poulin advised Alleslev-Krofchak of this when they met at a luncheon the same day. Alleslev-Krofchak was angry that Poulin had not discussed the matter further with her before submitting Lewis' name to PWGSC. Later the same day, Chouinard advised Alleslev-Krofchak that Lewis did not meet the mandatory requirements for the position. Alleslev-Krofchak assumed that Lewis' candidacy was dead. At some point around this time, she encouraged two other candidates to apply for the SPM#2 position: John Weiler and Patricia Sauv -McCuan.

[149] Poulin acknowledged that, when Lewis' application was initially rejected as not meeting the mandatory requirements, Poulin told Lewis that this likely was the result of Alleslev-Krofchak's exerting her considerable influence on Chouinard. He also told Lewis that Alleslev-Krofchak had encouraged two other candidates to apply. Poulin also expressed his concern about how things would work out once Lewis was on the job and warned him that it might be a hostile work environment.

[150] On Friday June 20, 2003, in apparent response to Alleslev-Krofchak not supporting Lewis' candidacy for the SPM#2 position, Poulin e-mailed Flanders under the subject: "Unsatisfactory Performance – Ms. Alleslev-Krofchak". He stated that the situation involving Alleslev-Krofchak had reached a breaking point and Valcom was increasingly concerned with Alleslev-Krofchak's ability to effectively lead the SSC project office. Poulin advised that Alleslev-Krofchak "... has openly defied Valcom directives, she has undermined Valcom's management team and she has become a threat to [Valcom's] reputation." Poulin demanded a response from Flanders by Monday. He attached a draft note he had intended sending to Alleslev-Krofchak listing her shortcomings. He claimed to have held off sending it realizing that the consequences of that action could engage the termination articles within the Valcom/ARINC Teaming Agreement. That note read:

Leona;

Your reaction to my submission of Brian Lewis as the candidate to fill the vacant SPM #2 position has caused me to become concerned about your ability to continue to fulfil your responsibilities as SPM #1 in an unbiased and effective manner. I have reflected on the many incidents that have arisen since the commencement of this contract and your comments to me on Wednesday, that you "would not accept" Brian as SPM #2 can only interpreted this as a threat. This has lead me to consider the possibility that you might deliberately undermine Brian's candidacy and in doing so, Valcom as the Prime Contractor.

It has become increasingly clear that your loyalty rests first and foremost with satisfying your own personal agenda. You have eroded the trust I have placed in you by:

- manipulating the Valcom/ARINC relationship to position yourself as a contractor/employee of ARINC;

- either marginalizing or removing any member of the project team you have assessed as a threat to your leadership. While some departures are understandable the project team has suffered an inordinately high turnover of personnel (SPM#2 (two departures), SSS#1, PS#2, PM#1, JPM#1, JE#2, JE#3, SLCT#1, ISS#1 (two departures), and [a] number of ARINC project management support personnel);
- taking action to centralize project authority; isolating the majority of your team members and ensuring that the client interfaces primarily with yourself;
- forcing your own team to attempt to reconcile matters by summoning you to a meeting to offer counsel on how you could improve your management style;
- subverting Valcom's credibility and reputation by criticizing our management of the project ([Patricia Sauvé-McCuan])
- taking unilateral action in an attempt to control the staffing of contract positions and failing to disclose information directly affecting the staffing of contract positions ([John Weiler, Harley Rogers])

Up until now, you have been allowed the greatest of autonomy in managing this project. I have included you in virtually every contractual matter affecting you and the project team. This has included supporting you in withdrawing personnel from the project team, allowing you to influence the introduction of new personnel, and defending your position as SPM #1 from detractors. As a company, Valcom has deliberately not interfered in the day-to-day management of the project team however; at this juncture you will have to make a choice.

The contract Statement of Work clearly defines the Senior Project Manager #2 as the project 2 I/C. Although you have worked to organize the Group 1 and 2 positions, you have isolated the SPM#2 position and reduced the role to that of an Admin Officer – there is no logical reason to have done this. The SPM#2 is wasted if reduced to an administrative function when there are Group 2 positions that are better suited and better priced for this role. Your contention that Brian Lewis is “unacceptable” based upon charges that he is going to assume duties and responsibilities beyond your vision of the SPM#2 mandate and subvert your leadership, borders on paranoia. Furthermore, you show complete disregard for his leadership, relevant postgraduate credentials, and past military and recent commercial industry experience. Brian Lewis is a tremendous candidate for this position and can make a tremendous contribution to the success of this project.

You are sub-contracted through ARINC to fulfil the role of SPM#1. Your job is to motivate a highly talented composite team and fully exploit their skill and knowledge to satisfy the clients needs. Your obligations also extend to your employer to ensure that he fulfils his commitments as a sub-contractor to Valcom.

I want to know what you intend to do to allay my concerns regarding your commitment to the Client, Valcom as the Prime Contractor, and the members of your project team.

[151] Four minutes later, Poulin sent Lewis via e-mail a copy of his e-mail to Flanders and a copy of the attached draft note for Alleslev-Krofchak. At this time, Lewis had no status on the OWSM project. He was simply someone whose name had been proposed for the SPM#2 position. If he were accepted for that position, he would have become Alleslev-Krofchak's subordinate. I cannot say strongly enough that, under no circumstances, was it appropriate for Poulin to forward either of these documents to Lewis. Burke's evidence is that he would not have done so. He acknowledged that it would have made it tough for Lewis and Alleslev-Krofchak to work together after this. Lewis – despite his many degrees – refused to acknowledge how inappropriate this communication had been.

[152] Pierce understood that Poulin had left a voice-mail message for Flanders on June 19, 2003 expressing concern that Alleslev-Krofchak was influencing in a negative manner the Technical Authority's assessment of Lewis as a candidate for the SPM#2 position. Pierce and Flanders did not send Poulin's draft note to Alleslev-Krofchak due to its inflammatory nature. Pierce and Flanders agreed to instruct Alleslev-Krofchak to remove herself from any discussions relating to Lewis' approval. They understood that this would resolve the immediate issue being raised by Poulin.

[153] Pierce and Flanders went on to have discussions with Lucas, Chouinard and other ARINC personnel on the OWSM project. In their view, none of the concerns raised by Poulin in his draft note was substantiated. Pierce and Flanders concluded that Poulin's criticisms of Alleslev-Krofchak were motivated by Valcom's desire to get Alleslev-Krofchak, an ARINC resource, moved out of the SPM#1 position, to be replaced by Lewis, a Valcom resource.

[154] Pierce testified that Alleslev-Krofchak was managing the project exactly the way she, and others at ARINC, would have expected her to, and consistent with how they managed similar large projects in the U.S. This was confirmed for them by the feedback from Lucas and Chouinard – both indicating to ARINC that they were very satisfied with Alleslev-Krofchak's performance on the contract, how she was managing the team and what she was delivering.

[155] Pierce agreed with Alleslev-Krofchak's approach of centralizing control and responsibility in the SPM#1 position. That is what was expected with a performance-based contract. She believed that the criticisms being levied against Alleslev-Krofchak by Poulin resulted from unhappiness with this methodology and a lack of understanding of what is required in performance-based contracting. Furthermore, she believed that the push-back that Alleslev-Krofchak was experiencing from some individuals on the contract was the result of those individuals struggling with the new performance-based contracts with a centralized reporting system to the client. In the past, the consultants would have been considered the expert in a particular field with direct input to the client. Under the OWSM contract, the consultants had to

do the tasks assigned to them in the timeframe assigned, have their work vetted and possibly pooled with that of others and then presented to the client through the SPM#1. This removed control from the individual consultant, and many were uncomfortable under this new paradigm.

[156] On June 23, 2000, Alleslev-Krofchak advised Poulin that Chouinard had expressed to her how pleased he was with the team, their deliverables and the general attitude around the workplace. As well, she had received positive feedback from the WSM managers for the CC-130 and CF-18 fleets in terms of the progress the team was making on the project. She reported that the team was working together extremely well and “the proof was in the pudding of happy clients who are pleased with our deliverables”. She thanked Poulin for helping to make this happen.

[157] On June 25, 2003, Poulin e-mailed Flanders asking for feedback regarding ARINC’s corporate position regarding Alleslev-Krofchak and asking Flanders to contact him. Flanders responded the same day that both he and Pierce were on vacation in separate states and wanted to meet face to face with Poulin to resolve the issue conclusively after their return on June 30, 2003. He identified the larger issue as being the relationship between Alleslev-Krofchak and Valcom and how that relationship was adversely influencing the ARINC/Valcom relationship. He undertook to remain in communication with Poulin to make sure Alleslev-Krofchak was honouring her commitment to make the relationship and the project work. Poulin provided Lewis with copies of these e-mails.

[158] On June 25, 2003, Poulin responded that it was imperative that some action be taken immediately to remedy the SPM#2 situation. He reiterated his view that Alleslev-Krofchak was standing in the way of Lewis being accepted by Chouinard for the SPM#2 position, relying on his cynicism, Alleslev-Krofchak’s track record, Alleslev-Krofchak’s statements to him, and his discussions with Sauv -McCuan and Chouinard. Poulin wanted Alleslev-Krofchak to strongly recommend Lewis to Chouinard. He also advised that he and Burke had spoken to many of the WSM managers and directors and everyone, with the exception of Chouinard, supported Lewis’ candidacy. Poulin was “astounded” by Chouinard’s tepid response to Lewis’ candidacy and assumed that it must have been a reflection of the opinion Alleslev-Krofchak would have expressed to Chouinard. Poulin provided Lewis with a copy of this e-mail. Lewis agreed that the e-mails of June 25, 2003 coloured his view of Alleslev-Krofchak.

[159] By this point, Pierce and Flanders started having concerns about Poulin’s motives in that, despite ARINC instructing Alleslev-Krofchak to stay out of discussions regarding Lewis’ candidacy, Poulin was still not satisfied.

[160] On June 25, 2003, Flanders forwarded to Alleslev-Krofchak a copy of Poulin’s June 20, 2003 e-mail and the June 25, 2003 Flanders/Poulin e-mail interchange. This was the first time that Alleslev-Krofchak learned of the highly charged communications Poulin was sending to Flanders regarding her unsatisfactory performance. Flanders did not send Alleslev-Krofchak a copy of Poulin’s draft note to Alleslev-Krofchak listing his criticisms. Alleslev-

Krofchak was shocked by Poulin's comments as she was under the impression that everything was going well on the OWSM project. She understood how his administrative responsibilities had increased due to the personnel changes on the project; however, she did not accept responsibility for those changes. She did not understand how she had undermined Valcom in any respect. She did not feel compelled to follow Valcom directives in that Valcom was not her employer and was not the client. In any event, she did not see how she had defied Valcom directives. Flanders reassured Alleslev-Krofchak that Poulin's chief complaint was that Alleslev-Krofchak was thwarting Valcom's efforts to have Lewis accepted for the SPM#2 position. Flanders instructed Alleslev-Krofchak not to act as a roadblock in this regard. Flanders assured Alleslev-Krofchak that this would alleviate Poulin's concerns and that ARINC was not unhappy with her performance.

[161] On June 25, 2003, Poulin e-mailed Lewis, asking that he "beef-up" his resumé wherever he could. Lewis did so. On June 26, 2003, Poulin resubmitted to PWGSC Lewis' documentation to support his qualifications for the SPM#2 position. A third revision was resubmitted in early July.

[162] On June 25, 2003, Sauvé-McCuan also forwarded to Alleslev-Krofchak documentation to support her candidacy for the SPM#2 position. Poulin subsequently interviewed Sauvé-McCuan.

[163] Sauvé-McCuan is a chartered accountant who was employed by DND in 1990 as an auditor and then in 2004 as Director General for project delivery in the technology and communications areas. In 2005, she moved into the position of Assistant Deputy Minister for Information Management at DND, and in August 2008 became a Special Advisor at DND, though at the time of trial she was on a one-year leave to do her Masters in Public Administration. At the level of Assistant Deputy Minister, she is the equivalent of a three-star general, and in the hierarchy would be above General Lucas. Between 1990 and 2004, Sauvé-McCuan worked in various capacities at various organizations – at times being an employee and at times being an independent consultant. One major project related to outsourcing the supply chain at DND.

[164] In June 2003, Alleslev-Krofchak had spoken to Sauvé-McCuan about the SPM#2 position, which Sauvé-McCuan understood would involve day-to-day management of the team, including overseeing deliverables and timeframes. Sauvé-McCuan submitted her resumé and then met with Poulin on June 19, 2003. Sauvé-McCuan described the interview as bizarre, in that she and Poulin hardly spoke about the SPM#2 position, aside from Poulin saying that she was overqualified and would not be suitable for it. Poulin directed the conversation to Alleslev-Krofchak – her abilities, her style, her approaches, how they were not appropriate for the job, and how she did not have the right background because she was not an engineer and was too low in rank. Poulin went on to say that he knew someone who was an engineer and had been a major in the military and he possessed the necessary skills to properly manage the project. As soon as she left the interview, Sauvé-McCuan called Alleslev-Krofchak to say that it was unlikely she would

get the position and to warn her that it appeared Valcom would try to move Alleslev-Krofchak off the project.

[165] Sauv -McCuan testified that she had never heard of Brian Lewis prior to trial. When she had met with Poulin to discuss the SPM#2 position, she certainly had not mentioned Lewis' name and had not commented about his qualifications in any regard; she did not know the man and knew nothing about his qualifications. I accept the evidence of Sauv -McCuan and reject the evidence of Poulin that Sauv -McCuan had criticized Lewis' candidacy and had relayed criticisms of Valcom that had originated with Alleslev-Krofchak.

[166] On June 27, 2003, Poulin e-mailed Flanders regarding Harley Rogers (who was retiring from the Military) becoming an ARINC resource under the OWSM project, stating that, despite Rogers' obvious qualifications for a senior engineer position, it should not be assumed that Rogers would obtain the position. There was a process that had to be undertaken first, and that considering the difficulties in getting Lewis confirmed in the SPM#2 position, there could be "potential delays" and "negative optics" in presupposing PWGSC would approve Rogers. At this time, Valcom was displeased that Rogers was being proposed as an ARINC resource, and I find that Poulin was putting up roadblocks in this regard.

[167] On July 4, 2003, Poulin e-mailed Flanders expressing disappointment that he had not heard from him or Pierce and reiterating his concern with Alleslev-Krofchak's concentration of authority, the marginalization of the SPM#2 position, and the effect Alleslev-Krofchak's management style had on the team. He stated: "The fact that she so vigorously protested Valcom's candidate for the SPM#2 position has brought the matter to a head and eroded trust to the extent that unless things change, we will require ARINC remove her from the SPM#1 position." He went on to say that Valcom would require that the SPM#2 position be re-instated as the Deputy Program Manager of the project team as described in the Statement of Work and the current organizational structure be modified to devolve responsibility and authority back to principals within the team so that everyone is more fully engaged and accountability is more transparent. Alleslev-Krofchak did not see this e-mail until after she was locked out.

[168] Pierce and Flanders did not agree with what they believed was Poulin's underlying goal; namely, to water down the authority and responsibility of the SPM#1 position and to flow more control to individual team members. In their experience, this was not the way to manage a performance-based contract.

[169] On July 11, 2003, Alleslev-Krofchak e-mailed the OWSM team with kudos regarding the CF-18 performance work statement and performance management framework. She commended various individuals in particular for rising to a difficult challenge. She forwarded a copy of the e-mail to Chouinard, Poulin, Burke, Flanders and Mackey. Poulin responded by applauding the e-mail and endorsing her acknowledgement of her team's work. He suggested they get together "to resume constructive communication re contract delivery issues". Alleslev-Krofchak assumed that everything was back on track.

[170] On July 16, 2003, Chouinard e-mailed Alleslev-Krofchak and Duncan with kudos for the outstanding work they and the team had done to create the performance work statement.

[171] On July 18, 2003, Poulin e-mailed Alleslev-Krofchak regarding a number of issues, one being Lewis' acceptance in the SPM#2 position with a starting date of July 21, 2003. He stated:

To ensure we do not suffer a recurrence of the situation which led to the departure of Gilles Fortin and Ross Embree it is necessary to establish appropriate terms of reference (TORs) for all Group 1 labour categories affected by Brian Lewis' arrival.

As discussed with Jim Flanders, Valcom is asserting its authority as Prime Contractor and insisting that the SPM#2 position be re-instated as the DPM of the Contractor Team. In order to ensure this is established properly it will be necessary for you to prepare clear TORs for the principal positions within Group 1. In simple terms the SPM#2 is to be in direct line between SPM#1 and the remainder of the contract team. This will require you to amend the OWSM Program Structure (contractor component) by inserting the SPM#2 in between yourself and the Primary Organization Specialist, the Primary Engineer, and the Program Office Manager (JPM#1). The specific authorities, responsibilities, and tasks are to flow from this functional arrangement while meeting the objectives of the Technical Authority. This approach is to ensure that there is full exploitation of the leadership, experience, training and practical skills of all members of the team. As Valcom is the Prime Contractor and ultimately responsible for delivery on this contract we should, in fact, 'own' the SPM#1 position. However, as we have deferred that to ARINC we are reinstating the authority of the SPM#2 position as the DPM. We are confident that Mr. Brian Lewis possesses both the leadership and skills necessary to easily fulfill both this role and those described by the contract statement of work.

I would suggest that you present the TORs for the SPM#1, SPM#2, PS#1, SE#1 and JPM#1 to both Jim Flanders and myself for review. Once agreed to by Valcom/ARINC, these TORs will serve to define the respective company's expectations of the incumbents in these key positions. Furthermore, Valcom proposes conducting regular meetings with the 'principals' of the OWSM project team to discuss matters from a contract delivery standpoint.

[172] On July 19, 2003, prior to commencing work at the OWSM project, Lewis e-mailed Poulin the following:

By the way, based on my discussions between you, Len and me over lunch a few weeks ago, my expectations (and an important reason I accepted the SPM#2 position) was that within 6-12 months, a move will be made to remove Leona

from her position, to be replaced by myself. It was really that advancement opportunity that attracted me to the job, and why I turned down several other job opportunities. Based on my conversation with you last Wednesday and with Len on Thursday, it appears that your concerns with Leona are increasing daily. If you wish to implement the plan we agreed upon sooner, I am certainly ready and willing to do so.

In the meantime, I will work with Leona to establish the OWSM project office organizational changes that you envision and to which I fully agree. I also like your idea of a regular meeting with the “principals” of the OWSM project team.

[173] Lewis testified that when he had written this e-mail, he thought he was accurately reflecting the conversation he, Burke and Poulin had had weeks earlier. He had understood at the time that Valcom had a plan to remove Alleslev-Krofchak as SPM#1 within six to twelve months, at which time Lewis would step into her role. He understood that he would initially be installed in the SPM#2 position and would observe and report to Valcom in writing on a weekly basis about the actual situation on the team and about Alleslev-Krofchak’s deficiencies. I find that Lewis understood that one of the purposes of these written reports was to provide ammunition to Valcom to assist in its goal to remove Alleslev-Krofchak at SPM#1. More will be said later about this very important document.

Alleslev-Krofchak’s Removal as SPM#1

[174] Lewis commenced work on the project on July 21, 2003. Poulin and Burke admitted that they had instructed Lewis to keep track of Alleslev-Krofchak’s performance as it related to personnel management and to report to them any problems internal to the organization. Burke acknowledged that that might have put Lewis in a conflict situation because he was being asked to report on deficiencies in the performance of the person whose job he had been promised once she left. Poulin denied there was any conflict and considered himself and Burke perfectly justified in adopting this approach.

[175] By July 22, 2003, Lewis was already undermining Alleslev-Krofchak by sending a confidential e-mail to Poulin advising as to how Alleslev-Krofchak was responding to Poulin’s request that she prepare a new organizational structure for the OWSM program office. To date, all of the e-mails between Poulin and Lewis had been to and from Lewis’ home e-mail address. Interestingly, he ended this e-mail by stating: “I will continue to use my home e-mail to discuss this sort of issue with you, Greg. Please feel free to continue sending related e-mails to my home address”. By return e-mail Poulin responded that he was in agreement with Lewis’ suggestions. The implication was clear. Neither Lewis nor Poulin wanted their e-mail exchanges, the purpose of which was to further their mutual goal of getting Alleslev-Krofchak off the OWSM project, to come to the attention of Alleslev-Krofchak. I reject Poulin’s evidence that the only reason why Lewis was sending e-mails from his home address was so that he was not using client time to perform Valcom business.

[176] Lewis worked with Alleslev-Krofchak on July 21, half of July 22, July 25, August 5 to 7, and then August 13. Alleslev-Krofchak was away from the office on work or vacation the other days immediately prior to her being removed on August 14th. Chouinard was away on vacation for the two weeks at the beginning of August.

[177] Commencing on July 27, 2003, Lewis began sending to Poulin from his home e-mail address weekly updates about Alleslev-Krofchak's shortcomings. In the July 27, 2003 update, he recounted in detail discussions he had had with Alleslev-Krofchak about preparation of the OWSM project office organizational structure. He advised that Alleslev-Krofchak would be away on holidays from July 25 to August 5, 2003. Then he went on with the following vituperative assessment:

I have started a file that I'm going to maintain at home concerning Leona's shortcomings. There is much that I learned this week, some of which corroborates what you told me and some is new information. For instance, in our "clearing the air" meeting Monday morning, she said that you said the reason I had turned down the Performance Measurement position back in April was that I had said I couldn't work with her. According to her, that is why she was reluctant to support my candidacy for the D/PM position. Of course, I know this explanation was pure bs for a number of reasons, but she obviously concocted it as a tidy excuse for turning me down, rather than express her real reasons (intimidated and threatened by me, didn't fit into her master plan, etc.). As you know, the "working with Leona" thing was never an issue until well into June (it was certainly never discussed in April), when she started blocking my candidacy and you started warning me about the problems people were having working for her. And even then, I never said I couldn't work with Leona – on the contrary, I remember how surprised I was to learn in June that so many people were having difficulty working with her, because she and I got along so well when we worked together several years ago. I told her on Friday, as I have stated all along, the only reason I had turned down the performance measurement position was that I felt it would not be a good career move.

So, I've already started to experience first-hand some of the problems people have been having working with Leona. I can't stand being lied to. Leona lied to me at least twice this week, and other members of the team have already (voluntarily) told me about other instances where she has lied to them. As you know, if a leader (if we can call her that) doesn't have integrity, first and foremost, then anything else the person has to offer is irrelevant; nobody will follow them.

Besides a lack of integrity, the other core problem with Leona is her lack of trust in the people working for her. I guess it's hard to trust other people when you aren't trustworthy yourself. This drives her to be the "micro-manager" that she is, which drives her team nuts. Every single time she and I began a discussion about someone, she was always extremely negative about them and quickly focused on

their weaknesses. For instance, (get this), she said that Tom Wall is not really a Senior Engineer – he’s more of an Intermediate Engineer. That is just one example. She is very quick to criticize anyone being discussed, be they the people working for her, clients, engineers in general, etc. and I find that, frankly, pretty disgusting.

[178] Poulin thanked Lewis for this level of detail, saying that it was perfect and asking him to continue with regular frequency; however, he warned Lewis to be as “dispassionate” as possible in regard to Leona. I find that one reason Poulin instructed Lewis to be dispassionate was because Poulin intended to use Lewis’ reports as ammunition against Alleslev-Krofchak.

[179] Lewis’ August 3, 2003 update to Poulin focused on his own accomplishments over the week in Alleslev-Krofchak’s absence. He reported that he had met individually with members of the OWSM project office team and that every one had described their displeasure working with Alleslev-Krofchak, particularly in terms of her lack of trust and respect for them. He had kept detailed notes. He described the warm welcome he had received from the colonels on the Board of Directors of the project.

[180] On August 6, 2003, Poulin e-mailed Mackey at ARINC to advise that Alleslev-Krofchak had not notified Poulin of what she was doing to re-establish the SPM#2 as the Deputy Project Manager and to clarify the roles of the other senior managers on the project. He stated: “To be frank, Alleslev-Krofchak is on her last chance with Valcom. We will not tolerate any further subterfuge, discrediting of Valcom’s reputation, pursuit of a personal agenda, or what we view to be a destructive management approach toward the team on her part.” Poulin sent a copy of this e-mail to Lewis. Mackey instructed Alleslev-Krofchak to have an organizational chart to him by August 8, 2003. He advised Poulin that he and Flanders wanted to review it before they forwarded it to Poulin for discussion and he advised that he was out of the office the entire next week.

[181] Lewis’ evidence was that he, Poulin, Best and Wall met for a drink after work on August 7, 2003, at which time Lewis, Best and Wall advised Poulin that they could no longer work with Alleslev-Krofchak and would be leaving the project. Poulin’s evidence was that it was only during a meeting with Burke and Lewis on Monday, August 11, 2003 that Lewis advised that if Alleslev-Krofchak was not removed, then he would be leaving the project.

[182] Wall’s evidence was that he had no recollection of having a beer with Poulin, Lewis, and Best on August 7, 2003. He did not remember any announcements at that time that anyone was going to leave the project. If he had been with them at that time, and if he had been told by either Lewis or Best that they were going to leave the project, he would have remembered that. Wall was clear that he had not told Burke or Poulin that he was leaving the project unless Alleslev-Krofchak was removed as SPM#1.

[183] Both Best and Hopkins testified. No evidence was adduced from either to the effect that he had advised Poulin, Burke or Lewis that he was going to quit. Best’s evidence is

that he told Burke that he would like to be transferred to another contract, if one became available. The only evidence relating to Hopkins was that, although he was stressed and unhappy about aspects of Alleslev-Krofchak's management style, he was going through a divorce and was not in any position to quit his job.

[184] Lewis opened his third update to Poulin, dated Sunday August 10, 2003 by stating that he hoped the update was redundant, which I interpret as meaning that he hoped steps had already been taken to terminate Alleslev-Krofchak's role as SPM#1. After describing a disagreement between Alleslev-Krofchak and himself regarding how work on an aspect of the project needed to be scheduled, he went on to state:

When you, Tom, Lyle and I met over a beer on Thursday last week, I mentioned to you what I had learned about the extensive client dissatisfaction with Leona. Let's recap. As I learned at a two-hour meeting with Maj. Sylvain Lavoie on Wednesday (at his request), he is extremely dissatisfied with Leona and her handling of the CF-18 Performance Work Statement (PWS) fiasco. In Sylvain's words, she has been negative value added. He also mentioned how unhappy Col Doherty is with Leona, and that Col Doherty had mentioned that he was hoping I was coming in to replace Leona. Finally, Sylvain related how Leona managed to severely piss off Col Miller by her constant "know-it-all" type of interruptions of him during his briefing in front of a room full of people in Winnipeg recently. Those people included BGen Lucas, Col Doherty and others, who Sylvain feels couldn't help but notice (and frown upon) Leona's actions.

Also of note – the CP140 WSM, LCol Poulin, briefed the BOD on 30 Jul that he was planning to contract out to IMP the writing of the CP140 PWS. Although he was re-directed on this, you have to ask yourself why he was trying to avoid the OWSM program office.

Finally, as I mentioned in a previous update, Maj Chouinard stated to Diane and I "We haven't had a strong program manager, until now."

Not a day has gone by where she hasn't made a derogatory comment about AERE or engineers. I don't think it is ever a good idea to speak ill of your primary clients, and perhaps her disdain of her primary clients is at the core of the client dissatisfaction we are now seeing.

The clear client dissatisfaction makes me conclude that the optional extension of the OWSM PO contract on 1 Apr 04 is in serious jeopardy. In fact, it could be even worse. I had a three-hour talk with Wayne Clubine Friday evening (we left the office at 7:30 pm), and he is very worried that the "rug could be pulled out from underneath this contract at any time."

To summarize, the three outcomes of all the problems associated with Leona are:

- 1) Client dissatisfaction (contract sustainment is in doubt)
- 2) Team dissatisfaction (many are threatening to leave soon unless Leona leaves)
- 3) An unchanged OWSM PO organization structure (she has ignored your direction)

I have talked to many people over the past three weeks, and have received many strong, unsolicited indications of support in terms of my replacing Leona, both from clients and the team. I have already had sufficient time to “get up to speed” on the project, and have made significant progress in formulating my plans on how I would run the team if put in charge. I am very, very confident that I would be able to a) regain client confidence and satisfaction with the team’s work, b) vastly enhance team morale, employee retention and productivity and, c) secure the contract extension.

[185] Lewis acknowledged that the only “homework” he had done before sending the three reports to Poulin in addition to working with Alleslev-Krofchak for a few days was to speak to members of the team and to speak with Lavoie, one of the WSM managers. To the knowledge of Poulin and Burke at that time, Lucas, Boland, Chouinard and all of the fleet managers except Lavoie were satisfied with the progress being made by the OWSM project team and with Alleslev-Krofchak’s leadership of that team. To the knowledge of Poulin and Burke at that time, there were not “many team members threatening to leave soon” if Alleslev-Krofchak did not leave. I also note that Clubine had no recollection of ever having had a three-hour talk with Lewis during which they discussed Alleslev-Krofchak.

[186] On Monday, August 11, 2003, Poulin e-mailed Mackey and Flanders to advise that, due to a briefing he had had that morning, he had no choice but to direct ARINC to remove Alleslev-Krofchak from the contract. In an e-mail to Flanders and Mackey later in the day, Poulin stated that the situation with Alleslev-Krofchak was no longer tenable. He freely admitted to having Lewis provide him with regular updates as to how things were going within the project office, and he enclosed a copy of Lewis’ first update. He also claimed to have had feedback from other members of the project team expressing serious dissatisfaction with Alleslev-Krofchak’s management approach to the point that he was concerned about more departures. Finally he reported that the lead on part of the CF-18 team, who was admittedly very biased against Alleslev-Krofchak, believed that it was only a matter of time before the client [*i.e.* Lucas] would pressure Valcom to remove Alleslev-Krofchak.

[187] Poulin’s evidence was that Valcom had to take this dramatic step on August 11, 2003 because it believed that Lewis was going to quit as SPM#2 and leave the project, as was Best, Hopkins and Wall – all because of Alleslev-Krofchak’s mismanagement and her untrusting, disrespectful attitude with them and others working on the project.

[188] I reject any evidence of Burke, Poulin or Lewis to the effect that on August 7, 2003 or on August 11, 2003, Lewis advised Poulin that he simply could not work with Alleslev-

Krofchak and, if something was not done immediately, he would be leaving the project. That evidence does not sit with Lewis' e-mail to Poulin dated August 10, 2003 in which he continues to itemize Alleslev-Krofchak's deficiencies and everyone's dissatisfaction with her management, he blows his own horn in terms of his abilities and the confidence people have in him, and he reassures Poulin that he would have the support of both the clients and the team if he were to replace Alleslev-Krofchak. He closed by saying that he would drop by Valcom's office in the morning to discuss this with Poulin and/or Burke. This is the message of a person hoping to take over the SPM#1 position earlier than originally contemplated – not the message of someone who is threatening to quit the project if Alleslev-Krofchak were not immediately terminated.

[189] Later on August 11, 2003, Flanders responded to Poulin stating that, in the absence of substantive evidence that Alleslev-Krofchak was deficient, ARINC would not remove Alleslev-Krofchak from the contract until DND directed them to do so. According to Flanders, he had met personally with Chouinard, Lucas and many of the WSM managers in the past, and there had been no indication of dissatisfaction. He stated that the removal of Alleslev-Krofchak from the contract would negatively impact the project and ARINC and Valcom's relationship with the client. He went on to state:

It is obvious to me that DND is attempting a substantial paradigm shift in the way they have done business in the past. I am also aware that some of these changes adversely impact Valcom's business strategy. We at ARINC have long recognized that shift within the US DoD and embraced it whole heartedly. In our dealings with DND, we have made significant efforts to make the Valcom/ARINC team look good, but your recent moves make that more difficult. I sincerely hope that we can work together to mutual advantage, and am prepared to bring corporate resources to bear in that objective; however, I cannot embrace your position of removing Leona from the program.

Adelle Pierce and I are willing to meet with you, your management and the Crown if necessary to resolve this conflict.

I realize that Leona is a forceful individual; however, I have found her to be of considerable substance when it comes to affecting the paradigm shift. Before you respond, I would like for you to consider the inevitability of this [phenomenon] and work with ARINC, not against us.

[190] On August 12, 2003, Poulin forwarded to Flanders Lewis' second and third updates to Poulin and advised that Valcom remained firm that Alleslev-Krofchak had to go. Although Poulin did not question Alleslev-Krofchak's corporate knowledge of the OWSM program and her capacity for work, he claimed that her disastrous management style had resulted in low morale, low efficiency, and an extraordinarily high turn-over rate. Poulin blamed this on her inability to establish trust with the team as a whole, her highly autocratic and overbearing style, and her centralization of power and information. Pierce and Flanders were shocked by the unprofessionalism of Lewis' updates and of Poulin circulating such inflammatory notes. They

believed that Lewis and Poulin were conspiring to undermine Alleslev-Krofchak's credibility on the contract and to build a case to have her removed from the project.

[191] Poulin explained his actions in sending Lewis' e-mails to Flanders as follows:

I had even taken what I consider in hindsight to be the unusual step of simply forwarding Brian's e-mail to ARINC, and I can only think that – my thinking at the time was that to have paraphrased them would have simply been more of the same old stuff from Greg Poulin to Jim Flanders and not likely to gain any traction. And perhaps if it was seen to be coming from somebody else, then that might hold more sway. I don't know, I don't know, and perhaps I might have liked to have handled it differently, but I don't know that I would have been any more successful in convincing ARINC of the seriousness of our concerns.

[192] When Poulin had not received any response from Flanders by the end of the day on Wednesday, August 13th, he e-mailed him that until the matter was resolved, Task Order Val/Ar:0001 was *suspended* effective immediately. He stated: "Unless ARINC is able to present an acceptable resolution regarding the "Unsatisfactory Performance" issues associated with Alleslev-Krofchak, Valcom will seek to invoke the Agreement, Article 12. Termination, Sub-Paragraph A, and direct Alleslev-Krofchak be permanently removed from this contract."

[193] Poulin testified that in wording the step as a suspension instead of a termination his intention was to leave the door somewhat open for some reconciliation or some alternate solution; however, he found that ARINC was not negotiating. To Poulin, ARINC seemed categorical and dismissive of Valcom's concerns.

[194] All of this was happening behind Alleslev-Krofchak's back, without her being aware that Valcom was threatening to remove her from the contract. In fact, on August 13, 2003, she and Lewis held an OWSM management meeting regarding the OWSM program office management chart and communications within the office, a summary of which was circulated later that day by Lewis.

[195] On the morning of August 14, 2003, Alleslev-Krofchak learned from Flanders that Valcom had suspended the ARINC contract. She immediately advised Lewis and then left the office. Before doing so, she had drafted an e-mail to Pierce, Flanders and Mackey, which she discussed sending with Harley Rogers, another ARINC resource, and then decided against it. Unquestionably it was a sharply worded, hard-hitting e-mail highly critical of Poulin and Valcom but, in the circumstances of Alleslev-Krofchak being summarily locked out, it was an understandable expression of anger. Alleslev-Krofchak showed good judgment in deciding not to send it. Unfortunately, she discarded the draft in her recycle bin. Subsequently Lewis discovered it and provided it to Poulin. That unprofessional and self-serving act on his part speaks volumes as to his *animus* regarding Alleslev-Krofchak. Thivierge and Burke then tried to use this draft e-mail against Alleslev-Krofchak when they met with Flanders on August 21, 2003.

[196] Within minutes of being advised by Alleslev-Krofchak that the ARINC contract was being suspended, Lewis sought a meeting with Chouinard. Later that day, Chouinard circulated an e-mail to the senior management in the DGAEPM Division and in PWGSC advising that, due to contractual issues between Valcom and ARINC, Valcom had temporarily removed Alleslev-Krofchak, the SPM#1, from the OWSM program office. Poulin blamed someone at ARINC for advising Chouinard of the contract suspension; however, I find it was Lewis who advised Chouinard, and did so on Valcom's behalf.

[197] On August 20, 2003, Mackey provided Alleslev-Krofchak with copies of the e-mails ARINC had received from Poulin describing Alleslev-Krofchak's shortcomings and enclosing Lewis' updates.

[198] On August 21, 2003, Valcom's representatives, Thivierge and Burke, and ARINC's representative, Flanders, met to discuss Alleslev-Krofchak's status. There is a disagreement as to what transpired at that meeting. Minutes of the meeting were prepared by Burke and relied on by Valcom as accurately reflecting what was agreed to. Unfortunately, Flanders died before this matter came to trial. Burke's minutes were never sent to Flanders or ARINC. There is no other documentary evidence regarding what transpired at the meeting.

[199] I do not accept the minutes drafted by Burke as being an accurate reflection of what transpired at the meeting. I do not accept that Flanders at any time told Thivierge and Burke that he would support Valcom's recommendation to terminate Alleslev-Krofchak, or that he later said that he was 100% behind Alleslev-Krofchak's termination. I do not accept that Flanders later spoke to Burke saying that Pierce was in agreement with terminating Alleslev-Krofchak.

[200] First, such an interpretation of what was said at the meeting goes against the e-mail traffic between ARINC and Valcom that came both before and after that meeting. Second, Pierce testified that the meeting notes prepared by Burke were not at all consistent with the feedback that Flanders provided to her following the meeting. ARINC's position had not changed. It did not agree with Alleslev-Krofchak's termination, and Flanders was attending the meeting with the goal of emphasizing to Valcom the benefits of a long term relationship with Valcom in an attempt to get Valcom to change its position regarding Alleslev-Krofchak. Third, Poulin's evidence was that when he returned from holidays, he immediately arranged a conference call with Flanders and Burke. The call was very short. Flanders made it clear that he vehemently opposed Valcom's decision regarding Alleslev-Krofchak, and most likely ARINC would withdraw from the entire contract.

[201] I accept the evidence of Pierce that at the meeting of August 21, 2003 Thivierge and Burke indicated that Valcom's position regarding Alleslev-Krofchak was firm. ARINC recognized that Valcom had the right under the contract to terminate Alleslev-Krofchak, provided it gave proper notice. Following the meeting, ARINC was of the view that Valcom's reactions were rash and unprofessional and could negatively impact on ARINC's efforts to

develop a relationship with DND. ARINC began to consider how to extricate itself from its relationship with Valcom.

[202] On August 22, 2003, PWGSC advised Poulin that it had not received any written notification of Valcom's intention to remove Alleslev-Krofchak from the SPM#1 position, nor had it received the name and resumé of the proposed replacement, contrary to articles 11.4 and 11.5 of the May 02/RFSA. By Sunday, August 24, 2003, Lewis had already provided Poulin and Burke, via his home e-mail address, with a completed resumé for the SPM#1 position.

[203] On August 25, 2003, Poulin formally notified PWGSC of Alleslev-Krofchak's withdrawal as SPM#1 on the OWSM project. He explained:

Over a significant period of time, Valcom had been working with ARINC to address concerns related to Ms. Alleslev-Krofchak's performance as a sub-contractor. It is important to note that these concerns were, for the most part, restricted to performance deficiencies as measured against the Valcom/ARINC Teaming Agreement and were not necessarily apparent to the Crown as the client.

During a Valcom/ARINC meeting on 21 August, it was ultimately determined, that these concerns regarding the performance deficiencies were irreconcilable and plans were initiated to terminate Ms. Alleslev-Krofchak's engagement in accordance with the Valcom/ARINC Teaming Agreement. Although Valcom intended to prepare the necessary documentation for presentation to the Crown ASAP, news of this decision reached the Technical Authority and resulted in the initiation of immediate remedial action. Unfortunately, this action effectively pre-empted Valcom's ability to respond in accordance with the timelines dictated by Article 11.4 of the RFSA.

Valcom wishes to assure the Crown that it is well aware of its obligations under **Article 11 – PROPOSED PERSONNEL AND REPLACEMENT** and is working with ARINC to identify and present a replacement candidate to the Crown as soon as possible. Furthermore, Valcom sincerely regrets any inconvenience caused by Ms. Alleslev-Krofchak's withdrawal and is expending every effort to minimize the impact to the delivery of services.

[204] Effective August 25, 2003, Lewis was installed as acting SPM#1 and continued to handle his SPM#2 functions. It is interesting to note that, despite the urgency placed by Valcom on getting Lewis appointed to the SPM#2 position, that position was never filled during the remainder of the contract while Lewis was occupying the SPM#1 position.

[205] After Alleslev-Krofchak was terminated from the OWSM project, Lucas summoned Thivierge and Poulin to his office where he and Boland conveyed in very clear terms how displeased they were with the action Valcom had taken.

[206] On August 26, 2003, Flanders e-mailed Poulin to confirm that ARINC disagreed with Valcom's decision to terminate Alleslev-Krofchak, and it insisted on the 15-day written notification required in the Valcom/ARINC Subcontract. He reiterated ARINC's belief that the removal of Alleslev-Krofchak would be detrimental to the overall objectives of the OWSM project and the wishes of the Technical Authority. He advised that if Valcom and ARINC were unable to resolve the conflict, ARINC would be exercising its right to terminate the Valcom/ARINC Subcontract upon 30 days notice.

[207] On August 26, 2003, Poulin sent formal notification to ARINC that, in accordance with section 12 of the Valcom/ARINC Teaming Agreement, Valcom was directing that the services of Alleslev-Krofchak as SPM#1 be terminated. Valcom considered the notification to have been given on August 13, 2003 and confirmed on August 21, 2003. ARINC replied in writing that it was entitled to 15 days **written** notice and therefore Alleslev-Krofchak's last working day under the contract was September 17, 2003.

[208] On September 2, 2003, pursuant to instructions from Flanders, Alleslev-Krofchak returned to the SSC-PMO and resumed her position as SPM#1. Poulin immediately advised her by telephone that she did not have any status on the Valcom contract and she was not authorized to act in any capacity under the contract. Alleslev-Krofchak left the building. Within the hour, Poulin instructed Lewis to circulate to all staff a notice to the effect that Alleslev-Krofchak had no authority to act in the capacity of SPM#1 because she had been removed from the position effective August 21, 2003. Staff were advised that they could be reassured that Alleslev-Krofchak would not be returning to a position of personnel management responsibility under the Valcom contract. Later that same day, Flanders circulated a responding e-mail clarifying that ARINC had 15 days following receipt of written notification from Valcom to rectify any personnel problems and that, consequently, Alleslev-Krofchak would be continuing in her role until September 17, 2003. In fact that did not happen. Alleslev-Krofchak never returned to 400 Cumberland Street due to the edict issued by Valcom. Nevertheless, Chouinard continued to send her work at home relating to the contract, and she continued to do that until approximately September 15, 2003.

[209] On September 23, 2003, Poulin sent a detailed memo to McDougall at PWGSC in an attempt to justify Valcom's actions in removing Alleslev-Krofchak from the contract and to reassure PWGSC that Valcom could continue to deliver under the contract. It is clear from this memo that Valcom and Poulin intended that Alleslev-Krofchak have no further status on the contract effective August 14, 2003, and that they intended to lock her out of the building at 400 Cumberland Street through their notice to ARINC that their subcontract was suspended. The memo read:

The purpose of this e-mail is to provide additional detail and record of Valcom's decision to withdraw the services of Ms. Leona Alleslev-Krofchak from the position of Senior Project Manager (SPM#1).

As articulated at reference B, the services of Ms. Alleslev-Krofchak were being provided by ARINC; Valcom's sub-contractor of some of the Group 1 positions. Notwithstanding her considerable personal abilities (eg.: extensive knowledge of PWSS/SSC/OWSM principles, analytical capabilities and impressive capacity for work, etc.), Ms. Alleslev-Krofchak was found to be seriously lacking in the areas of leadership and personnel management.

By mid August of this year, the situation within the contract support team had deteriorated to the point that Valcom was faced with a crucial decision: remove Ms. Alleslev-Krofchak or expect the resignation of up to four personnel. Valcom chose to remove Ms. Alleslev-Krofchak, with the full appreciation that this decision would impact the program (ie.: loss of corporate knowledge). Furthermore, Valcom knew that the negative effects of Ms. Alleslev-Krofchak's leadership were not apparent to the DND client and therefore our rationale for removing her would most certainly appear contradictory to the reputation she had established.

Although Valcom knew that this decision would be unpopular, we also knew that no one individual is irreplaceable and that we could recover from the situation. The alternative of retaining Ms. Alleslev-Krofchak, to appease the client, would likely have resulted in the loss of a 'critical mass' of personnel within the team. This represented a more serious outcome, as it would have been a greater challenge to continue to deliver services while undertaking to recruit multiple replacement personnel. Furthermore, Valcom would still have to deal with Ms. Alleslev-Krofchak's leadership and personnel management style and potentially be faced with the same situation in the future.

It is important that the Crown recognize that problems associated with Ms. Alleslev-Krofchak's leadership and personnel management had been identified in the early stages of the contract and on two occasions even required that the Crown become engaged:

- a. 24 September 2002, formal meeting convened with PWGSC/DND/ADGA/Valcom to discuss removal of two personnel from Group 2; and,
- b. February 2003, informal meetings with DND Technical Authority and members of the DND Client Team at the Major, Lieutenant-Colonel and Colonel rank to discuss Ms. Alleslev-Krofchak's leadership/personnel management vis-à-vis the resignation of the SPM#2.

It is equally important that the Crown know that Valcom had been working to resolve this internal issue on numerous other occasions in response to personnel crises within the contract team. In most cases, these interventions were required to address and rectify problems that arose from Ms. Alleslev-Krofchak's leadership

and personnel management style. As these were internal contract management issues, exposure to the client was limited and only occurred if there was potential to impact on the delivery of services.

Nevertheless, the impact should have become apparent to the Crown in consideration of the frequency of personnel turnover. While some departures are understandable, overall, the project team has suffered an inordinately high number of departures (eg.: SPM#2 (two departures), SSS#1, PS#2, PM#1 (two departures), JPM#1, JE#1, JE#3, SLCT#1, ISS#1). On many of these occasions, Valcom counseled Ms. Alleslev-Krofchak on the effect of her leadership and management style and how she might improve her approach. On one occasion, senior members of her team took it upon themselves to call a meeting to provide her with feedback and to counsel her. Furthermore, ARINC (her employer) was advised of Valcom's concerns with her approach and it was requested that they intervene. Unfortunately these efforts failed to ameliorate the situation appreciably.

When it was learned that the SPM #2, the SE#3, and the SE#1 and SLCT#1 from contract W8485-2-UUFC41 were all considering resigning from their contracts for reasons attributed to Ms. Alleslev-Krofchak, Valcom had no choice but to remove her from the SPM#1 position. The validity of this decision was reinforced in consideration of other actions by Ms. Alleslev-Krofchak such as:

- a. her reaction to Valcom's submission of Mr. Brian Lewis as the candidate to fill the vacant SPM #2 position was that she "would not accept him". This response shocked and concerned Valcom as it reflected complete indifference towards Valcom's position as the Prime Contractor. Furthermore, Valcom became concerned that she might take action to deliberately undermine Mr. Lewis' candidacy;
- b. her misrepresentation of Valcom to its subcontractor ARINC that, in our view, has seriously undermined the Valcom/ARINC business relationship. Furthermore, these actions have caused concern that she might equally have misrepresented Valcom to DND;
- c. her taking unilateral action in an attempt to control the staffing of contract positions;
- d. her becoming increasingly non-responsive to Valcom direction. The most dramatic example occurred after she was formally withdrawn from the contract; she reacted by;
 - i. without authority, reporting to the client site on 2 September;
 - ii. announcing to the contract team that she was still the SPM#1 and that her status would be confirmed by those of higher authority [than Valcom];

- iii. refusing to communicate with Valcom or even acknowledge it's position as Prime Contractor, rather she directed that we communicate to her through our sub-contractor ARINC; and,
- iv. in spite of being advised that she held no status on the contract (iaw reference B) and that her building pass was effectively void, she remained at the client site for the full business day. Although the DND client was fully aware of her presence, she was allowed to remain on site in spite of the obvious contravention of security protocol.

All the aforementioned actions demonstrated to Valcom that Ms. Alleslev-Krofchak considered herself above our authority as the Prime Contractor, had every expectation that the Crown would compel Valcom to reverse its decision; and was prepared to take any action she felt necessary to pursue her personal agenda.

Valcom appreciates that Ms. Alleslev-Krofchak's withdrawal was contrary to the desires of the DND client; however, we are expending every effort to minimize the impact to the delivery of services. To that end, Valcom has continued to provide services through the other members of the team and we are prepared to fulfil our contractual obligation by presenting a replacement candidate for the SPM#1 position. Unfortunately Valcom is currently constrained in how it continues to deliver services as a result of the Crown's direction at references D and E, and we are awaiting authorization from the Crown to proceed.

As articulated in reference F, Ms. Alleslev-Krofchak's removal has put the continued participation of ARINC, in the role of sub-contractor to Valcom, in question. Valcom is expending every effort to ensure ARINC will continue to contribute its expertise to advance the OWSM program and will advise the Crown once they have advised us of their intent.

Finally, Valcom believes that it has provided unprecedented transparency and insight into its actions and decision making process regarding the removal of an individual from a contract. Notwithstanding the information provided to date, Valcom is prepared to allow the Crown access to more detailed records, including e-mails, phone conversations, and other correspondence and documentation in order to fully defend its decision.

I am at your disposal should the Crown have any questions or require further information.

[210] Considering the evidence at trial, I consider many statements made in this summary, as well as in earlier communications from Poulin to Flanders, to be untruthful, inaccurate or misleading.

[211] There is no credible evidence that, had Alleslev-Krofchak not been removed as SPM#1 on August 14, 2003, Valcom could expect the resignation of up to four personnel or that there likely would have been the loss of a 'critical mass' of personnel within the OWSM project team. In regard to the four individuals Poulin identified as considering resignation from the OWSM project for reasons attributed to Alleslev-Krofchak, I find that to Poulin's knowledge, none of them was considering resigning in August 2003, although Hopkins and Best had asked Valcom to keep them in mind if other opportunities arose.

[212] The reason for the September 24, 2002 meeting between PWGSC, DND, ADGA and Valcom to discuss the removal of French and O'Brien from the project team was not Alleslev-Krofchak's leadership and personnel management. Neither French nor O'Brien had been prepared to follow the legitimate instructions they were being given by others on the OWSM management team. Boland had directed that French be removed in the fashion she was. O'Brien had quit. The meeting was to ensure that there was a proper protocol in place to handle such situations – something that was more the purview of PWGSC, ADGA and Valcom than it was of Alleslev-Krofchak.

[213] Of the eleven personnel departures listed by Poulin as being somehow indicative of Alleslev-Krofchak's inadequate leadership and management skills, the only one where Alleslev-Krofchak's personnel management style played a direct role was with Fortin. Her management style was not implicated in the departure of many of these individuals. In some of the other cases, Valcom had recruited the personnel for other, more lucrative, positions. It was incorrect to state that on many of the occasions when individuals had departed, Valcom had counselled Alleslev-Krofchak on the effect of her leadership and management style and how she might improve her approach. The only evidence adduced in this regard related to one telephone call between Poulin and Alleslev-Krofchak in February 2003 and one lunch with Poulin, Burke and Alleslev-Krofchak in March 2003 shortly after Fortin and Hollick left. Burke testified that no other formal counselling or warnings had been offered or given to Alleslev-Krofchak regarding her personnel management style.

[214] The evidence fails to satisfy me that Alleslev-Krofchak ever misrepresented Valcom to ARINC, did anything to undermine the Valcom/ARINC business relationship, or took unilateral action in an attempt to control the staffing of contract positions. Nor does the evidence satisfy me that Alleslev-Krofchak became increasingly non-responsive to legitimate direction given by Valcom, though she may have resisted efforts on Valcom's part to tell her how to do her job – something Valcom was not entitled to do in any event. Poulin tried to rely on events that occurred after Alleslev-Krofchak was suspended as SPM#1 to justify this assertion; however, what happened on August 14, 2003 or thereafter cannot possibly justify decisions taken by Valcom prior to that date. In any event, anything Alleslev-Krofchak did at that time was done – to Poulin's knowledge – under the direction of ARINC.

[215] When bids were initially submitted for the Prime Contract, Alleslev-Krofchak did not manipulate the Valcom/ARINC relationship to position herself as a contractor/employee of

ARINC. She had offers from Valcom and ARINC and accepted the one she considered the best for her. She advised Valcom of that in November/December 2001.

[216] Alleslev-Krofchak was not the only one interfacing with the clients. The SPM#2, Duncan, Clubine and Hopkins did so as well.

[217] Alleslev-Krofchak did not criticize Valcom's management of the project to Sauv -McCuan, and during her interview with Poulin regarding the SPM#2 position, Sauv -McCuan did not tell Poulin that Alleslev-Krofchak had done so.

[218] Alleslev-Krofchak knew that Valcom was speaking to Harley Rogers about the position of SPM#2 and Alleslev-Krofchak was also speaking to him on behalf of ARINC to fill an engineering position. Each was entitled to pursue these conversations with Rogers. This is not evidence of Alleslev-Krofchak undermining Valcom.

[219] Much of what Poulin stated in his letter to McDougall was defamatory of Alleslev-Krofchak and could not be justified on the basis of its being truthful or accurate.

After Alleslev-Krofchak's Removal

[220] ARINC went on to terminate its association with Valcom, as it did not want to do business with an organization that, in its view, handled itself in such an unprofessional fashion. Although Poulin called it "a strong possibility" that ARINC would terminate its contract with Valcom after Alleslev-Krofchak was removed as SPM#1, I find that, prior to terminating Alleslev-Krofchak, Valcom believed that the likely outcome of this step would be ARINC terminating its business relationship with Valcom. Poulin acknowledged that Valcom was hopeful that the government would not require that ARINC be replaced by another company with performance-based contracting experience. Valcom hoped that the 14 months that had transpired under the contract would result in the government having confidence that Valcom could handle the contract without a more experienced company being a partner. In fact, the government did insist on ARINC being replaced, and it was by SAIC.

Challenges on the OWSM Project

Unfamiliar Subject Matter

[221] Introducing SSC for aircraft fleet maintenance involved conceptualizing and then putting into place the overall framework and specific contracts for the four fleets. This was a huge task in relatively uncharted territory. Although, due to earlier assignments, some of those involved on the OWSM project had a taste of what was involved, everyone was feeling his or her way on the project. This led to considerable uncertainty in terms of expectations regarding the product to be delivered by the various team members. That in turn created anxiety and frustration.

[222] As Clubine emphasized in his evidence, the uncertainty regarding deliverables was exacerbated by the conflicting expectations of Lucas, Boland and Chouinard on the one hand, and the WSM managers on the other hand. Alleslev-Krofchak took her instructions from Lucas, Boland and Chouinard and she passed those on to the team members. At the same time, some of them were receiving conflicting guidance from the WSM managers with whom they worked most closely. This was especially obvious in regard to the CF-18 manager, Lavoie, who vociferously opposed some of the direction Alleslev-Krofchak was providing pursuant to instructions from Lucas. In the summer of 2003, Alleslev-Krofchak had reported to Lucas that she was getting significant pushback from those involved with the CF-18 work, and Lucas had instructed her to hold the course. Best, who worked closely with both Lavoie and Alleslev-Krofchak, felt particularly vulnerable in this context. During Alleslev-Krofchak's tenure, no formal mechanism was put into place to deal with this conflict in direction.

[223] What made matters worse, as observed by Burke, was that there was a lack of enthusiasm in the DND military community for SSC. DND was giving up much of its responsibility to industry, and therefore positions for AERE engineers and technicians at DND were being lost. The ex-military personnel working on the OWSM project had some reticence about the end goal of the project.

Different Work Environment

[224] I accept the evidence of Alleslev-Krofchak, Boland, Chouinard and Pierce that the Prime Contract was meant to operate as a performance-based contract. The expectation of Lucas, Boland and Chouinard was that Alleslev-Krofchak, as the SPM#1, would be responsible for all of the deliverables under the contract. She was meant to be the contact person between the OWSM team and Lucas and the SSC-PMO Steering Committee. It was her responsibility to determine what the client wanted and to ensure, through appropriate resource management, that the end product would be achieved. Lucas described the end product he wanted, but then left it to her to deliver. Of necessity, considering the newness of the subject matter, this process involved trial and error.

[225] One factor that made the environment more complicated was that members of the OWSM project team were expected to be flexible in terms of moving between air fleets and shifting assignments as needs arose and evolved. As Fortin noted, the structure of the project was different from what people were used to. It was very fluid. There were some high level requirements, but no recipe to fulfil these. So the PESS personnel were feeling their way. Chouinard also described the environment as being very harsh, difficult, dynamic, tough – an environment of change in which some people felt uncomfortable about what they were doing, directions being taken, or decisions being made. He expected there to be some personnel issues. In short, frustration within the group was due in part to the nature of the project itself. People would come into work and not know what they might be asked to do. They also did not have a clear idea of what they needed to do to meet expectations on the project. That created anxiety and uncertainty.

[226] What created additional stress was that Poulin, and therefore Valcom, did not realize that the contract was intended to operate as a performance-based contract. Consequently, Poulin had minimal appreciation of the inherent challenges Alleslev-Krofchak was facing in terms of leadership and management, and he did not understand why Alleslev-Krofchak was trying to impose a clear chain of command from the team to her and then to the clients, nor did he appreciate the extent to which, of necessity, the initial stages of the OWSM project would naturally involve much trial and error. Poulin expected Alleslev-Krofchak to manage the project much the same way as any other time and material service contract, whereas Lucas, Boland, Chouinard and ARINC were instructing Alleslev-Krofchak to manage it as a performance-based contract.

Involvement of Three Contractors

[227] Each of Valcom, ADGA and ARINC had a share of the work to be done under the Prime Contract, and had their own team of employees or consultants working on the OWSM project. The consultants of each company were answerable to that company in terms of meeting their contractual obligations to that company. At the same time, the consultants were expected to take direction from Alleslev-Krofchak as SPM#1 in terms of their taskings and deliverables on the project. As well, Valcom had overall responsibility to the client under the Prime Contract and wanted some clout to ensure that the project was successful. As evidenced during this litigation, this resulted in competing demands and at times struggles for control.

[228] Those struggles were exacerbated by the reality that Valcom and ADGA were in direct and intense competition for military contracts – especially in the Ottawa area, and under the contractual framework a Group 1 Valcom resource was managing all of the Group 2 ADGA resources. In order to get the Prime Contract, Valcom was in the position of having to deal with ARINC, a much stronger and larger American company and potential future competitor in Canada, in circumstances where it would have preferred to have the contract on its own. In my view, Valcom strategized during the course of the project in order to render ARINC's involvement unnecessary. Having the SPM#1 on the project an ARINC instead of Valcom resource was particularly irksome to Valcom, and it was anxious to put an end to that arrangement. All of this created underlying tensions having nothing to do with Alleslev-Krofchak's management of the project.

[229] Despite ARINC having, to Valcom's knowledge, 15 to 20 years experience running performance-based contracts, Valcom's preoccupation with being the prime contractor and being seen as the prime contractor stood in the way of its seeking ARINC's advice on contract management. Had Valcom done so, it would have learned that much of what Valcom complained of, in terms of the centralization of control with Alleslev-Krofchak, was what ARINC recommended for contracts of this nature.

Further Underlying Tensions

[230] Further tensions relating to gender, rank, and the existence of pre-existing friendships exacerbated the other challenges listed above.

[231] A number of ex-military personnel found it a struggle to take directions from someone who in the military had occupied a lower rank than they had – especially when the person was female. Alleslev-Krofchak had retired as a captain. All of the AERE officers to whom she was giving direction on the OWSM project had held the rank of major or lieutenant colonel. A number testified about feeling uncomfortable or excluded due to the close working relationship enjoyed by Alleslev-Krofchak, Duncan and Smith (all females). On the other hand, there were a number of close relationships among the former AERE officers such as Poulin, Burke, Lewis, Wall, Best, Hopkins and Clubine (all males), that spilled over to lunches, regular golf games and other gatherings to which Alleslev-Krofchak was not invited.

Inconsistent Feedback to Alleslev-Krofchak

[232] During her tenure as SPM#1, Alleslev-Krofchak received inconsistent feedback regarding her management and leadership skills. On the one hand, Lucas, Boland, Chouinard, Pierce and Flanders told her she was doing excellent work and they felt she was the right person for the job. Boland testified that while Alleslev-Krofchak was working on the OWSM project, he saw her several times a week. They dealt with the strategic issues and some specific operational issues. He observed her interacting with other individuals working on the contract and with industry players. Boland described Alleslev-Krofchak as an excellent worker. She appreciated what was to be accomplished and knew how to translate Lucas' vision and strategy into a performance-based way of accomplishing outcomes and objectives. During the entire time that Boland observed Alleslev-Krofchak, he had no negative comments about her management. Boland believed that Alleslev-Krofchak was performing exceptionally well and he considered her work outstanding. He anticipated that she would continue in the SPM#1 position throughout the term of the contract and the option periods.

[233] Chouinard was in contact with Alleslev-Krofchak several times a day. He did not observe any behaviour on her part that would cause him to want her role as SPM#1 terminated. Chouinard testified that from a knowledge-based point of view, Alleslev-Krofchak was an outstanding person and she was providing a lot of out-of-the-box thinking. From a managerial point of view, she was doing a satisfactory job. Although Poulin had approached Chouinard on several occasions advising that there were some internal issues about Alleslev-Krofchak's management style, Chouinard always said that his concerns were the deliverables and the timeframe, and if Poulin had difficulties, it was his responsibility to deal with them. Overall, Chouinard was quite pleased with the way things were going. His position in August 2004 was that he wanted Alleslev-Krofchak to carry on in the position of SPM#1 right through the option periods.

[234] Colleagues on the project, such as Tony Gumpert and John Gough also gave Alleslev-Krofchak positive feedback. Gumpert and Duncan provided her with excellent reference letters after her termination. Gough, who worked on the OWSM project from June

2002 to the time of trial as a senior avionics technologist, testified that he enjoyed working with Alleslev-Krofchak. She had a good grasp of the objectives of SSC, she made good use of Gough's technical input, and the OWSM made good progress under her leadership.

[235] In contrast to this support, starting in February 2003, Alleslev-Krofchak received the occasional feedback from Poulin and Burke that she was not properly managing the personnel on the OWSM project – even though the team was meeting the deliverables set by Lucas and was receiving praise for what it was accomplishing.

Alleslev-Krofchak's Management Decisions

[236] In the face of these challenges and tensions, Alleslev-Krofchak adopted a management style that was autocratic, highly centralized, controlling, tough, at times abrasive, and at times insensitive. Alleslev-Krofchak gave OWSM team members tasks and deadlines and expected the work to be done up to a particular standard; however, she was not seen by some as being approachable if a task required clarification or an individual required support in order to accomplish assigned tasks. On the one hand she micromanaged taskings and deliverables; on the other hand, she was not always able to be clear in giving directions. I accept the evidence of Clubine that, although Alleslev-Krofchak was by nature personable and normally easy to work with, her autocratic and inflexible management style on the OWSM project contributed to stress being felt by a number of OWSM team members.

[237] Although Alleslev-Krofchak realized that she was asking many of the personnel under her administration to work outside their comfort zone, she refused to acknowledge that her management style could be problematic in any respect. She blamed any discomfort on the part of individuals to the difficulty many ex-military personnel had in changing the *status quo* and in embracing a new way of doing business – both through performance-based contracts and through outsourcing tasks to industry, something many ex-military personnel working through Valcom saw as being personally disadvantageous to them.

[238] Unquestionably Alleslev-Krofchak struggled during the first year of the OWSM project as everyone, including herself, was feeling his or her way in a challenging environment. It would have been wise for her to seek out more mentoring in regard to project management, and more particularly personnel management, especially considering the palpable tensions that existed on the project. She did not help herself in not listening to the advice being offered from time to time by Best, Clubine, Duncan and others regarding the impact her management style was having on those around her. It is understandable that Poulin, Burke and Valcom would have had some concerns about the difficulty certain of their resources were experiencing in the work environment. Unfortunately, due to other motives at play, Poulin and Valcom stepped over the line into the area of torts in the way they purportedly dealt with those concerns.

Issues

[239] This case raises several issues relating to the torts of defamation, intentional interference with economic relations and inducing breach of contract. They will be addressed under the headings for each tort.

Defamation

[240] To show defamation, the onus is on a plaintiff to prove three elements: (1) that the words complained of were published; (2) that the words complained of refer to the plaintiff; and (3) that the words complained of, in their natural and ordinary meaning, or in some pleaded extended meaning, are defamatory of the plaintiff. (*Hodgson v. Canadian Newspapers Co.* (1998), 39 O.R. (3d) 235 (Gen. Div.) at 248). A publication is the intentional or negligent communication of the defamation by the defendant to a person other than the plaintiff. There is no question that the words complained of by Alleslev-Krofchak were “published” in that they were contained in e-mails sent by Lewis and Poulin to someone other than Alleslev-Krofchak. There is no question that the words complained of refer to Alleslev-Krofchak. The only issue is whether the words are defamatory and, if so, whether any defences are available to the Defendants.

Issue 1: Are the words identified in para. 12 (i) of the Amended Statement of Claim, uttered by Lewis in his June 20, 2003 e-mail to Poulin, defamatory of Alleslev-Krofchak?

[241] The specific words complained of by Alleslev-Krofchak in the Amended Statement of Claim in regard to the e-mail sent by Lewis to Poulin on July 27, 2003 are the following:

... I have started a file that I am going to maintain at home concerning Alleslev-Krofchak’s shortcomings. ...I can’t stand being lied to. Alleslev-Krofchak lied to me at least twice this week, and other members of the team have already (voluntarily) told me about other instances where she has lied to them. As you know, if a leader (if we can call her that) doesn’t have integrity, first and foremost, then anything else the person has to offer is irrelevant; nobody will follow them.

Besides a lack of integrity, the other core problem with Alleslev-Krofchak is her lack of trust in the people working for her. I guess it’s hard to trust other people when you aren’t trustworthy yourself. ...

[242] A publication that tends to injure a person’s reputation, to lower the person in the estimation of right-thinking members of society or, more particularly, to expose a person to hatred, contempt, ridicule, fear, dislike or disesteem is defamatory and will attract liability. (*Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3 at para. 62; *Leenen v. Canadian Broadcasting Corp.* (2000), 48 O.R. (3d) 656 (Sup. Ct.) at para. 40; R.E. Brown, *The Law of Defamation in Canada*, looseleaf, 2d ed. (Toronto: Carswell, 1999) at 5-13).

[243] The assessment of whether words are defamatory depends on the meaning to be assigned to them in the context in which they are uttered. As stated by Cunningham, J. (as he then was) in *Leenen.*, *supra*, at paras. 44 and 49:

The *prima facie* meaning to be attributed to words is determined by an objective test based on their natural and ordinary meaning, which would be inferred by a reasonable and fair-minded listener (or reader) who has no special knowledge of the facts. ... The standard should not be so low as to unduly stifle free expression, nor so high as to imperil the ability to protect the integrity of a person's reputation. ...

One does not select a meaning that is the harshest and most extreme because the test assumes a reasonable and fair-minded audience rather than one that is looking to the question of the plaintiff's reputation. It is, therefore, for the trier of fact to determine whether the words complained of, when considered in the context in which they were presented, would reasonably lower the plaintiff in the estimation of an ordinary, objective, reasonable member of society who, with common sense, is reasonably thoughtful and informed, but who does not have an overly fragile sensibility.

[244] A statement may be found to be defamatory either through its natural and ordinary meaning or through innuendo. No consideration need be given to any innuendo created by Lewis' words in his July 27th e-mail in that he baldly asserts that Alleslev-Krofchak is someone who lies, who cannot be trusted and who lacks integrity. Such an assertion goes to the very heart of a person's reputation. As Cory J. stated in *Hill v. Church of Scientology of Toronto* [1995], 2 S.C.R. 1130 at para. 107: "to most people, their good reputation is to be cherished above all. A good reputation is closely related to the innate worthiness and dignity of the individual. It is an attribute that must, just as much as freedom of expression, be protected by society's laws."

[245] Clearly the words complained of in Lewis' July 27th e-mail to Poulin defamed Alleslev-Krofchak. That is especially obvious considering the overall context of the e-mail. Lewis speaks of "starting a file" that he is going to maintain at home concerning "Alleslev-Krofchak's shortcomings".

Issue 2: If the words are defamatory, are the facts which comprise the defamatory material true?

[246] In his Statement of Defence, Lewis asserted that his communications were truthful, and therefore the defence of justification was available to him. The evidence adduced at trial to support this pleading was woefully inadequate to establish on a balance of probabilities that Alleslev-Krofchak had lied to Lewis twice that week, that anything recounted to him by other members of the team were examples of Alleslev-Krofchak lying to them, that Alleslev-Krofchak did not have integrity, or that Alleslev-Krofchak was not trustworthy.

[247] Lewis justified his allegation that Alleslev-Krofchak had lied to him twice by recounting two things that Alleslev-Krofchak had said to him, namely that: (1) Poulin had told her that Lewis had earlier turned down the performance measurement position because he had said that he could not work with Alleslev-Krofchak – something Lewis denied ever saying to Poulin and, according to Lewis and Poulin, something Poulin never said to Alleslev-Krofchak; and (2) Alleslev-Krofchak did not care about the terms of reference for the OWSM program office structure that Poulin had been pressuring her to address, when it was clear to Lewis from the emotion that Alleslev-Krofchak showed when he raised the subject with her on three occasions that she cared deeply.

[248] Alleslev-Krofchak's evidence was that Poulin had told her that one reason Lewis declined the performance measurement position was because he would not be comfortable working for Alleslev-Krofchak. She had been surprised by that because when they had both been working in the Canadian Military, she thought that they had gotten on well. Poulin's evidence was that he had never said this to Alleslev-Krofchak. Lewis' evidence was that he had not said this to Poulin. The onus is on Lewis to prove the truth of his assertion. In the face of conflicting evidence from Alleslev-Krofchak, and due to the reservations I have about the credibility of Poulin and Lewis in regard to their dealings with Alleslev-Krofchak, Lewis has not met that onus.

[249] In regard to the second alleged "lie", I find that Alleslev-Krofchak did say to Lewis that she did not care about the terms of reference for the OWSM program office structure that Poulin was pressuring her to produce. When she said that, the message she was conveying was that no new structure was required because the terms of reference for the project office had already been established in the original project documents. She saw no need for any new structural arrangement to be articulated and, in fact, considered any such effort to be contrary to the terms of reference under which the OWSM office was supposed to operate. Alleslev-Krofchak was frustrated by Poulin's insistence that new terms of reference be drafted. Lewis, who at the time was looking for shortcomings on Alleslev-Krofchak's part so as to accelerate his own rise to the SPM#1 position, put a spin on Alleslev-Krofchak's communications that was not justified.

[250] To justify his statement that others had told him about lies Alleslev-Krofchak had told them, Lewis could only point to one conversation with Patricia O'Neill during which she

complained that although some people who had left the project over the previous year had been forced out by Alleslev-Krofchak, when Alleslev-Krofchak had a team meeting to explain their departure, she put it down to other reasons. That is only one person, whereas the language Lewis used in his e-mail was plural. In any event, Lewis acknowledged that he simply took at face value the allegation that some other team members had been forced out by Alleslev-Krofchak, without knowing that to be the case, and without investigating further the circumstances surrounding their departures. He made the assumption that if Alleslev-Krofchak had provided the team with other reasons for different departures, she must have been lying. In fact, the evidence at trial does not establish that any member of the OWSM team had been “forced out” by Alleslev-Krofchak over the previous year.

[251] Lewis relies on these three events to justify his statement that Alleslev-Krofchak was lacking in integrity and could not be trusted – paltry factors indeed to justify such hurtful statements. None have been proven accurate or truthful through evidence at trial. As such, the defence of justification is not available to Lewis.

Issue 3: If the words are defamatory, are they protected because qualified privilege applies to the occasion on which they were conveyed?

[252] The following summary of the law regarding qualified privilege was provided by Cory J. in *Botiuk, supra*, at paras. 78-80, and mirrors the summary he provided in *Hill, supra*, at paras. 143-148:

Qualified privilege attaches to the occasion upon which the communication is made, and not to the communication itself. It was explained in this way by Lord Atkinson in *Adam v. Ward* (1916), [1917] A.C. 309 (H.L.), at p. 334:

... a privileged occasion is ... an occasion where the person who makes a communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.

See also *McLoughlin v. Kutasy*, [1979] 2 S.C.R. 311, at p. 321.

Where an occasion is shown to be privileged, the *bona fides* of the defendant is presumed and the defendant is free to publish remarks which may be defamatory and untrue about the plaintiff. However, the privilege is not absolute. It may be defeated in two ways. The first arises if the dominant motive for publishing is actual or express malice. Malice is commonly understood as ill-will toward someone, but it also relates to any indirect motive which conflicts with the sense of duty created by the occasion. Malice may be established by showing that the defendant either knew that he was not telling the truth, or was reckless in that regard.

Second, qualified privilege may be defeated if the limits of the duty or interest have been exceeded. In other words, if the information communicated was not reasonably appropriate to the legitimate purposes of the occasion, the qualified privilege will be defeated. ...

[253] As Loreburn E. stated, at 320-321 in *Adam v. Ward* (1916), [1917] A.C. 309 (H.L.):

[T]he fact that an occasion is privileged does not necessarily protect all that is said or written on that occasion. Anything that is not relevant and pertinent to the discharge of the duty or the exercise of the right or the safeguarding of the interest which creates the privilege will not be protected.

[254] On July 27, 2003, Lewis was in the position of SPM#2 at the OWSM project management office. He had been placed on this project by Valcom. The tasks associated with the SPM#2 position have been set out in paragraph 37 above. His primary function was to assist the SPM#1 with the utilization of personnel within the OWSM office. Nowhere in the contractual documents setting the framework for the OWSM project office and the role of the SPM#2 within that office is there any reference to the SPM#2 keeping tabs on the functioning of the SPM#1 for the benefit of the contractor that had placed the SPM#2 on the project (Valcom), or for the benefit of the contractor that had placed the SPM#1 on the project (ARINC). The actual contract between Valcom and Lewis was not tendered in evidence. In short, no evidence was adduced to the effect that Lewis had a duty to pass on to Poulin his observations regarding Alleslev-Krofchak.

[255] That being said, I recognize an interest on Lewis' part to keep Valcom informed of how work was progressing on the OWSM project and any challenges he was experiencing in functioning as the SMP#2, including any difficulties he was having with Alleslev-Krofchak as the person to whom he reported. Through negotiations with ARINC, ADGA and PWGSC, Valcom was in the position to assist in working through any difficulties that arose on the OWSM project, including any difficulties affecting Lewis' position. As well, Valcom had the ability to remove Lewis from the project or extend his stay on the project. Therefore good communication between Lewis and Valcom was in Lewis' interest. I also find that Valcom had a corresponding interest in being kept informed of how the OWSM project was progressing overall, and more particularly, of how the personnel it had placed on the project were faring. It was in Valcom's interest to maintain its personnel on the project. As well, Valcom was ultimately responsible to PWGSC for the deliverables under the Prime Contract in the sense that, if the Prime Contract was not being performed up to specifications, it could be terminated by PWGSC or, at the very least, not renewed for the option periods. Therefore Valcom had a significant financial interest in ensuring that the deliverables under the Prime Contract were being produced as anticipated.

On this basis, I find that qualified privilege attaches to the occasion of Lewis' July 27, 2003 e-mail to Poulin.

[256] The real issue is whether the defamatory and untrue statements Lewis made to Poulin in that e-mail are protected by virtue of qualified privilege attaching to the occasion. The onus is on Alleslev-Krofchak to prove that they are not, despite the existence of qualified privilege.

[257] Was the information communicated in that portion of Lewis' July 27th e-mail complained of by Alleslev-Krofchak reasonably appropriate in the context of a professional consultant reporting to the company with which he had contracted as to the progress he perceived on the project to which he was assigned and as to the challenges he was facing on that project? I conclude that it is not.

[258] Bald comments to the effect that Alleslev-Krofchak had lied to him and others and blanket condemnations to the effect that Alleslev-Krofchak was lacking in integrity and was not trustworthy went well beyond the bounds of what would have been reasonable in the circumstances. Lewis' pillorying of Alleslev-Krofchak's character cannot be characterized as relevant or pertinent to the legitimate common interests of Lewis and Valcom, which included the successful completion of the OWSM project and Lewis' potential contributions to that goal. Lewis had the right to communicate appropriate information to Valcom; he did not have the right to communicate a rant on Alleslev-Krofchak's poor character to Valcom, especially considering the considerable power Valcom wielded over Alleslev-Krofchak's future on the project. This is the first reason why unqualified privilege does not protect the complained-of communications in Lewis' July 27, 2003 e-mail. There are others.

Issue 4: Has malice on the part of Lewis been proven so as to negate qualified privilege as a defence?

[259] An occasion subject to a qualified privilege will not operate to protect defamatory and untrue statements in circumstances where the plaintiff can prove actual or express malice on the part of the defendant in uttering those statements.

[260] Malice can take several forms: (1) spite or ill-will toward someone (*Horrocks v. Lowe*, [1974] 1 All E.R. 662 (U.K.H.L.) at 669-670); (2) an indirect motive or ulterior purpose other than the sense of duty or the mutual interest that the privileged occasion created (*Cherneskey v. Armadale Publishers Ltd.*, [1979] 1 S.C.R. 1067 at 1099; *Horrocks, supra*; *Taylor v. Despard*, [1956] O.R. 963 (C.A.)); and (3) knowledge that one is not telling the truth or recklessness as to whether one is telling the truth (*McLoughlin v. Kutasy*, [1979] 2 S.C.R. 311 at 323-324; *Horrocks, supra*; *Netupsky v. Craig* (1972), [1973] S.C.R. 55 at 61-62). (See also *RTC Engineering Consultants Ltd. v. Ontario (Ministry of Solicitor General & Correctional Services – Office of Fire Marshall* (2002), 58 O.R. (3d) 726 (C.A.) at paras. 13-18.)

[261] "Evidence of malice may be intrinsic or extrinsic and malice may be inferred from the language used in the defamatory statements. Extrinsic evidence consists of evidence

apart from the statements themselves from which the trier of fact can infer some improper motive and a court will look at the conduct of the defendant throughout the course of events both before and after the defamatory publication.” (*Leenen, supra*, at para. 143)

[262] Alleslev-Krofchak has proven that all three forms of malice were present on the occasion of Lewis sending his July 27th e-mail to Poulin.

(a) Spite or ill-will

[263] If a desire to injure the defamed person in some respect, rather than the goal of meeting a recognized duty or protecting a valid interest, is the dominant motive for the publication, then qualified privilege does not apply. This requires more than mere knowledge that the publication will have an injurious effect on the defamed person in circumstances where the defendant is nevertheless acting in accordance with a sense of duty or in *bona fide* protection of his own legitimate interests. (*Horrocks, supra*, at 669)

[264] I find that before Lewis even began working with Alleslev-Krofchak, a negative attitude about her had been sown in his mind by Poulin and Burke. In late May or early June, when Poulin and Burke were discussing the SPM#2 position with Lewis, they told Lewis that his predecessors in the SPM#2 position had both left due to Alleslev-Krofchak’s management style and their inability to work with her. By no later than June 13, 2003, Poulin and Burke had reviewed in detail with Lewis all of Alleslev-Krofchak’s perceived shortcomings in terms of management and leadership skills. Lewis acknowledged that these briefings had coloured his impression of Alleslev-Krofchak. After Lewis met with Alleslev-Krofchak, Duncan and Smith on June 5, 2003 to discuss the SPM#2 position and Poulin had subsequently relayed to Lewis that Alleslev-Krofchak was thwarting his candidacy, Lewis acknowledged that this communication had further coloured his impression of Alleslev-Krofchak.

[265] Lewis’ ill-will toward Alleslev-Krofchak was evident in his communications with Poulin and Burke once he was in the position of SPM#2, and it was particularly palpable in his July 27th e-mail. On numerous occasions within the e-mail, Lewis belittled Alleslev-Krofchak saying he would not trust her, what she said was not worth anything, reasons she offered were concocted, and her behaviour was disgusting. It is inconceivable that he would have expressed to a third party such a visceral dislike for a colleague with whom he had worked for only a couple of days had Lewis not been communicating with the dominant purpose of hurting Alleslev-Krofchak’s estimation in the eyes of Valcom and ultimately ARINC. The July 27th e-mail was the first of three weekly reports to Poulin, and displayed a level of ill-will toward Alleslev-Krofchak that was out of proportion to anything that would have been reasonable had Lewis in the normal course been keeping Valcom abreast of how the OWSM project was progressing and how he was faring as the SPM#2 on the project. This supports the conclusion that the primary purpose of the July 27th e-mail was to reduce Alleslev-Krofchak’s reputation in the eyes of Valcom so as to enhance Lewis’ opportunity to replace her.

(b) An indirect motive or ulterior purpose

[266] Again, as Lord Diplock stated in *Horrocks, supra*:

There may be instances of improper motives which destroy the privilege apart from personal spite. A defendant's dominant motive may have been to obtain some private advantage unconnected with the duty or the interest which constitutes the reason for the privilege. If so, he loses the benefit of the privilege despite his positive belief that what he said or wrote was true.

[267] I find that by no later than June 13, 2003, Poulin, Burke and Lewis had devised a plan whereby Lewis would assume the SPM#2 position, would insert himself between Alleslev-Krofchak and the other members of the team, would effectively isolate and marginalize Alleslev-Krofchak, and would report to Poulin regularly on any and all perceived shortcomings of Alleslev-Krofchak, so that within six to twelve months, Valcom would have sufficient ammunition to insist that ARINC remove Alleslev-Krofchak as SPM#1, to be replaced by Lewis. I find that Lewis was a very willing participant in this plan, as the main reason why he took the SPM#2 position was because Poulin and Burke had promised he would get the SPM#1 position when they removed Alleslev-Krofchak within six to twelve months. He would not otherwise have been interested in the SPM#2 position.

[268] When Lewis started writing his weekly reports to Poulin about the OWSM project, and more particularly Alleslev-Krofchak's shortcomings and his own successes on the project, he was doing so with the goal of having Alleslev-Krofchak removed from the SPM#1 position as quickly as possible and having himself elevated to that role. His e-mail to Poulin of July 19, 2003 made that perfectly clear. I reject Burke's evidence that, between July 19, 2003 and July 27, 2003, he had corrected Lewis' understanding that Valcom would be taking steps to remove Alleslev-Krofchak from the SPM#1 position. I also reject the vague and inconsistent evidence of Poulin that at some unspecified time he or Burke had corrected Lewis' understanding. I find that neither Burke nor Poulin ever corrected Lewis' understanding as expressed in his e-mail of July 19th because his description of the agreement that he, Burke and Poulin had arrived at was accurate.

[269] The valid interest that both Valcom and Lewis would have had for Lewis to be sending regular updates to Valcom was the promotion of the successful completion of the Prime Contract and Lewis' constructive participation in that process. Undermining Alleslev-Krofchak's reputation in the eyes of her professional colleagues and the contracting companies through which she worked was not a legitimate goal for those in the position of Poulin and Lewis to be pursuing. It was not an interest for which the defence of qualified privilege offers protection.

(c) Recklessness as to whether one is telling the truth

[270] Recklessness as a form of malice has been described in R.E. Brown, *The Law of Defamation in Canada*, looseleaf 2d ed. (Toronto: Carswell, 1994) 16-72 to 16-77 as follows:

Speaking recklessly and in utter disregard of the consequences, or in knowing or reckless disregard for the truth, or at least speaking without caring whether what one says is true or false, is certainly strong, if not conclusive evidence of malice. Even a defendant who makes a defamatory assertion without any, or at least sufficient, knowledge to warrant it, or without having made reasonable inquiry where the means or sources were otherwise readily available to him, or who deliberately refrains from making any inquiry, may be guilty of reckless and, therefore, malicious conduct.

[271] Considering the flimsy reasons offered by Lewis in justifying his description of Alleslev-Krofchak in the July 27th e-mail as having lied to him and others, as not having integrity, and as not being trustworthy, I consider Lewis to have been reckless in the language he intentionally used to describe her.

(d) Conclusion regarding Lewis and defamation

[272] Lewis defamed Alleslev-Krofchak in his July 27th e-mail to Poulin.

(e) Conclusion regarding Poulin/Valcom and defamation respecting Lewis' July 27th e-mail.

[273] Lewis was Valcom's employee or consultant and was acting on Valcom's instructions when he sent the July 27th update to Poulin regarding Alleslev-Krofchak. In that Lewis was acting as Valcom's agent when he uttered the words complained of, Valcom is liable for the tort of defamation committed by Lewis.

[274] On August 11, 2003, Poulin forwarded Lewis' July 27th e-mail to Flanders and Mackey at ARINC. If one person writes a defamatory statement and another repeats it, they both have made the defamatory statement. (*Hill, supra*, at para. 176). Therefore, by further publishing Lewis' defamatory e-mail, Poulin also defamed Alleslev-Krofchak. When he forwarded Lewis' July 27th e-mail to Flanders, Poulin was acting in his capacity as a Valcom employee carrying out his duties as project manager for the OWSM project. Valcom is vicariously liable for the tort of defamation committed by Poulin.

Issue 5: Are the words identified in para. 13 (i) and (ii) of the Amended Statement of Claim, uttered by Poulin in his August 11, 2003 and August 12, 2003 e-mails to Jim Flanders, defamatory of Alleslev-Krofchak?

[275] The specific words Alleslev-Krofchak complained of in the Amended Statement of Claim in regard to the e-mail Poulin sent to Flanders and Mackey on August 11, 2003 are the following:

I have received feedback from other members of the Project Team expressing serious dissatisfaction with Alleslev-Krofchak's management approach to the

point that I had become concerned about more departures. I have also spoken to the Client lead for the CF 18 SSC PAV and although he admits a strong bias against Alleslev-Krofchak and her management style he has intimated that in his opinion, it is only a matter of time before Valcom would find itself under pressure by the Client to remove Alleslev-Krofchak.

[276] These words must be read in the context of the last two e-mails Poulin had sent to ARINC. In an August 6, 2003 e-mail to Mackey, Poulin had stated: "To be frank, Alleslev-Krofchak is on her last chance with Valcom. We will not tolerate any further subterfuge, discrediting of Valcom's reputation, pursuit of a personal agenda, or what we view to be a destructive management approach toward the team on her part."

[277] In an August 11, 2003 e-mail to Mackey and Flanders at 9:50 a.m., Poulin stated:

I regret to advise that I have received a briefing this morning that leaves me with no choice but to direct ARINC to remove Alleslev-Krofchak from the contract. Alleslev-Krofchak is currently on leave today and tomorrow however this action needs to be taken as soon as possible. Obviously we will need to connect today to discuss this development, a withdrawal date, and a response plan. ...

[T]his action is in the best interests of the Client, will enhance the contract team's morale and productivity, will ensure the continuation of the contract through its options and, I am certain, will serve to simplify and enhance the Valcom/ARINC relationship.

[278] The words Alleslev-Krofchak complained of in the later e-mail from Poulin to Flanders and Mackey at 4:06 p.m. were offered to ARINC to explain why Valcom was directing ARINC to remove Alleslev-Krofchak from the contract. What the ordinary and reasonable person would infer from the words complained of, considered fairly and objectively and in context, is that: (1) Alleslev-Krofchak lacked the necessary management skills to be in the position she was occupying; (2) Poulin had been led to believe that some members of the contract team were so dissatisfied with her management that they would leave if she was not removed as SPM#1 as soon as possible; and (3) Alleslev-Krofchak's shortcomings were so significant that the client lead for the CF 18, and Poulin himself, believed that it was only a matter of time before the client, General Lucas, would pressure Valcom to remove her. Such a communication would tend to hurt Alleslev-Krofchak's reputation and is therefore defamatory.

[279] The specific words Alleslev-Krofchak complained of in regard to the e-mail sent by Poulin to Flanders, Mackey, and Pierce on August 12, 2003 are the following:

In liaison with myself as the Valcom Contract Manager Alleslev-Krofchak has been manipulative and recently has openly defied direction. For the past month she has taken the approach of being uncommunicative. The current situation is such that Valcom is once again faced with the possibility of team members

quitting. This lack of communication and cooperation with the Senior Project Manager position and recurring personnel crisis has created a severe contract management burden for Valcom that is no longer acceptable.

[280] These words must be considered in the context of Poulin's earlier e-mails to ARINC regarding Alleslev-Krofchak's removal as SPM#1 and in the context of Flanders' response to Poulin on August 11, 2003 at 5:23 p.m.:

In the absence of substantive evidence that Alleslev-Krofchak is deficient, I refused to remove her from the contract until some direction from the DND technical authority is in evidence. Having personally met with Roger, the General and many of the Weapon System Managers in the past, I have seen no indication of dissatisfaction. Alleslev-Krofchak is an integral part of the OWSM team and removing her from the leadership role in the program without the client's explicit support and concurrence could only negatively impact the program and our relationship with the client. ...

[281] The words complained of in Poulin's August 12, 2003 e-mail to Flanders, Mackey and Pierce are part of Poulin's response to ARINC's refusal to remove Alleslev-Krofchak. Poulin first wrote of Alleslev-Krofchak's "disastrous management style", stating:

As a leader she has been unable to establish trust with the team as a whole and has exercised a highly autocratic and overbearing style. She has centralized all decisions and is so controlling of information that the team must endure a highly reactionary approach to taskings and work in isolated groups. The result has been remarkable low morale, low efficiency and an extra-ordinary high turn-over rate.

[282] It is immediately after this paragraph that the words complained of were uttered. The words were offered as the "icing on the cake" to justify Alleslev-Krofchak's removal. What the ordinary and reasonable person would infer from the words complained of, considered fairly and objectively and in context, is that Alleslev-Krofchak was incompetent as a manager, that a number of team members were planning to leave the project due to her management style, and that Alleslev-Krofchak was very difficult to deal with as a consultant from a contract management perspective because she was manipulative, oppositional, uncommunicative, and uncooperative. The defamatory sense of the complained-of words is clear.

Issue 6: If the words are defamatory, are the facts which comprise the defamatory material true?

[283] Poulin's reference to departures in his e-mail of August 11, 2003, considered in context, conveyed the message that he had been led to believe that some members of the project team would leave if Alleslev-Krofchak was not removed as the SPM#1 as soon as possible. Poulin's evidence was that the members of the team he was referring to were Lewis (first and foremost), Best, Hopkins and Wall. As already indicated above, the evidence does not support a

finding that any of these individuals had advised Poulin or Burke that they would be leaving the contract if Alleslev-Krofchak was not removed as SPM#1 as soon as possible. Burke's evidence was that at no time did he and Poulin talk about four people leaving the contract unless Alleslev-Krofchak was locked out. His evidence was that the only person who was threatening to do that was Lewis, who was putting pressure on Poulin and Burke to get rid of Alleslev-Krofchak, the result of which would have been that he would get her job.

[284] Lewis was actively working at becoming Alleslev-Krofchak's replacement and was doing so with Poulin's knowledge and encouragement. The closing passage of Lewis' e-mail to Poulin of August 10, 2003 at 10:40 p.m. was a clear statement that Lewis was ready to take over the helm earlier than previously agreed to and anticipated, and he went to Poulin's office on the morning of August 11th to strategize with him as to how the transition to his leadership could occur – not to advise Poulin that he was planning to leave unless Alleslev-Krofchak was removed immediately as SPM#1. I find that, when he wrote the August 11th e-mail to ARINC, Poulin did not believe that Lewis would quit the project unless Alleslev-Krofchak was immediately removed as SPM#1.

[285] Although Best had asked Burke to look around for another contract position for him, the evidence does not support the conclusion that he was planning to leave the OWSM project imminently or that he had told anyone that he was planning to do so. On the contrary, his evidence was that he was afraid his position on the project was not secure. Although Hopkins had expressed dissatisfaction about Alleslev-Krofchak's management style to Burke and had asked Burke to keep him in mind if other contract opportunities arose, the evidence does not support the assertion that he told anyone at Valcom that he would be leaving the project unless Alleslev-Krofchak was terminated. Finally, Tom Wall's evidence was that, although he had some concerns about project management issues, he was not contemplating leaving the project at that time and had not told Poulin or Burke that he intended to do so. The evidence Poulin provided to support the truth of his statement that he was concerned about more departures if Alleslev-Krofchak was not removed as SPM#1 as soon as possible does not persuade me that this statement was true when it was made.

[286] In regard to Poulin's statement regarding his conversation with the "client lead for the CF 18", no evidence was adduced at trial that Poulin had spoken directly to either Walker, the true lead on the CF 18, or to Lavoie, his second. There was evidence that at some point either Burke or Lewis had spoken to Lavoie. There was evidence that Lavoie was biased against Alleslev-Krofchak and had expressed serious dissatisfaction with her management style to Burke and Lewis. However, Poulin did not testify that he had directly spoken to Lavoie, and Lavoie had said what was attributed to him in Poulin's e-mail. Lavoie was not called as a witness. Therefore, Poulin has not proven that he had spoken to the client lead for the CF 18 before sending the August 11, 2003 e-mail to ARINC or that the lead on the CF 18 had actually said to Poulin what Poulin attributed to him.

[287] As well, the evidence of Boland, Chouinard, Alleslev-Krofchak and Poulin was that at all times until her removal as SPM#1, "the Client", embodied in Lucas, was very pleased

with Alleslev-Krofchak's work and did not want her removed from the SPM#1 position, and Poulin was aware of this. Therefore, Poulin has not proven that when he sent the August 11th e-mail to ARINC, he believed that it was only a matter of time before Valcom would be pressured by Lucas to remove Alleslev-Krofchak.

[288] In regard to the complained-of words in Poulin's August 12, 2003 e-mail to ARINC, the evidence falls short of persuading me that, as of August 12, 2003, Valcom was again faced with the possibility of team members quitting, or that Alleslev-Krofchak's conduct prior to August 12, 2003 could truthfully be described as manipulative, oppositional, uncommunicative, and uncooperative in her dealings with Valcom. I have already referred to the absence of evidence regarding impending departures from the OWSM project. In regard to Alleslev-Krofchak's relationship with Valcom, while testifying, Poulin pointed to Alleslev-Krofchak not supporting Lewis' candidacy for the SPM#2 position and Alleslev-Krofchak not wanting to prepare a new organizational structure as evidence of her having these characteristics.

[289] It is true that Alleslev-Krofchak did not support Lewis' candidacy for the SPM#2 position. I have found that she did not do so because she feared he simply was taking the position as a stepping stone to replace her as SPM#1 and he would not be content to operate within the confines of the role, as she understood it in the Statement of Work. She did not believe that Lewis truly wanted the SPM#2 position or would stay for long in that position. Her instincts were completely accurate. Advising Poulin that Lewis was overqualified for the position was an accurate statement. It does not justify Poulin describing her in the pejorative language he used in his e-mail.

[290] Similarly, Alleslev-Krofchak was not obliged under the contractual framework to complete a new organizational structure for the OWSM project within a timeframe dictated by Poulin. An organizational framework existed under the initial Statement of Work. Under that Statement of Work, Alleslev-Krofchak was obliged to follow the directions of Lucas in terms of deliverables. Any disagreements regarding the organizational framework and the tasks to be performed by members of the team called for input from the Technical Authority, possibly the Contracting Authority and the contracting companies whose resources may have been affected; in other words, Valcom, ARINC and ADGA. It was not for Valcom to dictate to Alleslev-Krofchak, or anyone else on the contract, that their role and responsibilities were to be different from those set out in the initial Statement of Work. Alleslev-Krofchak's reluctance in jumping to Poulin's command in this regard, and her delay of a couple of weeks, during which time she was in the office for only six days, did not justify Poulin describing her as manipulative, oppositional, uncooperative or uncommunicative.

Issue 7: If the words are defamatory, are they protected because qualified privilege applies to the occasion on which they were conveyed?

[291] Qualified privilege does apply to the occasion of Poulin's August 11th and August 12th e-mails to ARINC. Valcom and ARINC had a contractual relationship pursuant to which ARINC was Valcom's subcontractor on the OWSM project and was supplying Alleslev-

Krofchak to the project as an ARINC resource. Valcom was responsible for the overall performance of both Group 1 and Group 2 on the project, and Alleslev-Krofchak was responsible to ensure that the deliverables under the Prime Contract were produced. Clearly, Valcom had a duty and interest in communicating with ARINC in regard to performance issues relating to Alleslev-Krofchak, and ARINC had a corresponding duty and interest to receive such communications.

[292] The real question is whether the privileged nature of the occasion of the e-mails protected the words complained of within those e-mails. Was the information communicated in that portion of Poulin's August 11th and 12th e-mails Alleslev-Krofchak complained of reasonably appropriate in the context of a project manager interacting with a subcontractor in regard to one of the subcontractor's resources for the purpose of alerting the subcontractor to performance issues relating to the subcontractor's resource? Subject to my comments below relating to malice, I find that the language used in both e-mails was not of a nature to take the statements outside of the realm of qualified privilege. The issues raised by Poulin were relevant and pertinent to the legitimate common interests of Valcom and ARINC and the successful completion of the OWSM project.

Issue 8: Has malice on the part of Poulin been proven so as to negate qualified privilege as a defence?

[293] Alleslev-Krofchak has proven that all three forms of malice were present on the occasion of Poulin sending his August 11th and 12th e-mails to ARINC.

(a) Spite or ill-will

[294] I find that on August 11th and 12th, when Poulin sent the e-mails to ARINC, he harboured ill-will toward Alleslev-Krofchak that dated back to her decision to be an ARINC resource instead of a Valcom resource on the OWSM project. Both Poulin and Burke were frustrated and angry when Alleslev-Krofchak advised them of this decision in December 2001. Alleslev-Krofchak had been working with them for months in regard to the preparation of Valcom's bid, and they had assumed she would let her name go forward as a Valcom resource. It was important to them that she do so because they realized the SPM#1 position had been written with her in mind, they believed that without her Valcom likely would not be the successful bidder, and they had a strong interest in winning the bid so as to position Valcom well for future performance-based contracting for the Canadian Military. Poulin and Burke felt they had been blind-sided at the eleventh hour.

[295] When the Valcom/ARINC bid, although compliant in terms of mandatory requirements, was not accepted due to overall cost, Poulin pressured Alleslev-Krofchak to become a Valcom resource as one of a number of cost-reduction initiatives. Poulin tried his best to get Alleslev-Krofchak to reconsider her decision to be an ARINC resource, and he delayed finalizing a subcontract with ARINC until their respective work-shares under the project guaranteed Valcom a 60% share. It is clear from Poulin's e-mails to Alleslev-Krofchak during

this period that Valcom was most unhappy that Alleslev-Krofchak, as SPM#1, was not a Valcom resource. As Poulin said in a June 11, 2002 e-mail to Alleslev-Krofchak:

I can tell you that although the issue of contract revenue to Valcom is of significant importance; the main drivers are workshare, our role as Prime vis-à-vis our role in the contract, the strategic value of the contract, its duration and scope, etc. The proposed approach [dealing strictly with Valcom's lost revenues due to a reduced workshare on the project] clearly addresses the issue of revenue; however, would come at the expense of the other more important issues.

[296] The most compelling evidence that Poulin's ill-will towards Alleslev-Krofchak regarding the original contractual arrangements had lasted through to the summer of 2003 is in the form of his highly critical June 20, 2003 e-mail to Flanders to which he attached a draft letter to Alleslev-Krofchak. He stated:

... I have reflected on the many incidents that have arisen since the commencement of this contract ...

It has become increasingly clear that your loyalty rests first and foremost with satisfying your own personal agenda. You have eroded the trust I have placed in you by:

- manipulating the Valcom/ARINC relationship to position yourself as a contractor/employee of ARINC;

[297] Further evidence of ill-will Poulin felt toward Alleslev-Krofchak in August 2003 includes: (1) the agreement Poulin entered with Lewis in late May or early June for Valcom to install Lewis in the SPM#2 position with an undertaking to remove Alleslev-Krofchak as the SPM#1 in six to twelve months and replace her with Lewis; (2) Poulin inviting Lewis in June 2003 to report to him regularly about Alleslev-Krofchak's management shortcomings, thereby providing Valcom with ammunition to justify her removal; (3) Poulin sending Flanders on June 20, 2003 the highly critical draft letter for Alleslev-Krofchak; (4) Poulin sending a copy of this document to Lewis; (5) Poulin's comment in an e-mail to Lewis on July 28, 2003 that he could "only smirk" at Alleslev-Krofchak's reason regarding her reluctance to have Lewis in the SPM#2 position; and (6) Poulin responding happily to Lewis on July 28, 2003 that the level of detail Lewis was providing to him about Alleslev-Krofchak was perfect.

(b) An indirect motive or ulterior purpose

[298] I find that, after Fortin left as SPM#2, Poulin formed the intention, along with others at Valcom, to find a replacement for the SPM#2 position who would be capable of moving into the SPM#1 position as a Valcom resource when Alleslev-Krofchak was manoeuvred out by Valcom. Ross Embree fit that description, though he did not stay long enough for any plans to develop. I have already found that by no later than June 13, 2003, Poulin, Burke and Lewis had devised a plan whereby Lewis would assume the SPM#2 position and within six to

twelve months would replace Alleslev-Krofchak as SPM#1 when she was removed from the position.

[299] I find that by August 11, 2003, Poulin accepted Lewis' suggestion that Valcom not wait six to twelve months, but act immediately to have Alleslev-Krofchak removed and put Lewis in at least an acting SPM#1 position. The true motivation for Poulin and Valcom to act when it did was to gain more control over the OWSM project by controlling the lead resource on the contract and to fend off any effort by ARINC (a potential competitor) to increase its presence on the contract and its visibility in performance-based contracting in Canada. The motive or reason for Poulin sending the e-mail of August 11th was not truly as expressed. It was not because the situation with Alleslev-Krofchak was truly "no longer tenable". It was not because there was a real concern that if she was not immediately removed as SPM#1, the OWSM project and Prime Contract were at risk. The real reason was to advance Valcom's strategic goals in a number of respects by getting rid of Alleslev-Krofchak as SPM#1.

[300] The same can be said of Poulin's e-mail of August 12th, where the words complained of had the goal of vilifying Alleslev-Krofchak so as to justify the steps being taken by Valcom. I note that the disingenuous nature of the communication is confirmed in the next paragraph where Poulin states that Alleslev-Krofchak is not irreplaceable, and Valcom was prepared to assist ARINC in recruiting a replacement – that being said at a time when Poulin and Burke had already promised Lewis, a Valcom resource, that he would be the replacement, and they had no intention of putting anyone else in that position.

(c) Recklessness as to whether one is telling the truth

[301] Poulin was reckless in terms of ascertaining whether the statements complained of in his August 11th and 12th e-mails were truthful. He relied heavily on the updates from Lewis, even though Lewis was clearly in a conflict of interest. Despite his reluctance while testifying to agree with this proposition, it would be obvious to any reasonable person that Lewis was in a conflict of interest situation. It was to Lewis' interest to portray Alleslev-Krofchak in as negative a light as he could so as to improve his chances of getting the SPM#1 position as soon as possible. This conflicted with his duty to be an objective and dispassionate observer and reporter. Poulin himself noted after Lewis' first update that Lewis' reporting was not dispassionate.

[302] Poulin realized that Lewis was biased against Alleslev-Krofchak. It must be remembered that Poulin and Burke reviewed all of Alleslev-Krofchak's perceived deficiencies with Lewis before he started in the SPM#2 position, and Poulin continued to feed Lewis with negative information about Alleslev-Krofchak after Lewis started to work on the project. Despite Lewis' obvious bias, Poulin conveyed everything Lewis stated about Alleslev-Krofchak on the basis of its being accurate, truthful and adequately researched. This is further evidence of malice. (*Leenan, supra*, at para. 178.)

[303] Poulin also acted recklessly – particularly in the August 12th e-mail – by using categorical language and by overstating the case regarding Valcom once again being faced with the possibility of team members quitting. There was no credible evidence that in the month preceding the August 12th e-mail another “personnel crisis” had developed. In fact, Burke acknowledged that he was not aware of any urgency requiring immediate action on August 11th or 12th.

(d) Conclusion regarding Poulin/Valcom and defamation

[304] Poulin defamed Alleslev-Krofchak in his August 11th and 12th e-mails to ARINC. In sending these e-mails to ARINC, Poulin was acting as a Valcom employee carrying out his duties as the project manager of the OWSM project on Valcom’s behalf. Valcom is vicariously liable for Poulin’s defamation.

Issue 9: If Alleslev-Krofchak was defamed, and neither the defence of justification nor qualified privilege applies, what is the measure of her damages?

[305] General damages in defamation are presumed from the publication of the false statement and are awarded at large. (*Hill, supra*, at para. 167). The quantum of such damages depends on a variety of factors, including the conduct of the plaintiff, her position and standing, the nature of the libel, the mode and extent of publication, the conduct of the defendant from the time the libel was published to the end of trial, the motivations of the defendant, and the possible effect of the defamation on the plaintiff. One must keep in mind the damage inflicted on the plaintiff's reputation, the difficulty in rehabilitating a reputation, and the suffering experienced by the plaintiff.

[306] Lewis' defamation of Alleslev-Krofchak, as repeated by Poulin, was most egregious in that it reflected on her reputation for honesty, integrity and trustworthiness – essential characteristics going to the very heart of a person's character. For someone with a military background, who continued to work in a military environment, having one's character defamed strikes a particularly heavy blow. Both Lewis and Poulin, as ex-military, would have understood this.

[307] It is significant that after having worked with Alleslev-Krofchak for only a few days, Lewis had no compunction in writing off Alleslev-Krofchak's character in the way he did when communicating with her professional colleagues. It is also significant that Poulin, who knew Lewis was in a conflict of interest situation and had a lot to gain by Alleslev-Krofchak's downfall, and who recognized Lewis' e-mail as not being dispassionate or objective, would nevertheless forward the e-mail to ARINC, for whom Alleslev-Krofchak was a consultant and with whom Poulin knew Alleslev-Krofchak had hopes of being employed in the future.

[308] Lewis' e-mail was sent only to Poulin. I have no doubt, however, that Lewis realized it likely would reach a wider audience. To Lewis' knowledge, Poulin wanted his weekly reports as ammunition against Alleslev-Krofchak. I find that Lewis knew or assumed that Poulin would be showing his e-mails or repeating their contents to others at Valcom, DND, PWGSC and/or ARINC. Poulin in fact sent a copy of Lewis' e-mails to Thivierge and Burke at Valcom and Flanders, Mackey and Pierce at ARINC. In doing so, he lost control over who saw the e-mails or learned of their contents. Poulin and Lewis understood that the aerospace community in Ottawa, where Alleslev-Krofchak had worked for years and anticipated working into the future, is a small, closely-knit network where news travels fast and reaches most individuals. Both knew that defaming Alleslev-Krofchak's character in strong terms would have an impact on her future career in the small aerospace community. Neither can complain if the damages awarded reflect the fact that Lewis' e-mail was seen by a wider audience than its named recipient.

[309] The deviousness Lewis and Poulin displayed in having Lewis "spy" for Valcom on the person to whom he reported and to feed negative reports about her to Valcom for their mutual benefit increases the seriousness of the defamation. So too does the lack of remorse

Lewis displayed when testifying, and his denial that he had in fact been told by Poulin and Burke that Valcom would have Alleslev-Krofchak removed as SPM#1 within six to twelve months to be replaced by Lewis – a denial which I do not believe. The same comment applies to Poulin, who displayed considerable difficulty in answering simple questions in a straight forward fashion and who refused to acknowledge the inappropriateness of any of his actions.

[310] The defamation contained in Poulin's August 11th e-mail to ARINC was less serious in that it focused more on perceived shortcomings in Alleslev-Krofchak's management approach, rather than aspects of her character. The evidence persuades me that Alleslev-Krofchak did have some difficulty managing the personnel on the project. As I have indicated, many factors contributed to this, not all of which were attributable to decisions Alleslev-Krofchak took. Therefore, although the specific statements complained of in this e-mail were defamatory, untruthful, and not protected by qualified privilege, nevertheless, to the extent that the message conveyed was that some personnel were dissatisfied with Alleslev-Krofchak's management style, the message was accurate.

[311] The defamation contained in Poulin's August 12th e-mail to ARINC was more serious again, with generalizations being made about Alleslev-Krofchak's way of interacting with Valcom; nevertheless, it was not as serious as an all-out attack on her character.

[312] Taking these factors into account, I conclude that a reasonable level of damages for defamation is \$100,000 of which Valcom, Poulin and Lewis shall be jointly and severally liable. I am not allowing damages under this heading for economic loss in that neither the defamation by Lewis nor the subsequent defamation by Poulin/Valcom caused the loss of income Alleslev-Krofchak suffered. Valcom had plans to terminate Alleslev-Krofchak in the SPM#1 position before Lewis uttered the defamatory words. ARINC rejected the criticisms of Alleslev-Krofchak levied by both Lewis and Poulin and refused to terminate their contract with Temagami. It was Valcom that ended Alleslev-Krofchak's participation on the OWSM project, not ARINC.

Conclusion Regarding Defamation

[313] Valcom, Poulin and Lewis are jointly and severally liable to Alleslev-Krofchak for damages for defamation in the amount of \$100,000.

Intentional Interference with Economic Relations

[314] In *Correira v. Canac Kitchens* (2008), 91 O.R. (3d) 353 (C.A.), the Ontario Court of Appeal noted how *OBG Ltd. v. Allan*, [2007] U.K.H.L. 21, had attempted to clarify and rationalize the elements of the torts of inducing breach of contract and the intentional interference with economic relations. The court described *OBG* as providing a clear definition of the elements of both torts.

[315] Until *Correia, supra*, the jurisprudence in Canada was to the effect that to establish the tort of intentional interference with economic relations against a defendant, the plaintiff must prove three elements:

- The defendant intended to injure the plaintiff;
- The defendant interfered with the business or livelihood of the plaintiff by illegal or unlawful means; and
- As a result of the interference, the plaintiff suffered economic loss.

(*Drouillard v. Cogeco Cable Inc.* (2007), 86 O.R. (3d) 431 (C.A.) at para. 19; *Reach M.D. Inc. v. Pharmaceutical Manufacturers Assn. of Canada* (2003), 65 O.R. (3d) 30 (C.A.) at para. 44; *Lineal Group Inc. v. Atlantis Canadian Distributors Inc.* (1998), 42 O.R. (3d) 157 (C.A.) leave to appeal to S.C.C. refused October 14, 1999.) *OBG Ltd. v. Allan* was released one day after *Drouillard* and approximately one year before *Correia*.

[316] In *Correia, supra*, at para. 100, the Ontario Court of Appeal, in adopting the statement of Lord Hoffman in *OBG, supra*, described the elements of the tort of causing loss by unlawful means as: (1) wrongful interference by the defendant with the actions of a third party in which the plaintiff has an economic interest; (2) an intention by the defendant to cause loss to the plaintiff. It is unclear to me whether this articulation of the elements of the tort was intended to modify or replace the earlier articulation of the essential elements provided by the Ontario Court of Appeal in such cases as *Lineal, supra*; *Reach, supra*; and *Drouillard, supra*. In the absence of a clear direction in that regard, I conclude that the Ontario Court of Appeal was not intending to change the essential elements needed to establish this tort, as applied in other recent Court of Appeal decisions.

Issue 1: Did Lewis, Poulin and/or Valcom intend to injure Alleslev-Krofchak and/or Temagami?

[317] The Court of Appeal in *Correia, supra*, at para. 100 stated: "... the intentionality of the defendant's conduct is critical: it is not enough that the loss was a foreseeable consequence of the defendant's conduct; to be actionable under this tort, the loss must have been the intended result." The Court of Appeal concluded that the tort of intentional interference with economic relations could not be made out where the defendants were merely negligent in their conduct, even if they were reckless as to the consequences of their negligent conduct. (para. 106)

[318] The first element of the tort will be met as long as the unlawful act of the defendant was in some measure directed against the plaintiff. This is so even if the predominant purpose of the defendant was to advance his, her or its own interest, rather than to injure the plaintiff. (*Lineal, supra*; John G. Fleming, *The Law of Torts*, 9th ed. (Sydney: LBC Information Services, 1998) at 769). The intent to cause injury may be inferred in circumstances where the defendant knew that injury to the plaintiff would ensue. (*Daishowa Inc. v. Friends of the*

Lubicon (1996), 27 O.R. (3d) 215 (Gen. Div. (Div. Ct.)) leave to appeal to Ont. C.A. refused April 24, 1996, Doc. CAM 17675).

[319] As I have already found above, Lewis and Poulin/Valcom intended their actions to result in Alleslev-Krofchak being removed as SPM#1 on the OWSM contract to be replaced by Lewis. They consciously and actively took steps to make that happen. In doing so, they intended to cause the natural consequences flowing from Alleslev-Krofchak being removed from the SPM#1 position; namely, her suffering economic loss. This amounted to an intention to cause injury to Alleslev-Krofchak.

[320] Poulin and Valcom were aware that Alleslev-Krofchak contracted her services to ARINC through Temagami, just as she had contracted her services to Valcom at the beginning of the OWSM contract through Temagami. I find that Poulin and Valcom knew that by taking action to terminate Alleslev-Krofchak's involvement on the OWSM project, they would be causing economic loss to Temagami. Therefore, in consciously and actively taking steps to bring about Alleslev-Krofchak's termination, they intended to cause Temagami economic loss.

[321] There is no evidence that Lewis knew about the existence of Temagami or that Alleslev-Krofchak contracted her services to ARINC through Temagami. Therefore, there is no evidence that Lewis intended to cause Temagami economic loss. Temagami's claim against Lewis for intentional interference with economic relations is dismissed.

Issue 2: Did Lewis, Poulin and/or Valcom interfere with the business and or livelihood of Alleslev-Krofchak and/or Temagami by illegal or unlawful means?

[322] There is considerable uncertainty in the law as to how the term "unlawful means" should be defined for the purpose of this tort.

[323] Several appellate courts in Canada have given the term "illegal or unlawful means" a broad interpretation not restricted to an act prohibited by law or by statute but also encompassing an act that the defendant "is not at liberty to commit" – an act without legal justification. This is based on the oft quoted statement of Lord Denning in *Torquay Hotel Co. v. Cousins* (1968), [1969] 1 All E.R. 522 (C.A.) at 53:

I must say a word about unlawful means, because that brings in another principle. I have always understood that if one person deliberately interferes with the trade or business of another, and does so by unlawful means, that is, by an act which he is not at liberty to commit, then he is acting unlawfully, even though he does not procure or induce any actual breach of contract. If the means are unlawful, that is enough.¹⁹

¹⁹ In *OBG Ltd. v. Allan*, *supra*, the House of Lords held that several earlier cases that had enjoyed precedential importance had been wrongly decided and should not be followed with respect to aspects of their holdings concerning the economic torts of inducing breach of contract and interference with economic relations. Those included *Torquay Hotel Co. v. Cousins*, *supra*. The House of Lords also stated that aspects of the reasoning in a

(See *Drouillard, supra*, at para. 19; *No. 1 Collision Repair & Painting (1982) Ltd. v. Insurance Corp. of British Columbia*, [2000] B.C.J. No. 1634 (C.A.) per Lambert J.A. dissenting; *United Food and Commercial Workers Local 1252 v. Cashin*, [1996] N.J. No. 343 (S.C.T.D.), affirmed (Nfld. C.A.); *Spicer v. Volkswagen (Can.) Ltd.* (1978), 91 D.L.R. (3d) 42 (N.S.S.C. App. Div.)

[324] The Ontario Court of Appeal in *Reach, supra*, at paras. 48-52 concluded that the trial judge was right in taking a broader view of “illegal or unlawful means”, but declined to define the outer limits of the principle in *Torquay Hotel*. It did find that “unlawful means” at least included an organization making a ruling that it was not authorized to make in the sense that the ruling was beyond its powers. In *Drouillard, supra*, at paras. 19-25, the Ontario Court of Appeal noted the lingering uncertainty as to how broadly the expression “unlawful interference” should be interpreted, but went on to confirm that the commission of an intentional tort – such as defamation – constitutes unlawful means. The court in that case found that a company acting against its unwritten internal policy, in circumstances where there was no evidence that the employees were not at liberty to do so and neither the plaintiff nor the third party affected had relied on that policy, did not amount to an unlawful act. The court went on to say that conduct which is simply arbitrary, in bad faith, or distasteful falls short of being conduct amounting to illegal or unlawful means. (para. 25)

[325] In *Correia, supra*, at paras. 102-104, the Ontario Court of Appeal highlighted the ongoing disagreement amongst judges and legal scholars as to the meaning to be assigned “unlawful means” for the purpose of establishing the tort of intentional interference with economic relations, as reflected in the majority and dissenting opinions in the House of Lords in *OBG, supra*. The court noted that Lord Hoffman, for the majority in *OBG* at para. 551, articulated the parameters of “unlawful means” as follows:

Unlawful means therefore consists of acts intended to cause loss to the claimant by interfering with the freedom of a third party in a way which is unlawful as against that third party and which is intended to cause loss to the claimant. It does not in my opinion include acts which may be unlawful against a third party but which do not affect his freedom to deal with the claimant.

The Court of Appeal summarized Lord Hoffman’s definition of “unlawful means” as “acts against a third party that are actionable by that third party, or would have been actionable if the third party had suffered a loss.”

[326] The court went on to contrast this interpretation with that of Lord Nicholls, in dissent, who adopted a broader interpretation of “unlawful means” as encompassing “any conduct that is deliberately intended to harm the plaintiff and in breach of a legal or equitable obligation under either civil or criminal law”. He saw the tort as a remedy for intentional

number of cases should not be followed, including *Dimbleby & Sons v. National Union of Journalists* (1983), [1984] 1 W.L.R. 67 (Eng. C.A.).

economic harm “caused by unacceptable means”, which includes all means that would violate an obligation under the law. This approach is closer to that of Laskin J.A. in *Reach, supra*, though the Court of Appeal in *Correira, supra*, suggested that Rouleau J.A. in *Drouillard, supra*, tried to rein in the breadth of “unlawful means”.

[327] In *Correira* at para. 107, the Ontario Court of Appeal declined to fully define the scope of the “unlawful means” component of the tort, concluding that the negligence of one of the defendants as alleged by the plaintiff in that case was directly actionable under the tort of negligence, and therefore no assistance through the tort of intentional interference was required. The court noted that the intentional torts exist to fill a gap where no action could otherwise be brought for intentional conduct that caused harm through the instrumentality of a third party.

[328] Regrettably, the Plaintiffs’ claims in this case, based on the tort of intentional interference with economic relations, were not pleaded with any particularity in the Amended Statement of Claim and were not clearly analyzed during submissions. This, coupled with the uncertainty in the law regarding the scope of the concept of “unlawful means”, has made my task particularly difficult. At trial, the Plaintiffs’ counsel made submissions based on two types of conduct on the part of the Defendants to meet the requirement for “unlawful means”: defamation and conspiracy. Based on the evidence fully canvassed at trial in both the Plaintiffs’ and Defendants’ cases, I add a third in regard to the claim against Valcom: breach of contract.

(a) Defamation

[329] The law relating to defamation was canvassed above and I have already found that Lewis and Poulin, and therefore Valcom, defamed Alleslev-Krofchak; that some of the statements made by each were untruthful; and that although qualified privilege attached to the occasion when the statements were made, the communications themselves were not protected due to the existence of malice on the part of both Lewis and Poulin. Alleslev-Krofchak’s success in her action founded on defamation was based on the particular statements complained of in the Statement of Claim.

[330] During argument, I asked counsel whether, in order to decide that the Plaintiffs had established “unlawful means” under the tort of intentional interference with economic relations, I was at liberty to consider defamatory statements made by the Defendants regarding Alleslev-Krofchak other than those specifically pleaded in regard to the tort of defamation. Counsel were unable to assist in this regard; nevertheless, I conclude that I am able to rely on other defamatory statements made by the Defendants when considering whether the requirement of “unlawful means” has been established for the separate tort of intentional interference with economic relations.

[331] The other statements which were defamatory of Alleslev-Krofchak were Poulin’s e-mail to Flanders and Thivierge dated June 20, 2003 with the attached draft letter to Alleslev-Krofchak, and Poulin’s September 23, 2003 letter to McDougall explaining Valcom’s actions in terminating Alleslev-Krofchak. I have already explained earlier how many statements made in

those documents were inaccurate or untruthful. In that they were motivated in part by malice and in part by Valcom's hidden objective to move ARINC out of the picture and have the SPM#1 position filled by its own resource, the statements were not protected by qualified privilege even though the occasion of their being sent was subject to qualified privilege.

[332] I find that the defamatory statements in all of these documents did not result in ARINC terminating its relationship with Alleslev-Krofchak. Nevertheless, they did result in ARINC terminating its subcontract with Valcom because it did not want to continue dealing with a company that would handle itself in such an unprofessional fashion. This severely interfered with Alleslev-Krofchak's livelihood. Valcom also relied on the defamatory statements to justify locking out Alleslev-Krofchak on August 13, 2003 and giving notice to ARINC on August 26, 2003 that she was removed from the SPM#1 position. Finally, as apparent in Poulin's September 23, 2003 letter to McDougall (PWGSC), the defamatory statements were relied on by Valcom to justify to the Technical and Contracting Authorities Valcom's removal of Alleslev-Krofchak as SPM#1. In this regard, the statements were used so that Valcom would not be seen as being in breach of the Prime Contract and the way would be paved to have Lewis installed as SPM#1.

[333] I conclude that Lewis, Poulin and Valcom interfered with Alleslev-Krofchak's livelihood through use of defamatory statements. I find that Poulin and Valcom interfered with Temagami's business through use of the defamatory statements against its principal, Alleslev-Krofchak.

(b) Conspiracy

[334] The concept of civil conspiracy in Canada is summarized in G.H.L. Fridman, *The Law of Torts in Canada*, (Toronto: Carswell, 1989) vol. 2, at pp. 265 as follows:

In modern Canada, therefore, conspiracy as a tort comprehends three distinct situations. In the first place there will be an actionable conspiracy if two or more persons agree and combine to act unlawfully with the predominating purpose of injuring the plaintiff. Second, there will be an actionable conspiracy if the defendants combine to act lawfully with the predominating purpose of injuring the plaintiff. Third, an actionable conspiracy will exist if defendants combine to act unlawfully, their conduct is directed towards the plaintiff (or the plaintiff and others), and the likelihood of injury to the plaintiff is known to the defendants or should have been known to them in the circumstances.

[335] In *Hunt v. T & N plc*, [1990] 2 S.C.R. 959 at para. 43, the Supreme Court accepted the above passage as a useful summary of the then current state of the law in Canada with respect to the tort of conspiracy.

[336] As a preliminary matter, the Defendants' counsel argued that conspiracy was not pleaded in the Statement of Claim as the unlawful means by which the Defendants intentionally

interfered with the Plaintiffs' economic relations and, therefore, the Plaintiffs should not be permitted to pursue this line of argument to support their claims under this tort.

[337] The only allegation in the Amended Statement of Claim that touches on the existence of a conspiracy, without specifically using that term, is contained in paragraph 9:

The Plaintiffs say that in or about the summer of 2003 the Defendants Lewis and Poulin, acting for their own personal benefit and for that of Valcom began a pattern of conduct to remove the Plaintiff, "Alleslev-Krofchak" as Senior Program Manager of the contract. Included in this conduct they made a variety of defamatory statements suggesting that the Plaintiff was incompetent in her job and/or that she was guilty of misconduct. These statements were false and maliciously made for the sole purposes of Inducing a Breach of Contract and the interfering with Economic Relations so as to deprive "Alleslev-Krofchak" of her income.

[338] Without question, the Amended Statement of Claim leaves much to be desired. The causes of action to support the Plaintiffs' claims were melded together with no attempt to isolate the material facts supporting each cause of action, aside from specific reference to three allegedly defamatory statements. The required material facts to support the various causes of action were scantily provided. In short, the Amended Statement of Claim provided minimum disclosure to the Defendants, and to the court, as to extent of the case to be advanced by the Plaintiffs at trial. That being said, the Amended Statement of Claim did raise – even if obtusely – the allegations of conspiracy and breach of contract on the part of the Defendants. No motion to strike pleadings nor request for particulars was brought prior to trial. Discovery of Alleslev-Krofchak occurred over three days. Evidence was adduced at trial by both the Plaintiffs and the Defendants in regard to the issues of conspiracy and breach of contract. In fact, considerable time was devoted to the factual underpinnings of both. As a result, in an effort to secure the just determination of the real matters in dispute in this litigation, I will deal with the issues of conspiracy and breach of contract in regard to the Plaintiffs' allegation that the Defendants used unlawful means to interfere with the Plaintiffs' business or livelihood.

[339] I find that by May and June 2003, Valcom was becoming concerned about the possibility of ARINC moving into the Canadian market, and more particularly into the arena of performance-based contracting for the Canadian Military – a move that could have had some implications for Valcom in the future. ARINC representatives had already come to Ottawa in mid-May to meet senior management within DND and had impressed those individuals with their experience and expertise. I find that Poulin and Burke, thinking strategically about the future of Valcom's contracting in the aerospace field, had come to the conclusion that the best way to protect Valcom's interests into the future was by removing Alleslev-Krofchak from the SPM#1 position and replacing her with their own resource who would work with them to further Valcom's interest. Poulin and Burke realized that a likely outcome of this step would be that ARINC would withdraw from the project, and any plans for it to expand into the Canadian

aerospace market – in that they were based in part on Alleslev-Krofchak’s connections and credibility – would be thwarted.

[340] It is within this context that I find (as earlier stated) that an agreement existed between Poulin and Burke (on behalf of Valcom) and Lewis pursuant to which Valcom, with Lewis’ help, would bring about the removal of Alleslev-Krofchak as the SPM#1 on the OWSM project and Valcom would then put Lewis in her stead. I also find that Poulin, Valcom and Lewis all knew that Alleslev-Krofchak would likely suffer economic injury if she were removed as SPM#1.

[341] Lewis’ e-mail to Poulin of July 19, 2003 is powerful evidence against Lewis as to the existence of such an agreement. Lewis testified that when he wrote this e-mail, he thought he was accurately reflecting the conversation he, Burke and Poulin had had weeks earlier. He had understood at the time that Valcom had a plan to remove Alleslev-Krofchak as SPM#1 within six to twelve months, at which time Lewis would take her position. When testifying, Lewis claimed that, in retrospect, he had been mistaken about the part: “A move will be made to remove Alleslev-Krofchak from her position”. He claimed that after Burke had seen this e-mail, Burke had called Lewis and had reminded him that what was said was simply that Poulin and Burke expected Alleslev-Krofchak to move on within six to twelve months – not that steps would be taken to remove her. Lewis said that the light had then gone on and he agreed with Burke that this had been what was said. I reject the notion that Lewis had misunderstood the message that Burke and Poulin had conveyed to him.

[342] Burke’s evidence was that, in his enthusiasm to recruit Lewis, he had indicated to Lewis that being SPM#2 meant that, if the opportunity came up, he would be SPM#1. He claimed to have said that because he understood from Poulin that, within six to twelve months, Alleslev-Krofchak would be leaving the contract to take over ARINC’s Canadian operations. Burke claimed not to have intended Lewis to receive the message that steps would be taken to remove Alleslev-Krofchak from the SPM#1 position so as to install Lewis in that position, but simply that when Alleslev-Krofchak left, Lewis would become SPM#1. Burke claimed to have been horrified when he saw Lewis’ July 19, 2003 e-mail to Poulin. His evidence was that he immediately called Lewis to correct the impression that Lewis had received that Valcom would actively be taking steps to remove Alleslev-Krofchak from the SPM#1 position to be replaced by Lewis.

[343] Poulin’s evidence was that, during the lunch he and Burke had with Lewis in late May or early June, he and Burke intended to and did convey the message to Lewis that they understood Alleslev-Krofchak would leave the SPM#1 position to work on establishing an ARINC office in Canada and, when she did that, he would migrate to the leadership role within the project. Lewis would be in charge, he would assume control of the team, and he would be running the program. Although Poulin would not acknowledge this, I find that at the lunch both Poulin and Burke specifically promised Lewis the SPM#1 position – despite the fact that under the contract with ARINC, it was not Valcom’s position to offer. I reject Poulin’s evidence that, at the time, he was not thinking about the clauses in the Valcom/ARINC Subcontract that gave

ARINC the initial right to replace the SPM#1 resource. Poulin's evidence throughout the trial made it clear that the contractual terms pursuant to which Valcom was engaged on this project were always in his mind.

[344] Poulin's evidence was that when he and Burke saw the e-mail, they intentionally decided not to respond by e-mail to correct Lewis' "misunderstanding" because they could risk Lewis changing his mind and not taking the SPM#2 position. Poulin stated: "So we just let it lie and decided that we'd meet up with him later on down the road". Poulin made no mention of correcting Lewis' impression and, in fact, contradicted Burke's evidence that he and Poulin had done so immediately in person. Later in his evidence he stated: "We ultimately clarified that, myself or Mr. Burke ultimately clarified that to Brian, what was intended and what the position was going to migrate into and when". When pressed, he could not remember the specific conversation when clarification had been granted. He reiterated: "...when that e-mail was received [from Brian], I intentionally did not answer it, we just let it go, and figuring that we would meet with him at some point following that day and address it with him at that time." Poulin then stated that he believed that the discussion had occurred in the ensuing days during one of the meetings he and Burke would have had with Lewis to talk about a number of things, though he could not remember whether it would have been over lunch, in the hallway or elsewhere.

[345] I do not believe the evidence of Burke, Poulin or Lewis that there was a misunderstanding or that steps were taken to correct the misunderstanding. I find that Poulin and Burke specifically told Lewis, prior to his taking the SPM#2 position, that they were intending to remove Alleslev-Krofchak from the project within six to twelve months and that, when that happened, Lewis would be installed in her place. Burke and Poulin had already briefed Lewis in detail on Alleslev-Krofchak's shortcomings as SPM#1 and they had already canvassed with all of the client representatives on the project the possibility that Alleslev-Krofchak would be removed as SPM#1. Clearly, this was a plan that they had been considering at least since February 2003. The way events unfolded – and especially the fact that Poulin instructed Lewis to be his "eyes" at the OWSM project and to report on Alleslev-Krofchak's management of the project, the gusto with which Lewis undertook that task, the obvious satisfaction of Poulin in receiving such damning e-mails from Lewis, and the speed with which Poulin took steps to remove Alleslev-Krofchak so shortly after Lewis was placed on the project – all point to Lewis' e-mail of July 19, 2003 being an accurate reflection of the agreement arrived at by Lewis, Poulin and Burke a couple of weeks previously.

[346] I consider Lewis' e-mail of July 19, 2003 the single most important piece of evidence against Lewis. It was admitted to prove the truth of its contents as against Lewis. The question arose as to whether it could also be admitted to prove the truth of its contents against Valcom. Statements made by a representative of a party in his or her capacity as such may be binding as admissions against the party.²⁰ For an agent's statements to his or her employer or to

²⁰ Sopinka, John, Lederman, Sidney N., Bryant, Alan W. *The Law of Evidence in Canada* 2d ed. (Butterworths: Toronto, 1999) at para. 6.323.

a third party to be admitted in evidence against the employer as an admission, there must be proof of the agency or employment and proof that the statement was made within the scope of the agent's authority during the subsistence of the agency or employment relationship. Lewis only commenced work on the OWSM project as a Valcom resource on July 21, 2003; however, prior to that time, he had agreed to have his name put forward to the Contracting Authority as a Valcom resource, and the Contracting Authority had accepted him in the role of SPM#2. Poulin and Burke had fully briefed him on the OWSM project, the role he would be playing, and what Valcom wanted him to do on its behalf. The July 19th e-mail was a communication made by Lewis, as a Valcom agent, to Poulin, another Valcom agent, relating to issues arising pursuant to Lewis' status as a Valcom employee. I find that the requirements for admissibility of the July 19th e-mail as an admission against Valcom have been met.

[347] However, even if the July 19th e-mail itself was inadmissible for the truth of its contents against Valcom, there is ample additional evidence that points to that e-mail being an accurate reflection of the understanding of Poulin (and Valcom) as well as Lewis. The silence of Poulin after he received this e-mail is damning evidence against Poulin and Valcom. I note that between July 19th and August 11th, there were nine e-mail exchanges between Poulin and Lewis and Poulin never took the opportunity to correct Lewis' purported misunderstanding. I find that the July 19, 2003 e-mail accurately reflects the reality that Poulin on behalf of Valcom and Lewis on his own behalf had arrived at an agreement in late May or early June 2003 whereby within six to twelve months Valcom would have Alleslev-Krofchak removed as SPM#1 to be replaced by Lewis. Furthermore, I also find that by no later than July 19, 2003, a plan had been put into place whereby Lewis would assist Valcom in having Alleslev-Krofchak removed as SPM#1.

[348] Did the agreement between Poulin/Burke and Lewis amount to a conspiracy?

[349] First, I find that the purpose of the agreement was to bring about Alleslev-Krofchak's removal as SPM#1, which Poulin/Valcom and Lewis knew would likely result in economic injury to Alleslev-Krofchak. I cannot find, however, that causing injury to Alleslev-Krofchak was the predominant purpose of the agreement. Each Defendant had different reasons to want her removal, when they conspired to bring that about. Lewis' motivation in entering the agreement was to pave the way for his own advancement on the OWSM project. He was ambitious, confident that he could do a better job as SPM#1 than Alleslev-Krofchak, and impatient to be given that opportunity. Valcom's motivation was multifaceted and included getting back at Alleslev-Krofchak for not having agreed to be a Valcom resource in the first place, gaining greater control over the lead position on the OWSM project, installing someone in the SPM#1 position (such as a former AERE officer) with whom Poulin and others at Valcom could more easily relate, better situating Valcom for future performance-based contracting with DND, gradually moving ARINC out of the OWSM project, and reducing ARINC's potential growth in the Canadian market. Further motivation was also provided by legitimate concerns about festering dissatisfaction at the OWSM project with Alleslev-Krofchak's management style, resulting in Valcom having to spend more time than anticipated ensuring positions on the project were filled by competent personnel. Since the predominant purpose of the agreement was not to

injure Alleslev-Krofchak, the first two bases upon which to find a conspiracy have not been proven.

[350] Second, I find that at the luncheon meeting in late May or early June 2003, there was no agreement between the parties to use unlawful means to bring about Alleslev-Krofchak's removal as SPM#1. However, as of July 27, 2003, I find that the agreement of Poulin/Valcom and Lewis had evolved to include an agreement to defame Alleslev-Krofchak in order to achieve their goal of getting rid of her. On that date, Lewis provided Poulin with his first of three weekly reports – a document that I have found was defamatory – and Poulin had responded that the level of detail was perfect, implying that the substance of the document (despite being clearly defamatory) was the sort of ammunition he would welcome. Poulin went on to defame Alleslev-Krofchak by forwarding Lewis' July 27, 2003 update to ARINC on August 11, 2003. Lewis provided further defamatory statements to Poulin who forwarded them, as well, to ARINC. Since Lewis and Poulin had an agreement to use unlawful means (defamation) to bring about Alleslev-Krofchak's removal as SPM#1, which they knew would cause her injury, the agreement did amount to a conspiracy.²¹

[351] Third, I find that it was pursuant to the agreement that (1) Lewis provided his three updates to Poulin that included statements defamatory of Alleslev-Krofchak; (2) Poulin forwarded those statements to Flanders and made his own defamatory statements regarding Alleslev-Krofchak to persuade ARINC to agree to Alleslev-Krofchak's removal as SPM#1; (3) Valcom suspended the Valcom/ARINC Subcontract as it pertained to Alleslev-Krofchak's work under the Prime Contract; (4) Valcom gave formal notice to ARINC of Alleslev-Krofchak's removal as SPM#1; (5) Valcom gave formal notice to PWGSC of Alleslev-Krofchak's removal; (6) Valcom justified its actions to ARINC, the Technical Authority and the Contracting Authority through use of the defamatory statements; and (7) Valcom proposed Lewis as the new SPM#1 and had him acting in this capacity on the OWSM project until PWGSC formally accepted him in this position.

(c) Breach of Contract

[352] When Valcom suspended the Valcom/ARINC Subcontract regarding Alleslev-Krofchak's services on August 13, 2003, it did so in breach of the terms of that Subcontract. There is no reference in the Valcom/ARINC Subcontract to the concept of Valcom suspending work done by ARINC resources under the Subcontract. Section 12 of the Subcontract entitled "Termination" deals comprehensively with the circumstances in which Valcom (and to a lesser extent, ARINC) can terminate the Subcontract in whole or in part or in regard to a particular resource supplied by ARINC. Specific clauses deal with such topics as "unsatisfactory performance", "termination on notice", "termination for Valcom's convenience" and "termination for default". Valcom did not rely on or follow the requirements of any of these when it suspended Alleslev-Krofchak's involvement on the OWSM project on August 13, 2003

²¹ See discussion of conspiracy in Lewis N. Klar, *Tort Law*, 4th ed., *supra*, at 700-708.

and took the position immediately thereafter that she had no authority to be at the OWSM offices at 400 Cumberland Street.

[353] It was only on August 26, 2003 that Valcom gave ARINC the formal notice required under section 12A of the Subcontract. By then, Alleslev-Krofchak's livelihood and Temagami's business interests had already been interfered with to the extent that damage ensued. Due to Valcom's breach of its Subcontract with ARINC and its unprofessional handling of matters relating to Alleslev-Krofchak, ARINC had understandably and predictably decided to terminate its relationship with Valcom, thereby reducing the opportunities available to Temagami and Alleslev-Krofchak through ARINC.

[354] On August 14, 2003, Lewis – acting as Valcom's agent – immediately notified Chouinard that Valcom had suspended Alleslev-Krofchak as SPM#1 and Chouinard, again quite understandably and predictably, sent notice of this to the client representatives working on the OWSM project. I find without hesitation that Valcom's sudden suspension of Alleslev-Krofchak and its effectively locking her out of the OWSM project, standing alone, had an impact on Alleslev-Krofchak's subsequent marketability, and therefore contributed to Alleslev-Krofchak's (and Temagami's) economic loss.

[355] The actions of Valcom on August 13, 2003 were also in breach of the contractual provisions in the Valcom Supply Arrangement with PWGSC – whether one considers paragraph 9.0 of the August/99 Valcom SA or paragraph 11.0 of the May/02 RFSA to be the governing provision. As I found earlier, the former would appear from the contractual documents to be the governing provision; however, in August and September 2003, both Valcom and PWGSC assumed that the latter (paragraph 11.0) was the relevant provision, and they governed themselves accordingly. In any event, under both sections, Valcom was obliged to provide PWGSC with written notice at least five working days in advance of any personnel change, together with documentation providing a detailed explanation of the reasons for proposing new personnel and why the new personnel would be qualified for the position. Valcom did not do that.

[356] As well, under paragraph 9.1 of the August/99 Valcom SA, the replacement of personnel was to happen only in exceptional circumstances when Valcom was “unable to provide the specific individual originally proposed”. That was not the case in August 2003 when Valcom suspended Alleslev-Krofchak's work on the OWSM project: she was ready, willing and able to perform the work, and the Technical Authority was very pleased with her performance. Under paragraph 11 of the May/02 RFSA, Valcom was obliged to offer the services of the individual originally proposed – namely Alleslev-Krofchak – and could only change personnel if Valcom was unable to provide the specific individual originally proposed “for reasons outside of its control”. Again, what happened in August 2003 was completely within Valcom's control.

[357] These breaches of contract provide additional grounds upon which I conclude that Valcom used unlawful means to interfere with the business or livelihood of Alleslev-Krofchak and Temagami.

Issue 3: Did Alleslev-Krofchak/Temagami suffer loss?

[358] Alleslev-Krofchak testified as to how shocked, upset, humiliated and embarrassed she was to be forced, without proper notice, to leave 400 Cumberland and not return to the OWSM project. She had been working on preliminary matters relating to this project and on the project itself for a number of years. She was the senior project manager to whom everyone else reported directly or indirectly. She was the contact person with DND, the client. Not only was she summarily excluded from the work and the work site without notice, but word that this had happened was immediately spread to all client representatives and shortly thereafter to all OWSM team members. She was not told in any formal way how her performance had been inadequate. She was not given the opportunity to explain herself or to work on a personal recovery plan that would have enabled her to stay in her position. Without question, Alleslev-Krofchak's reputation suffered within the small Canadian aerospace and DGAEPM community in Ottawa, as evidenced by Alleslev-Krofchak's inability to get any work in this context subsequently. Her loss of reputation was so great that she learned from one colleague that he had been advised not to use her name as a reference.

[359] General damages awarded for intentional torts resulting in injury to reputation, self-esteem and feelings are "damages at large". They cannot be precisely measured, but are more a matter of impression. The following quote from Lord Hailsham of St. Marylebone in *Cassell v. Broome*, [1972] A.C. 1027 (U.K.H.L.) has been cited in a number of Canadian cases:²²

The expression "at large" should be used in general to cover all cases where awards of damages may include elements for loss of reputation, injured feelings, bad or good conduct by either party, or punishment, and where in consequence no precise limit can be set.

[360] Although offered in the context of a defamation case, the following quote of Lord Atkin in *Ley v. Hamilton* (1935), 153 L.T. 384 (H.L.) at 386 captures the essence of the wrong done in situations where damages at large are deemed appropriate:

It is precisely because the "real" damage cannot be ascertained and established that the damages are at large. It is impossible to track the scandal, to know what quarters the poison may reach: it is impossible to weigh at all closely the compensation which will recompense a man or a woman for the insult offered or the pain of a false accusation.²³

[361] The economic loss suffered by the Plaintiffs as a result of the Defendants' intentional interference with their economic relations will be dealt with separately below. In addition to those damages, I award damages at large to Alleslev-Krofchak in the amount of

²² *Uni-Jet Industrial Pipe Ltd. V. Canada (Attorney General)* (2001), 198 D.L.R. (4th) 577 (Man. C.A.) at para. 66; *Farrell v. Canadian Broadcasting Corporation* (1987), 43 D.L.R. (4th) 667 (Nfld C.A.) at 669.

²³ See also *McElroy v. Cowper-Smith*, [1967] S.C.R. 425 and *Hodgson v. Canadian Newspapers Co.* (2000), 49 O.R. (3d) 161 (C.A.).

\$100,000. Damages at large can also be awarded in favour of a corporation such as Temagami; however, such damages are not personal. They are based on loss of reputation and associated economic loss. (See *Uni-Jet Industrial Pipe Ltd. v. Canada (Attorney-General)* (2001), 198 D.L.R. (4th) 577 (Man. C.A.) at para. 83; *PSC Industrial Canada Inc. v. Ontario (Ministry of the Environment)* (2004), 48 B.L.R. (3d) 58 (Ont. Sup. Ct.) at paras. 60-63.) The evidence does not persuade me that Temagami had a reputation in the aerospace sector distinct from the reputation of Alleslev-Krofchak. Any economic loss suffered by Temagami will be dealt with below under that heading. Consequently, I award no additional damages at large to Temagami.

Issue 4: Is the defence of justification available to any of the Defendants?

[362] The law is unclear as to the extent to which justification is available as a defence to the tort of intentional interference with economic relations through unlawful means. For similar reasons to those elaborated upon below under the tort of inducing breach of contract, and especially due to the presence of malice, I find that the defence of justification is not available to Poulin, Valcom or Lewis.

Conclusion

[363] Valcom, Poulin and Lewis are jointly and severally liable to Alleslev-Krofchak for damages for intentional interference with economic relations. Those damages entail \$100,000 as damages at large together with damages for economic loss dealt with below. Valcom and Poulin are liable to Temagami for damages for intentional interference with economic relations. Those damages consist only of damages for economic loss dealt with below.

Inducing Breach of Contract

[364] To establish the tort of inducing breach of contract against a defendant, the plaintiff must prove five elements:²⁴

- The plaintiff had a contract with a third party;
- The defendant was aware of the existence of this contract;
- The defendant's conduct was intended to cause the third party to breach the contract;
- The defendant's conduct caused the third party to breach the contract;
- The plaintiff suffered damage as a result of the breach.

Issue 1: Did each Plaintiff have a valid and enforceable contract with a third party?

[365] Temagami had a valid and enforceable contract with ARINC, the ARINC/Temagami Subcontract,²⁵ pursuant to which Temagami was to provide personnel to perform the task of SPM#1 under the May/2002 Valcom SA (the Prime Contract).²⁶ The ARINC/Temagami Subcontract identified Alleslev-Krofchak as the representative of Temagami who would actually be performing the function of SPM#1, and the *per diem* billing rates that Temagami could charge for her services in this capacity for any additional work during the initial contract period and any option periods were set out in the ARINC/Temagami Subcontract.²⁷

[366] No documentary evidence was adduced as to the nature of any contract between Temagami and Alleslev-Krofchak. Alleslev-Krofchak's oral evidence was that she was not an employee of Temagami; she was an owner/operator, though there is some documentation in which she is named as an employee. Alleslev-Krofchak's income tax returns for 2002 and 2003 do not reference Temagami as a source of income, though they indicate Alleslev-Krofchak received \$30,000 as professional revenue generated under the name of Krofchak Consulting.

²⁴ *Drouillard, supra*, at para. 26; *Correira, supra*, at para. 99.

²⁵ Exhibit 2 Tab 2.

²⁶ See para. 5 and Exhibit A, Statement of Work.

²⁷ See para. 7B.

With this dearth of evidence, I cannot find that Alleslev-Krofchak had a valid and enforceable contract with Temagami. There is no evidence that she had any direct contractual relationship with ARINC. Consequently, any claim of Alleslev-Krofchak founded on the tort of inducing breach of contract is dismissed.

Issue 2: Were the Defendants aware of the existence of the ARINC/Temagami Subcontract?

[367] Poulin and Valcom were aware that Alleslev-Krofchak used her company, Temagami, to enter contracts for the provision of her consulting services. She had entered into three such contracts with Valcom in August 2001, May 2002, and June 2002,²⁸ the latter relating to Alleslev-Krofchak temporarily filling the SPM#1 position under the Prime Contract as a Valcom resource. I find that when this initial subcontract through Valcom ended and Alleslev-Krofchak's services were then provided on the OWSM project through ARINC, Poulin and Valcom were well aware that this occurred under a contract between ARINC and Temagami.

[368] Although the evidence satisfies me that Lewis knew of the existence of some kind of contract that enabled Alleslev-Krofchak to fill the position of SPM#1 on the OWSM project as an ARINC resource, it falls short of satisfying me that Lewis was aware of the existence of a contract between ARINC and Temagami. Consequently, any claim of Temagami against Lewis founded on the tort of inducing breach of contract is dismissed.

Issue 3: Did the Defendants know that they were inducing the breach of the ARINC/Temagami Subcontract?

[369] Poulin and Valcom knew that ARINC was satisfied with Alleslev-Krofchak's performance in the SPM#1 position and saw no grounds for removing her until it received some direction to this effect from the Technical Authority. Poulin and Valcom knew that ARINC had not received any such direction, and would not be receiving any such direction in that the Technical Authority had made it clear to Poulin, Valcom and ARINC that they were very satisfied with Alleslev-Krofchak's work.

[370] In *OBG, supra*, released the day after *Drouillard, supra*, the House of Lords confined the tort of inducing breach of contract to cases where the defendant actually knew that its conduct would cause the third party to breach the contract; it was not enough that the defendant ought reasonably to have known that its conduct would cause the third party to breach the contract. Although negligence would not meet the "knowledge" requirement, recklessness would. Lord Hoffman adopted the following explanation of "knowledge" in the context of this tort provided by Lord Denning MR in *Emerald Construction Co. Ltd. v. Lowthian*, [1966] 1 W.L.R. 691 at 700-701:

Even if they did not know the actual terms of the contract, but had the means of knowledge – which they deliberately disregarded – that would be enough. Like

²⁸ Exhibit 16 Tab 5; Exhibit 16 Tab 6; Exhibit 16 Tab 7.

the man who turns a blind eye. So here, if the officers deliberately sought to get this contract terminated, heedless of its terms, regardless whether it was terminated by breach or not, they would do wrong. For it is unlawful for a third person to procure a breach of contract knowingly, or recklessly, indifferent whether it is a breach of not.

[371] In *Correira, supra*, the Ontario Court of Appeal appears to have adopted the analysis in *OBG, supra*.

[372] I find that Valcom and Poulin knew that forcing ARINC to make Alleslev-Krofchak stay away from the OWSM project office and immediately cease her functions as SPM#1 would be in breach of the ARINC/Temagami Subcontract pursuant to which Alleslev-Krofchak was to provide these functions on behalf of Temagami and ARINC, even though Valcom and Poulin may not have known the precise extent to which this would have been in breach of that contract.

Issue 4: Did Poulin/Valcom have the intention to procure a breach of the ARINC/Temagami Subcontract?

[373] In *Drouillard, supra*, at para. 29, Rouleau J.A. (for O'Connor, A.C.J.O. and Feldman, J.A.) stated that the procurement of the breach of contract must be intended and direct. He relied on Lewis N. Klar's text, *Tort Law*, 3d ed. (Toronto: Carswell, 2003) at 612:

In order to succeed, a plaintiff must prove that the defendant intended to procure a breach of contract. In this respect, intention is proven by showing that the defendant acted with the desire to cause a breach of contract, or with the substantial certainty that a breach of contract would result from the defendant's conduct.

[374] As well, Rouleau J.A. referred to John G. Fleming, *The Law of Torts, supra*, at 761-762:

Merely that the breach was a natural consequence of his conduct is not sufficient: he must have intended it. Not that he need have actually known the precise terms of it or that his object could be accomplished only through its breach. If --- turning a blind eye --- he went about it regardless of whether it would involve a breach, he will be treated just as if he had knowingly procured it. Indifference is equated with intent.

[375] In *OBG, supra*, the House of Lords defined the mental element of this tort as being: "an intention by the defendant to procure or persuade ('induce') the third party to break his contract with the claimant" (para. 191 *per* Lord Nicholls). Lord Hoffman explained:

[Re intention] It is necessary for this purpose to distinguish between ends, means and consequences. If someone knowingly causes a breach of contract, it does not normally matter that it is the means by which he intends to achieve some further end or even that he would rather have been able to achieve that end without causing a breach. (para. 42) ...

On the other hand, if the breach of contract is neither an end in itself nor a means to an end, but merely a foreseeable consequence, then in my opinion it cannot for this purpose be said to have been intended. That, I think, is what judges and writers mean when they say that the claimant must have been “targeted” or “aimed at”. (para. 43)

[376] These principles were adopted by the Ontario Court of Appeal in *Correira, supra*.

[377] Rouleau J.A. in *Drouillard, supra*, concluded that the factual findings of the trial judge in that case supported the element of intention had been met. I have already made factual findings of a similar nature in this case.

[378] On August 11, 2003, Poulin on behalf of Valcom directed ARINC by e-mail to remove Alleslev-Krofchak from the contract. Poulin stated a need for discussions to occur that day regarding a withdrawal date and a response plan. When later that day Flanders refused to remove Alleslev-Krofchak from the contract without some direction from the Technical Authority, Poulin responded by e-mail on August 12, 2003 that Valcom insisted on Alleslev-Krofchak’s removal, despite the Technical Authority’s satisfaction with her performance. At 5:27 p.m. on August 13, 2003, Poulin advised Flanders that work under the Valcom/ARINC Subcontract in regard to Alleslev-Krofchak’s participation on the OWSM project was suspended effective immediately. ARINC advised Alleslev-Krofchak of this first thing the following morning, and advised her to leave the premises at 400 Cumberland Street. Alleslev-Krofchak advised Lewis of this development and left the building. Lewis immediately advised Chouinard, who immediately notified all of the client representatives on the OWSM project, and the Contracting Authority, about Alleslev-Krofchak’s “temporary” removal as SPM#1.

[379] ARINC strongly objected to the so-called “suspension” – a concept not included in the Valcom/ARINC Teaming Agreement or Subcontract. At a meeting of Valcom and ARINC representatives on August 21, 2003, Valcom made it clear to ARINC that under no circumstances would it accept Alleslev-Krofchak’s return to the OWSM project. Following this meeting, ARINC insisted that if Valcom wished Alleslev-Krofchak to be removed as SPM#1, Valcom had to provide ARINC with 15 days written notice and Valcom had to let Alleslev-Krofchak continue in the SPM#1 role during the notice period. Pursuant to instructions she received from ARINC, Alleslev-Krofchak returned to the Cumberland office on September 2, 2003 and resumed her role as SPM#1. Lewis advised Poulin. Poulin immediately instructed Alleslev-Krofchak to leave the building, claiming she had no authority to be there. Effective August 13, 2003, Valcom had locked out Alleslev-Krofchak from the offices of the OWSM project and from her role as SPM#1, without proper notice to ARINC.

[380] The primary target of Valcom's actions was Alleslev-Krofchak, though ARINC was also a secondary target. There is no question that Valcom, and Poulin acting on its behalf, intended that any contractual arrangement between ARINC and Temagami, pursuant to which Alleslev-Krofchak was occupying the SPM#1 position at the OWSM project, would end. Furthermore, it is clear from Valcom's actions that it was not concerned about how that termination occurred or the impact it would have on Temagami or Alleslev-Krofchak. Valcom knew that by its not giving ARINC the required notice under their contractual arrangements, ARINC would not be able to give Temagami any notice that Alleslev-Krofchak's services were no longer required.

[381] In *Correia, supra*, Rosenberg J.A. and Feldman J.A. (O'Connor A.C.J.O. agreeing) concluded that the tort of inducing breach of contract was not made out on the facts of that case because the intention of the defendants was not that the plaintiff's employment would be wrongfully terminated, but that it would be lawfully terminated for cause. Although not specifically argued, aspects of the evidence of Poulin and Burke on behalf of Valcom could be taken to support the argument that Valcom did not intend for ARINC to breach its contract with Alleslev-Krofchak; instead, Valcom intended to exercise its own rights under the Valcom/ARINC Subcontract and intended that ARINC would in turn exercise its rights under any contract with Temagami to remove Alleslev-Krofchak from the SPM#1 position due to her incompetent management of the project.

[382] Much evidence was adduced by the Defendants at trial regarding Alleslev-Krofchak's management and leadership shortcomings. Poulin claimed to have discussed these shortcomings repeatedly with Flanders and Mackey at ARINC but, aside from a flurry of e-mails in regard to Lewis' candidacy for the SPM#2 position, prior to August 6, 2003 there was scant documentary evidence supporting this assertion. As well, the assertion was contradicted by the evidence of Pierce.

[383] Valcom also took the position that the "suspension" on August 13th was not a termination, that Poulin's e-mail on August 13th was adequate notice to ARINC under the terms of their contract, and that ARINC subsequently agreed to the termination on August 21st, making any formal written notice under the Valcom/ARINC Subcontract unnecessary, and confirming the right of Valcom and in turn ARINC to remove Alleslev-Krofchak as SPM#1. This argument cannot stand in view of what happened during the week of August 11th.

[384] First, I have found there was no urgency that week in terms of the imminent departure of other OWSM team members. The evidence persuades me that no one was threatening to leave the project imminently unless Alleslev-Krofchak was immediately removed from the position of SPM#1. The evidence also persuades me that Poulin and Valcom knew that, and were knowingly overstating the urgency of the situation.

[385] Second, Poulin on behalf of Valcom refused Flanders' request that he and Pierce meet with Valcom and Crown representatives to resolve the conflict. Instead, Poulin immediately suspended the task order under which Alleslev-Krofchak was working on the

OWSM project – displaying his and Valcom’s intention that Alleslev-Krofchak’s performance of work under the ARINC/Temagami Subcontract immediately cease, regardless of whether this was in breach of that Subcontract. In doing so, Valcom acted in breach of its own contract with ARINC pursuant to which it had to give ARINC 15 working days notice in writing for the removal of an ARINC resource due to unsatisfactory performance. That notice was provided only on August 26, 2003, well after Alleslev-Krofchak had been locked out of the Cumberland premises and stripped of her authority on the OWSM project. This was not a situation where Valcom was prepared to follow its own contractual obligations and allow ARINC to do likewise in order to end Alleslev-Krofchak’s participation on the project.

[386] In keeping with my earlier findings regarding malice on the part of Poulin and Valcom, I find that Valcom did intend for ARINC to immediately remove Alleslev-Krofchak as SPM#1 even though Valcom knew that: (1) ARINC did not believe it had cause or reason to do so; (2) ARINC did not wish to do so; and (3) ARINC was not given any time in which to provide any notice to Temagami under the terms of the contract that Valcom knew ARINC and Temagami had. I conclude that Poulin and Valcom intended to procure the breach of the ARINC/Temagami Subcontract whereby Alleslev-Krofchak would perform the SPM#1 functions and be paid by Valcom through ARINC to do so; their intention was not simply to have Alleslev-Krofchak removed as SPM#1 through the application of the terms of the ARINC/Temagami Subcontract.

Issue 5: Did Poulin/Valcom procure the breach of the ARINC/Temagami Subcontract?

[387] The difficult question facing me is how the term “procure the breach of contract” is to be defined under this element of the tort of inducing breach of contract.

[388] In Canada, it has been held that interference with a contract or an existing contractual relationship which falls short of causing an actual breach of contract but which results in the untimely conclusion of relations is nonetheless actionable. (*D.E. & J.C. Hutchison Contracting Co. v. Windigo Community Development Corp.*, [1998] O.J. No. 4884 (Ct. J. (Gen. Div.)) at para. 30 citing the British principle as enunciated in *Dimbleby & Sons v. National Union of Journalists* (1983), [1984] 1 W.L.R. 67 (Eng. C.A.); *Manos Foods International Inc. v. Coca-Cola Ltd.* (1997), 74 C.P.R. (3d) 2 (Ont. Ct. J. (Gen. Div.)); *Daishowa Inc. v. Friends of the Lubicon*, *supra*, leave to appeal refused (1996), 1996 CarswellOnt 1553 (C.A.), leave to appeal refused (1997), 107 O.A. 160 (note) (S.C.C.). See discussion in Lewis N. Klar, *Tort Law* 4th ed., *supra*, at 694-696.)

[389] In *Drouillard*, *supra*, at para. 34, Rouleau J. (on a panel with O’Connor, A.C.J.O. and Feldman, J.A.) stated:

From the jurisprudence, it is not clear whether in order to succeed the plaintiff must show an unequivocal breach of the contract or whether something short of this will suffice. Some authorities suggest that the requirement can be met if the interference results in the contract being terminated in accordance with its terms

or if the contract is made more difficult though not impossible to perform. [FN 2]²⁹ Beyond acknowledging these strands in the case law, I do not find it necessary to further address or resolve these issues in the present case.

[390] In *OBG, supra*, the House of Lords decided that there must be an *actual* breach of contract; it is not enough for the conduct to merely hinder full performance of the contract. In *Correira, supra*, at para. 97, released a year later, Rosenberg J.A. and Feldman J.A. (O'Connor A.C.J.O. agreeing) stated:

In *OBG*, the House of Lords determined to clarify and specifically define the elements of each tort. In doing so, the Lords corrected and, where necessary, overruled formerly precedential cases that, in hindsight, had introduced confusion and error into the definition of the two torts. [FN3]³⁰ The result is a clear definition of the two torts and their elements. ...

[391] Rosenberg J.A. and Feldman J.A. went on to recount how the House of Lords had defined the elements of the tort of inducing breach of contract, including the requirement that the defendant's conduct cause the third party to *actually* breach the contract. The court stopped short of saying that this was now the law in Ontario. It never got to apply this element of the tort in *Correira* because it found that the previous element relating to intention to cause a breach had not been established.

[392] What I am left with is the observation of Rouleau J.A. in *Drouillard* that it is not clear in the relevant Ontario jurisprudence whether a plaintiff must show an unequivocal breach of the contract or whether something short of this will suffice, and the observation of Rosenberg J.A. and Feldman J.A. in *Correira* that the House of Lords has given a clear definition of the elements of the tort, including the requirement for an actual breach of contract, without the Court of Appeal explicitly stating that the definition of the elements provided by the House of Lords is now incorporated in the law of Ontario. In the absence of clearer directions from the Ontario Court of Appeal or the Supreme Court of Canada, I conclude that "procuring breach of contract" includes the situation of a defendant taking steps that it knows and intends will bring a contractual relationship, or one aspect of a contractual relationship, between the plaintiff and third party to an immediate end contrary to the wishes and intentions of the contracting parties. I find this to be the case even if the defendant's conduct does not result in a technical breach of the contract but does result in the total frustration of the contract or contractual term.

²⁹ The cases referred to were those in the previous paragraph.

³⁰ FN3 The Lords held that the following cases were wrongly decided and should not be followed with respect to aspects of their holdings concerning the two economic torts: *Merkur Island Shipping Corp. v. Laughton*, [1983] 2 A.C. 570 (U.K.H.L.); *Miller v. Bassey* (1993), [1994] E.M.L.R. 44 (Eng. C.A.); *Torquay Hotel Co. v. Cousins* (1968), [1969] 1 All E.R. 522 (Eng. C.A.); *D.C. Thomson & Co. v. Deakin*, [1952] Ch. 646 (Eng. C.A.). The Lords in *OBG* also stated that aspects of the reasoning in the following cases should not be followed: *Dimbleby & Sons v. National Union of Journalists* (1983), [1984] 1 W.L.R. 67 (Eng. C.A.); *GWK Ltd. v. Dunlop Rubber Co. Ltd.* (1926), 42 T.L.R. 376; *Quinn v. Leathem*, [1901] A.C. 495 (U.K.H.L.) at p. 510.

[393] In this case, I find that the evidence satisfies not only the broader definition of “breach of contract” but also the restrictive requirement of an *actual* breach.

[394] In regard to the more liberal meaning assigned to this element by some Canadian courts and authorities, the evidence is clear that the conduct of Poulin and Valcom in locking out Alleslev-Krofchak from 400 Cumberland and preventing her from continuing in the role of SPM#1 had the direct effect of frustrating the performance of the ARINC/Temagami Subcontract. The purpose of the ARINC/Temagami Subcontract was to enable Alleslev-Krofchak to work on the OWSM project as the SPM#1 in return for which ARINC, and subsequently Temagami, would receive a *per diem* amount. The understanding of ARINC and Temagami when entering their Subcontract was that Alleslev-Krofchak would continue to work as the SPM#1 on the OWSM project during the term of the Prime Contract, including any extensions, unless ARINC terminated the Subcontract in its entirety or in part for reasons of default or its own convenience, or ARINC and Temagami/Alleslev-Krofchak negotiated some other arrangement to their mutual advantage. As of August 13, 2003, ARINC had no intention to terminate the ARINC/Temagami Subcontract or Alleslev-Krofchak’s work under that Subcontract for either reason. It was ARINC’s hope and intention that the Subcontract would continue for the benefit of ARINC, Temagami and Alleslev-Krofchak. This was rendered impossible when Valcom locked out Alleslev-Krofchak and refused to let her return to the OWSM offices and project.

[395] In regard to the stricter requirement of an actual breach, the evidence is less obvious. This results, in part, from the use of generic forms in the preparation of the ARINC/Temagami Subcontract. The Subcontract consists of three separate documents: a Schedule (largely generic), a Statement of Work, and General Provisions for Commercial Subcontracts and Purchase Orders (generic). All documents were prepared by ARINC. I am satisfied that an implied term of the Subcontract was that ARINC had the authority to place Temagami’s resource, namely Alleslev-Krofchak, on the OWSM project site to act in the capacity of SPM#1, and would do so until such time as Temagami’s services under the ARINC/Temagami Subcontract were terminated in accordance with the terms of that Subcontract. I am also satisfied that a term of the Subcontract was that ARINC would not stop work under the Subcontract except by following the provisions in the General Provisions portion of the Subcontract dealing with default (paragraph 7), stop work orders (paragraph 31), or termination for convenience (paragraph 33). In situations where the contract was being terminated for default, a minimum of 10 days written notice was required. No minimum notice period was stipulated for a termination for convenience or for a stop work order, though written notice was required. Valcom’s precipitous step of suspending the task order pursuant to which Alleslev-Krofchak was working as the SPM#1 prevented ARINC from having the opportunity of providing written notification to Alleslev-Krofchak under the terms of any of the above paragraphs, and immediately put ARINC in breach of its contractual obligations.

Issue 6: Did Temagami suffer damages as a result of the breach?

[396] Where the different potential meanings of “breach of contract” (as that term is understood within the tort of inducing breach of contract”) really comes into play in the facts of this case is in deciding whether Temagami suffered damage as a result of the “breach of contract” procured by Poulin and Valcom.

[397] The actual breach of contract Temagami established is that ARINC failed to provide Temagami with the required notice for the cessation of Alleslev-Krofchak’s services as SPM#1 under the ARINC/Temagami Subcontract. From the rather limited evidence on topic, I conclude that ARINC continued to invoice Valcom for Alleslev-Krofchak’s *per diem* amount under the Valcom/ARINC Subcontract until September 17, 2003 – the last day of the official 15 working days notice that Valcom gave ARINC on August 25, 2003. I find that during this period, Temagami continued to receive the *per diem* amounts to which it was entitled under the ARINC/Temagami Subcontract in regard to Alleslev-Krofchak’s position as SPM#1. Therefore, despite the fact that ARINC did not provide Temagami with proper notice that Alleslev-Krofchak’s services as SPM#1 were not required, Temagami received revenues relating to Alleslev-Krofchak’s position for a period longer than the notice period that would have been required under the ARINC/Temagami Subcontract. Temagami has not proven any losses due to ARINC’s actual or technical breach of contract. This is not fatal to Temagami’s claim for damages based on inducing breach of contract because I have accepted a broader interpretation of the meaning of “procuring a breach of contract” that encompasses rendering the contract impossible to perform.

[398] Damages for the tort of inducing breach of contract are “at large”. (*Drouillard, supra*, at para. 42.) In the context of a corporate plaintiff, such damages can provide compensation for loss of reputation, loss of goodwill, and economic loss. In this case, the evidence is inadequate to persuade me that Temagami suffered a loss of reputation or loss of goodwill in the aerospace or larger military community. Temagami’s economic loss resulting from the tort of inducing breach of contract will be dealt with below.

Issue 7: Is the defence of justification available to Poulin/Valcom?

[399] There are certain situations where a defendant can avoid liability by claiming that his actions which induced the breach of contract were justified. (See *Drouillard, supra*, at para. 39; *Even v. El Al Israel Airlines Ltd.* (2006), 15 B.L.R. (4th) 265 (Ont. Sup. Ct.) at paras. 78-115; Phillip H. Osborne, *Law of Torts*, 2d ed. (Toronto: Irwin Law, 2003) at 300-302; Lewis N. Klar, *Tort law*, 4th ed., *supra*, at 688-690; G.H.L. Fridman, *The Law of Torts in Canada*, 2d ed. (Toronto: Carswell, 2002) at 804-806; *Thermo King Corp. v. Provincial Bank of Canada* (1981), 34 O.R. (2d) 369 (C.A.) at paras. 41-42; *Posluns v. Toronto Stock Exchange* (1964), 46 D.L.R. (2d) 210 (Ont. H.C.) at 270-272.)

[400] The state of the law as to when a defendant who has been found to have intentionally induced a third party to breach a contract, thereby causing economic loss to a plaintiff, may be considered justified in his actions is somewhat vague. It is not available if malice or bad faith is at play, though the absence of those is insufficient to establish the defence.

It may be available if the defendant acted in the public interest, or acted pursuant to a statutory or contractual right that rendered its actions legal. It has been held that self-interest or an honestly-held belief in the existence of a duty to act – standing alone – do not entail justification.

[401] What is clear is that numerous factors must be considered before a finding of justification can be made, including:

- the grounds for the interference (Is there any statutory, contractual, or similar basis for the intervention? Is there some important social or public policy reason?)
- the purpose of the interference (Was the defendant acting in good faith? Was the intervention motivated by malice? Was there a legitimate financial interest of the defendant that required protection?)
- the means used (Did the defendant exceed its authority?)
- the nature of the contract being interfered with (Did it affect someone's livelihood?)
- the consequences of the breach of contract.

I will review these factors in turn.

(a) Grounds for the interference

[402] There was no statutory or public policy reason for Poulin or Valcom to intervene in the contractual relations between ARINC and Temagami. The means by which Alleslev-Krofchak performed her work as SPM#1 were ARINC's responsibility, not Valcom's. Valcom had the limited right to provide policy direction and to comment on the result of ARINC's work, but not the means by which results were obtained. (Valcom/ARINC Subcontract, para. 8) Valcom also had the right to terminate all or part of the contract on appropriate notice; but that is not what Valcom did.

(b) Purpose of the interference

[403] As I have already found, the actions of Valcom and Poulin were motivated to some extent by malice in the sense of paying back Alleslev-Krofchak for what they perceived as her betrayal in becoming an ARINC resource instead of a Valcom resource. The presence of malice, in my view, dilutes the legitimate business and financial interests of Valcom that were also at play in its goal of removing Alleslev-Krofchak (and therefore Temagami) from the OWSM project despite the contractual arrangements pursuant to which all parties intended and expected her to be there.

[404] In submissions, much was made by the Defendants' counsel as to the very real and legitimate concerns Poulin, Burke and Valcom had about Alleslev-Krofchak's management

style at the OWSM project. Those shortcomings of Alleslev-Krofchak that caused Poulin, Burke and Valcom concern have been described as her tendency to micromanage; to want all communications with the project's clients to go through her; to oversee all aspects of the project and centralize all power with herself; to not trust her colleagues to meet deliverables without her close supervision; to not take advantage of the skills and expertise of others; to marginalize the SPM#2 position; to rely too closely on Duncan and Smith; to not accept direction from Poulin/Valcom; to not be able to bridge the gap between Lucas' expectations and the expectations of the weapon system managers; to not be able to create a working environment in which other members of the OWSM project team were prepared to work; to not be able to hear criticism; to be disrespectful of both staff and colleagues; and to be autocratic and controlling.

[405] There is ample evidence that Alleslev-Krofchak was extremely hardworking, focused, energetic, and knowledgeable in performance-based contracting. She was a strong catalyst for the kind of change in contracting being sought through the OWSM project. She ensured that the OWSM project team produced the deliverables set by Lucas and the Steering Committee within the timeframe they set. Her performance met, if not exceeded, the expectations of Lucas, Boland and Chouinard, representing the Technical Authority.

[406] That being said, I am satisfied from the evidence that Alleslev-Krofchak struggled with management issues relating to personnel, team building, and internal communications and reporting arrangements within the OWSM project. At this juncture, there is no need to explore the variety of reasons why Alleslev-Krofchak experienced these difficulties; suffice it to say that she struggled in this regard and her difficulties were a valid and legitimate cause for concern on the part of Poulin, Burke and Valcom. Their concerns would have justified certain steps being taken in good faith to address the problems. They did not justify malicious behaviour aimed at harming Alleslev-Krofchak and ARINC.

(c) Means used to interfere

[407] The legitimate concerns Poulin, Burke and Valcom had regarding Alleslev-Krofchak's "soft skills", "people skills", or personnel management – however they are expressed – did not justify the means used to deal with them. Those means included defaming Alleslev-Krofchak, surreptitiously conspiring with Lewis to remove her and install him in her stead, and locking out Alleslev-Krofchak without notice to her, ARINC, the Technical Authority or the Contracting Authority, thereby making it impossible for ARINC and Temagami to perform their Subcontract.

[408] The argument was made on behalf of Poulin and Valcom that Valcom had to take such drastic steps because the situation had reached a crisis point and both ARINC and Alleslev-Krofchak had failed to take seriously any concerns about her management style raised previously by Poulin. I do not accept this submission. First, the evidence does not support the assertion that a crisis was imminent due to the impending departure of other personnel. Burke acknowledged that there was no urgency of which he was aware on August 13, 2003.

[409] Second, a crisis can hardly be said to exist when the purpose of the Prime Contract was to deliver certain services to DND and DND was fully satisfied with the work being done under the contract.

[410] Third, the evidence is inadequate to persuade me that, prior to Valcom devising a plan to get rid of Alleslev-Krofchak as SPM#1 (which I find was in the works as early as February 2003), it had advised Alleslev-Krofchak directly, or through ARINC, that if certain conduct on her part did not change, Valcom would be seeking to have Alleslev-Krofchak removed as SPM#1. Poulin's evidence was that in February 2003, after Fortin had left and Hollick was planning to leave, Poulin had spoken to Flanders to express his concerns about Alleslev-Krofchak's management style. According to Poulin, Flanders had undertaken to bring Alleslev-Krofchak to its offices for some mentoring regarding management and leadership; however, the Defendants adduced no evidence to confirm that this had ever happened. No documentary evidence whatsoever was adduced to the effect that after the conversation Poulin said he had with Flanders on February 25, 2003, and prior to Poulin conspiring with Lewis to replace Alleslev-Krofchak as SPM#1, anyone on behalf of Valcom put in writing to someone at ARINC the concerns Valcom had with Alleslev-Krofchak's performance, and Valcom's intention to have Alleslev-Krofchak removed as SPM#1 if things did not change. Considering Poulin's penchant for written communications, I have no doubt that if he had communicated to anyone at ARINC that Alleslev-Krofchak's shortcomings were so serious that her removal had to be considered, there would have been a written record of that.

[411] Fourth, although Poulin testified that he had spoken to Alleslev-Krofchak on February 25, 2003 about Valcom's dissatisfaction with her management style on the OWSM project and warned her that Valcom was considering all of its options, including her removal, there is no evidence that Poulin ever put this threat in writing to ARINC or to Alleslev-Krofchak. Alleslev-Krofchak had no recollection of any such threat having been made. Although Burke testified that he and Poulin had discussed concerns with Alleslev-Krofchak over lunch in March or April 2003, Burke did not relate that he had been a party to any conversation in which Poulin raised the possibility of Alleslev-Krofchak's removal. I am not satisfied that at any time before the "lock out", Valcom ever gave Alleslev-Krofchak notice that if certain aspects of her management style did not change, Valcom would take steps to have her removed from the SPM#1 position.

[412] I conclude that Valcom's determination to have Alleslev-Krofchak removed as SPM#1 gelled no later than February 2003, but this intention was not communicated to ARINC until June 2003, when the message conveyed was that Alleslev-Krofchak was standing in the way of Lewis filling the SPM#2 position, and ARINC needed to ensure that Alleslev-Krofchak not resist that appointment and in fact support the appointment. ARINC acted and Alleslev-Krofchak complied with ARINC's directions. Valcom then raised with ARINC the issue of an organization chart. ARINC dealt with that as well through instructions to Alleslev-Krofchak, but again that did not satisfy Valcom. It was only on August 11, 2003, once it had Lewis in place and providing it with ammunition, that Valcom sprung on ARINC (and two days later Alleslev-Krofchak) that Alleslev-Krofchak had to go.

[413] There were numerous other initiatives that Valcom could have undertaken, short of suddenly suspending and then terminating Alleslev-Krofchak, had Valcom's true goal been the better management of the OWSM project team for the benefit of its team members, the clients and Valcom itself. Having a meeting with ARINC representatives in order to identify the problem and develop a strategy to assist Alleslev-Krofchak to change her management style would have been one option. Including the Technical Authority in the discussion would have been another. Setting out specific requirements for change within a specific timeframe might also have been appropriate. None of these other options were pursued because Valcom's goal was not to have Alleslev-Krofchak perform better, it was to get rid of her.

(d) Nature of the contract being interfered with

[414] To Poulin and Valcom's knowledge, the ARINC/Temagami Subcontract was the means by which Alleslev-Krofchak pursued her livelihood as a consultant on the OWSM project and was the mechanism through which she was paid.

(e) Consequences of the breach of contract

[415] One consequence of Valcom insisting on Alleslev-Krofchak leaving the SPM#1 position and the premises immediately, was that Lewis, as Valcom's agent, immediately advised Chouinard who, quite understandably, immediately notified others at DND of the suspension – thereby undercutting Alleslev-Krofchak's position, her reputation and not only her ability but also ARINC's ability to return Alleslev-Krofchak to that position in the future.

[416] Poulin and Valcom knew that by thwarting the ARINC/Temagami Subcontract in such a direct and dramatic fashion, Alleslev-Krofchak's reputation, position and prestige in the small Canadian aerospace and military contracting community would be irreparably damaged.

Conclusion

[417] Temagami has proven all of the essential elements of the tort of inducing breach of contract against Poulin and Valcom and the defence of justification is not available to these Defendants. Poulin and Valcom are jointly and severally liable to Temagami for damages for economic loss arising from the tort of inducing breach of contract. Those damages will now be discussed.

Damages for Loss of Past and Future Income

Mitigation Efforts

[418] Prior to working on the OWSM project, Alleslev-Krofchak had developed a very good network in the aerospace and DND military communities through her work for DND in the years leading up to 2002. She had acquired good insight into where DND was hoping to take the aerospace sector, and she had the specialized skills in SSC and performance-based contracting that DND required. Burke agreed that the fact of Alleslev-Krofchak having been locked out of 400 Cumberland Street and terminated from the OWSM project would have had a negative impact on her reputation and her ability to get work in the aerospace consulting field. That certainly has come to pass.

[419] From September 2003 to February 2005, Alleslev-Krofchak reached out to all of her contacts in the Canadian Military and aerospace industry seeking contracts or full-time employment. She spoke personally with several individuals both in the Military and in private industry who in the past had been supportive colleagues. Although initially some contacts suggested work might be available, nothing materialized. In some instances, she was told that the word on the street was that, although she was a good worker on her own, she was hard on

staff. In some situations, it was clear that individuals would not deal with her because of her outstanding lawsuit with Valcom. Although prior to the Valcom/ARINC Subcontract, Alleslev-Krofchak had continually been successful getting contract work of this nature, following her termination as SPM#1, she could not get a single military or aerospace contract.

[420] Finally in February 2005, Alleslev-Krofchak became a full-time employee of IBM Canada as a management consultant in their Global Business Services organization. Initially, she worked in Ottawa – the intention being that she would help IBM get defence aerospace contracts. Alleslev-Krofchak could not attract a single contract, despite her earlier success (including landing the Prime Contract for Valcom/ARINC). Instead of losing her position at IBM, she agreed to move to Toronto to work in another department; namely, software implementation and supply chain management in the hi-tech sector. Her work there took her to Montreal and then to Luxembourg and other international settings three weeks out of four. By 2006, Alleslev-Krofchak decided that spending this amount of time away from her family was not sustainable and was not conducive to a good family life. Unfortunately, IBM had nothing else to offer her, and she decided to leave. Alleslev-Krofchak's salary at IBM was \$109,000 plus a \$10,000 signing bonus in 2005. Based on her T4s, Alleslev-Krofchak actually earned from IBM \$104,008 in 2005 and \$119,293 in 2006.

[421] After leaving IBM, Alleslev-Krofchak applied for senior positions in Ontario in the aerospace industry and in other sectors requiring supply chain expertise. She submitted at least ten applications, two being to General Electric. One was for the position of program manager for the OWSM in-service support contract General Electric had been awarded for the F-18 engine; however, General Electric decided to run its operation out of the U.S. for the time being. The second was for a position in Peterborough but, with the downturn in the economy, General Electric decided to consolidate this function with its U.S. operations. At the time of trial, Alleslev-Krofchak was in the fourth stage of interviews for the position of vice-president of Canadian operations for a U.S. high-tech company, E2Open, which was anticipating a large contract with RIM. This job is in the field of software implementation and supply chain management. Alleslev-Krofchak in effect had to reinvent herself as an expert in this field after no work became available for her in the aerospace engineering and military outsourcing sector in Canada.

[422] In May 2006, Alleslev-Krofchak opened a paint and wallpaper store in Aurora, Ontario. As of the date of trial, the store's expenses continued to exceed its revenues. This does not represent a full-time career shift for Alleslev-Krofchak.

[423] There is no question that Alleslev-Krofchak has worked hard to mitigate any financial loss to Temagami and herself. She accepts that, for the purpose of any damages calculations, it will be assumed that she would have had the opportunity of continuing her work at IBM at a salary of \$120,000, adjusted annually for cost of living.

Temagami

[424] Alleslev-Krofchak and her husband had always planned on retiring to the home and land where Temagami Outfitting was located. Unfortunately, without the income Temagami had received under the ARINC/Temagami Subcontract (approximately \$250,000 annually), Temagami was not viable. In November 2005, Alleslev-Krofchak and her husband sold the assets of Temagami for \$475,000.

Lost Opportunities with ARINC

[425] Alleslev-Krofchak's evidence was that, had Valcom not wrongfully removed her from the OWSM project, she would have continued as the SPM#1 (and ARINC resource) until May 2007. Then she would have gone on to run ARINC's operations in Canada and would have stayed with ARINC until her retirement at age 65. I do not consider this to be a realistic assessment of how the future would have unfolded for Alleslev-Krofchak in the absence of the tortious conduct of the Defendants in the summer of 2003.

[426] ARINC was using the Valcom/ARINC contract to establish a presence in Canada so that it could bid on projects with the Canadian Military, and more particularly, on aerospace engineering contracts. In the summer of 2003, Alleslev-Krofchak had encouraged Harley Rogers and Dick Mohns, both ex-military aerospace engineers whom Alleslev-Krofchak and others at the OWSM project wanted for the project, to become ARINC resources. ARINC was hoping that eventually they would have 10 to 15 people in Canada providing support to DND.

[427] During the summer of 2003, ARINC and Alleslev-Krofchak began to negotiate a long-term relationship with Alleslev-Krofchak becoming a senior director of ARINC responsible for managing its operations in Canada. Her responsibilities would have been to conduct business development activities, negotiate the terms of any new work, interview prospective personnel, and manage the personnel. The remuneration discussed was an annual salary between US\$130,000 and US\$150,000 with an annual performance bonus of 10 to 15% of base salary. Additionally, ARINC had performance incentive awards typically based on two percent of the employee's salary paid out based on corporate performance. Those discussions never came to fruition after Valcom terminated Alleslev-Krofchak's involvement with the OWSM project. ARINC kept Alleslev-Krofchak on in a business development capacity for some time, but eventually had to terminate her because she was unable to bring in any revenue-producing contracts. Pierce's impression, which I accept, was that Alleslev-Krofchak's credibility in the Canadian aerospace community – a very small community – had been badly damaged as a result of Valcom's termination of her work on the OWSM project.

[428] In terms of what Alleslev-Krofchak's plans were in the summer of 2003, there is evidence that she would have been looking for a move away from the OWSM project prior to May 2007. After leaving the Canadian Military, she had not stayed in any one position for a lengthy period of time. When she and Valcom were discussing the possibility of her being the SPM#1 as a Valcom resource, she wanted to ensure that she was not locked into a five-year contract, but had the flexibility to move to industry before the end of the Prime Contract. In the summer of 2003, Alleslev-Krofchak and ARINC were already negotiating what her future role in

ARINC could be. I find that it is more likely than not that Alleslev-Krofchak would have wanted to leave the OWSM project and become an ARINC employee before May 2007, despite her not necessarily earning as much in a new ARINC position as Temagami was receiving from ARINC for the OWSM work. In terms of how long Alleslev-Krofchak would have stayed at ARINC, I reject her evidence that she would have stayed until age 65. In the past, Alleslev-Krofchak had moved contracts and positions frequently. Her own evidence was that she had contemplated working on contract throughout her career and, when she and her husband had purchased Temagami, they were looking forward to retiring about 20 years down the road and living in Temagami. That would have been when Alleslev-Krofchak was about 50.

[429] Second, in terms of the other players, I consider it likely that, prior to May 2007, Valcom would have brought about Alleslev-Krofchak's removal as SPM#1 through legitimate means, not in breach of contractual obligations under the Prime Contract or the Valcom/ARINC Subcontract. There were too many factors at play operating against Alleslev-Krofchak. First, there is no doubt that Alleslev-Krofchak was experiencing difficulty in the area of personnel management on the OWSM project. While Lucas, Boland and Chouinard loved her work and considered her the right person for the job, as did several members on the OWSM team, there were others who did not respond well to her management style. Several of them were well-connected with Poulin, Burke, Valcom and the WSM managers. They in turn were well-connected with senior management at DGAEPM. Some of them may have exerted pressure on the Technical Authority (and Contracting Authority) to make changes. Even had matters been handled in a way that was not tortious, I find it likely that prior to 2007 negotiations would have occurred or notice provisions exercised in order to replace Krofchak with a new project manager and new management style. ARINC, in turn, would have terminated or negotiated an end to its subcontract with Temagami, at least in regard to the OWSM work.

[430] Other factors supporting this likelihood included the internal tensions within the OWSM project team relating to gender and rank, the on-going competition between Valcom and ARINC, Valcom's goal to have the Prime Contract without the necessity of a partner such as ARINC, ARINC's minimal investment in the Canadian environment, the poor regard in which Pierce and Flanders held Poulin and Valcom, and the speed with which ARINC retreated from the Canadian marketplace after the events of August 2003.

[431] Taking these factors into account, I find that Alleslev-Krofchak would likely have moved to become an ARINC employee no later than May 2005, at the end of the first option period. I also find that, although by that time ARINC would have had a foothold in the Canadian market, its growth through Alleslev-Krofchak's business development efforts, would not have been as successful as ARINC and Alleslev-Krofchak would have hoped – due in part to the personnel difficulties Alleslev-Krofchak had on the OWSM project. The evidence does not persuade me that beyond May 2007, Alleslev-Krofchak would have been earning more than she in fact was capable of earning at IBM.

[432] Consequently damages shall be calculated on the basis of Alleslev-Krofchak having continued in the SMP#1 position through the ARINC/Temagami Subcontract until May

14, 2005, and then being employed directly by ARINC under the terms referred to above from May 15, 2005 to at least May 14, 2007. No damages for economic loss shall be payable beyond May 14, 2007.

Temagami's Damages for Economic Loss

[433] The damages arising from the intentional interference in Temagami's economic relations by Poulin and Valcom and by their procuring the frustration of the ARINC/Temagami Subcontract are obvious. Had Valcom not made it impossible for Alleslev-Krofchak to continue as SPM#1 pursuant to the ARINC/Temagami Subcontract and the Valcom/ARINC Subcontract, Alleslev-Krofchak would have continued in this capacity to the financial benefit of Temagami potentially for the entire length of the Prime Contract, including any extensions, though I have not been persuaded that she likely would have done that beyond May 2005.

[434] The evidence regarding the calculation of loss of past and future income was provided by Alleslev-Krofchak, Pierce, and Guy Martel, an actuary whose report was tendered in evidence and whose brief testimony was not subject to any cross-examination.

[435] Under the Valcom/ARINC Subcontract, it was anticipated that in the initial contractual period and during each of the three potential yearly option periods, Alleslev-Krofchak would work 230 days a year. The *per diem* charges for her work that would be paid by Valcom to ARINC in Canadian dollars were: \$1,182 for the first two years (May 15, 2002 to May 14, 2004), and then \$1,203, \$1,243 and \$1,286 in each of the subsequent three option years.

[436] Under the ARINC/Temagami Subcontract, Temagami was expected to get 90% of the rate paid by Valcom to ARINC on behalf of Alleslev-Krofchak's work, which the parties understood would be the following, expressed in US dollars:

Period	Dates	Hourly Rate	Per-Diem Daily Rate
Initial Period	07/22/02 – 05/14/04	\$ 92.20	US\$691.50
First Option	05/15/04 – 05/14/05	\$ 93.75	US\$703.12
Second Option	05/15/05 – 05/14/06	\$ 96.80	US\$726.00
Third Option	05/15/06 – 05/14/07	\$100.25	US\$751.88

For simplicity's sake, the amounts that ARINC would have paid Temagami for Alleslev-Krofchak's work can be based on 90% of the rates in Canadian dollars used in the Valcom/ARINC Subcontract.

[437] Under the contractual arrangements, it was anticipated that in 2003, Alleslev-Krofchak (on behalf of Temagami) would work on the OWSM project 1,725 hours at a rate of US\$92.20. In fact, due to her termination, Alleslev-Krofchak only worked 1,255.5 hours, producing a shortfall of revenues for Temagami of US\$43,288. Alleslev-Krofchak worked no hours on the OWSM project in 2004 or subsequent years.

[438] I find that ARINC paid Temagami business development income for work done by Alleslev-Krofchak in the amount of US\$7,808 in 2003, US\$30,634 in 2004 and US\$3,188 in January 2005. I find that this income was paid to help replace Temagami's lost revenues from the OWSM project. It was not income that Temagami would have received from ARINC had Alleslev-Krofchak continued to work on the OWSM project. Consequently, these sums should be deducted from any loss calculation for the years in question.

[439] The onus is on Temagami to prove what its damages for past and future loss of income are resulting from the Defendants' intentional and unlawful interference in its economic relations and their thwarting and frustrating the ARINC/Temagami Subcontract. The evidence does not persuade me that Temagami would likely have had any contract or economic relationship with ARINC beyond May 14, 2005, absent the tortious conduct of the Defendants. Therefore no damages for economic loss are awarded Temagami beyond May 14, 2005. Damages for the period from May 15, 2004 to May 14, 2005 are to be discounted by 10% for contingencies such as an earlier termination of the Valcom/ARINC Subcontract.

[440] Damages for economic loss based on the tort of intentional interference with economic relations and inducing breach of contract are awarded jointly and severally against Poulin and Valcom in favour of Temagami in the amount to be determined pursuant to a new actuarial calculation obtained by Temagami in which Martel's calculations are adjusted pursuant to the above directions.

Alleslev-Krofchak's Damages for Economic Loss

[441] During such time as Alleslev-Krofchak was working on the OWSM project, she billed Temagami \$30,000 for consulting services in each of 2002, 2003 and 2004, even though she worked for different periods of time in each year. I do not take \$30,000 annually as the measure of what her economic loss would have been at any time between September 2003 and May 2007.

[442] For the period from September 2003 to May 14, 2005, what Alleslev-Krofchak lost economically was access to the revenues that Temagami would have received from ARINC for Alleslev-Krofchak's work on the OSWM project. As an officer, director and shareholder of Temagami, Alleslev-Krofchak would have been able to determine how and when she would have received or invested those revenues. Those lost revenues are already being compensated through the economic loss damages being paid to Temagami. They will be available for Alleslev-Krofchak because she remains an officer, director and shareholder of Temagami. I will not allow any additional damages for economic loss for Alleslev-Krofchak personally for this period because that would result in double recovery. However, in that Lewis is liable to Alleslev-Krofchak for damages for the intentional interference with her economic relations, he shall be jointly and severally liable with Poulin and Valcom to pay to Temagami the award of damages for economic loss relating to this period.

[443] For the period from May 15, 2005 to May 14, 2007, Alleslev-Krofchak would have received an annual salary from ARINC which I find would have been US\$150,000, plus an annual 10% bonus. I am not prepared to allow any further amount for revenue incentive, as this amount is too speculative.

[444] Damages for economic loss based on the tort of intentional interference with economic relations are awarded jointly and severally against Lewis, Poulin and Valcom in favour of Alleslev-Krofchak in the amount to be determined pursuant to a new actuarial calculation obtained by Alleslev-Krofchak in which Martel's calculations are adjusted pursuant to the above directions.

Aggravated and Punitive Damages

[445] The circumstances in which punitive damages may be awarded and the principles governing such awards are articulated in *Whiten v. Pilot Insurance Co.*, [2002] 1 S.C.R. 595. The Supreme Court of Canada noted that punitive damages are the exception rather than the rule. They should be imposed only if there has been high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour. An award of punitive damages must be proportionate to the harm done, the degree of the misconduct, the vulnerability of the plaintiff and the advantage gained by the defendant. Punitive damages are awarded only where the misconduct would otherwise go unpunished and where the objectives of retribution, deterrence and denunciation would not otherwise be met.

[446] Two awards of damages at large, each in the amount of \$100,000, have already been made jointly and severally against Lewis, Poulin and Valcom in regard to the torts of defamation and intentional interference with economic relations. Both of these awards have a punitive component. They are aimed, in part, at recognizing the malicious and underhanded way in which Alleslev-Krofchak was treated, and in expressing society's disapproval of the Defendants' behaviour. Both awards took into account the harm done to Alleslev-Krofchak and the advantage gained by Lewis and Valcom. No further punitive damages are required to deliver this message.

[447] No arguments were advanced as to why aggravated damages should be awarded in this case, and I decline to order any.

Disposition

[448] In regard to the tort of defamation, Alleslev-Krofchak is awarded damages at large jointly and severally against Lewis, Poulin and Valcom in the amount of \$100,000 but no damages for economic loss.

[449] In regard to the tort of intentional interference with economic relations, in addition to damages for economic loss, Alleslev-Krofchak is awarded damages at large jointly and severally against Lewis, Poulin and Valcom in the amount of \$100,000.

[450] In regard to the torts of intentional interference with economic relations by unlawful means and inducing breach of contract, Temagami is awarded damages for economic loss jointly and severally against Poulin and Valcom for the loss incurred between September 2003 and May 14, 2005 in an amount to be determined by Martel pursuant to the above directions.

[451] In regard to the tort of intentional interference with economic relations by unlawful means, Alleslev-Krofchak is awarded damages for economic loss jointly and severally against Lewis, Poulin and Valcom for the period between September 2003 and May 14, 2007 in an amount to be determined by Martel pursuant to the above directions; however, there shall be no recovery for the period from September 2003 to May 14, 2005 because these losses will already have been compensated for through the award of damages in favour of Temagami for the same period, for which Lewis shall also be held jointly and severally liable.

[452] Prejudgment interest is awarded.

[453] If there is any uncertainty regarding my directions on the calculation of damages for economic loss or regarding the updated report from Guy Martel, a further appointment may be made through the Trial Coordinator. As well, an appointment may be made for cost submissions once the quantum of the damages award has been finalized.

Aitken J.

Released: May 25, 2009

