

IN THE MATTER OF: The Nova Scotia Human Rights Act (the "Act")

AND IN THE MATTER OF: Board File No. 51000-30-H19-1551

BETWEEN:

Dwayne Emmerson
("Complainant")

- and -

His Majesty the King in right of the Province of Nova
Scotia (Department of Public Works)
("Respondent")

- and -

The Nova Scotia Human Rights Commission
("NSHRC")

Board of Inquiry: Eric K. Slone, Chair

Heard: September 15, 16, 17, 18, 2025, written submissions
received thereafter

Counsel: Dwayne Emmerson, self-represented

Kendrick Douglas for the Commission

Katie Roebathan for the Respondent

Date of Decision: April 17, 2026

DECISION OF THE BOARD OF INQUIRY

Introductory remarks

1. This is a case alleging discrimination on the protected characteristics of race and colour. The Complainant, Dwayne Emmerson, is an African Nova Scotian man. He alleges that he encountered racist comments and stereotypical attitudes that caused him discomfort and disadvantage in the workplace. He claims this discrimination was a factor in the loss of his employment with what is now the Nova Scotia Department of Public Works, then the Department of Transportation and Infrastructure Renewal (TIR).
2. No one doubts that there is a pernicious thread of racism woven into our society, affecting people who differ from the perceived “norm.” That norm is mostly white.
3. As stated by an Ontario appeal court justice in *R. v. Parks*, 1993 CanLII 3383 (ON CA), and since cited by others including Boards of Inquiry in Nova Scotia:

I do not pretend to essay a detailed critical analysis of the studies underlying the various reports to which I have referred. Bearing that limitation in mind, however, I must accept the broad conclusions repeatedly expressed in these materials. Racism, and in particular anti-black racism, is a part of our community's psyche. A significant segment of our community holds overtly racist views. A much larger segment subconsciously operates on the basis of negative racial stereotypes. Furthermore, our institutions ... reflect and perpetuate those negative stereotypes. These elements combine to infect our society as a whole with the evil of racism. Blacks are among the primary victims of that evil.

4. But at the risk of stating the obvious, not all racism is created equal. Sometimes it is subtle while other times it is overt. It can appear almost harmless or innocent, while at other times it can be outright malicious. And it can be anything in between those poles.

5. Government action in the form of laws and enforcement mechanisms can offer some relief to parties who are impacted by racism, but it can only do so much.
6. Employers have a duty to provide a work environment that is free from discrimination, but they are not held to a standard of perfection. That duty is met in various ways including policies and training.
7. In the case here, the Complainant believed he was experiencing racist attitudes and stereotypes by co-workers and a course instructor, which made him feel demeaned and psychologically damaged, and which he says ultimately led to the loss of his job.
8. Ultimately, the question for this Board is not whether the Complainant has been exposed to racially insensitive or demeaning comments by one or more of his co-workers or instructors, although such a finding must be made; it is whether his Employer has breached s. 5 of the *Human Rights Act*, as applied and interpreted by Boards and Courts:

Prohibition of discrimination

5 (1) No person shall in respect of (d) employment discriminate against an individual or class of individuals on account of (i) race [or] (j) colour;

9. The Supreme Court of Canada case of *Robichaud v. Brennan* [1987] 2 SCR No. 27 confirmed that Employers can be held liable for the actions of its employees unless they act appropriately when made aware of potential discrimination. That duty of an Employer is to take diligent and reasonable steps to prevent such behaviour and, where necessary, to carry out a diligent investigation to determine whether such behaviour occurred and to take measures to remedy it. This is sometimes referred to as the diligence principle.

10. In *Hinds v. Canada* (1989), 1988 CanLII 109 (CHRT), at para. 41611, a Canadian Human Rights Tribunal applied this diligence principle as follows:

In considering whether an employer has exercised all due diligence to mitigate or avoid the effect of the act of the co-employee, one must examine the nature of the employer's response. Although the CHRA does not impose a duty on an employer to maintain a pristine working environment, there is a duty upon an employer to take prompt and effectual action when it knows or should know of co-employees' conduct in the workplace amounting to racial harassment.[] To satisfy the burden upon it, the employer's response should bear some relationship to the seriousness of the incident itself.[] To avoid liability, the employer is obliged to take reasonable steps to alleviate, as best it can, the distress arising within the work environment and to reassure those concerned that it is committed to the maintenance of a workplace free of racial harassment. A response that is both timely and corrective is called for and its degree must turn upon the circumstances of the harassment in each case.

11. This was accepted in *Gough v. C.R. Falkenham Backhoe Services*, 2007 NSHRC 4 (CanLII) as the approach to take in Nova Scotia.
12. So, the process before me necessarily requires a determination of two questions:
 - a. What actually went on? Was it racist in nature, no matter how subtly?
 - b. Did the Employer respond diligently and reasonably to what was complained of?

The Complaint

13. The Complainant, Dwayne Emmerson, was a probationary employee of what is now the Department of Public Works, then Transportation and Infrastructure Renewal (“the Department”), employed on a crew doing repairs to bridges throughout parts of Nova Scotia in the spring of 2019. The job title was Bridge Maintenance Worker. His start date was April 29, 2019. Apart from training, his active employment only lasted a few weeks.
14. Mr. Emmerson is African Nova Scotian. At the relevant time he was approximately 40 years old.
15. The job for which he was hired is semi-skilled and intensely physical, involving heavy lifting and the use of tools such as jack hammers. It involved working at heights, necessitating the use of fall arrest equipment. The work was inherently dangerous and accordingly as part of the onboarding process he was required to participate in various safety courses provided by the Department and taught by government employees or subcontractors. Not only are the workers obliged to observe safety protocols for their own safety, but they have a duty to report unsafe practices that might pose a danger to others.
16. Mr. Emmerson had worked in heavy industry or construction jobs in the past, most recently in Alberta. He appeared proud of his knowledge of safe work procedures, but the evidence suggested to me that he was overconfident in his abilities and slightly arrogant in his approach. This led to incidents on the job that others considered unsafe, and led to a series of complaints being made about Mr. Emmerson’s apparently lax approach to safety.

17. These complaints ultimately culminated in an investigation and ultimately the decision to terminate Mr. Emmerson's employment in July 2019.
18. While this safety record was accumulating, he was experiencing what he came to believe were acts of racial discrimination at the hands of instructors and co-workers. This came to a head in the early hours of June 6, 2019 when he sent a disturbing semi-coherent email to Crystal Young (now Crystal Oursin), the HR Business Partner responsible for Mr. Emmerson's group, outlining his experiences.
19. What follows are some extracts (grammar and spelling corrected) from that email:

I can't believe how racist this small province is.

Training Class co-trainer [referring to Robin Creelman] (said) "Hey George". My reply was that's my grandfather's name. He replied, "Oh you know your ancestors."

Sitting in training class they repeatedly kept shouting out jungle juice, he's over there drinking jungle juice, referring to my premix sport drink. They chuckled and giggled with loud laughter during class. Later that week I asked one of my co-workers [referring to Adam Rushton] what does jungle juice mean ... this (expletive) said "for you monkeys."

Another occasion this same dude says in the work home base "oh Dwayne, there is one of your brothers, better go there and speak to him" (referring to another African-Canadian student.)

I am not looking for anyone to get into trouble, but it needs to stop because in the last week or so it's been affecting my health because I can't stop thinking about it at night where times I only get 2 to 3 hours sleep.

20. He then made reference to co-workers avoiding him and leaving him alone to complete tasks. He also insinuated that co-workers may have been using cannabis while on the job.
21. On reading the email the next morning, Ms. Oursin immediately set in motion an investigation to determine whether the allegations were founded, and if so what to do about it. The first step was to offer to meet with him later that day after his work shift. The meeting actually happened on June 7, 2019. Mr. Emmerson's manager, Ray Daniels, was also present.
22. Ms. Oursin and Mr. Daniels then set up a formal investigation into the allegations. This investigation took place in parallel to an investigation into the safety concerns, which was arguably unfortunate in several respects as it involved many of the same people.
23. The results of the racism investigation were reported to Mr. Emmerson in a letter from Ms. Oursin dated June 26, 2019. She wrote:

We have reviewed your complaint in its entirety. Witnesses you referenced did not confirm information as you reported it. Therefore, I conclude, on a balance of probabilities, that the concerns raised do not constitute discrimination or harassment. There has been no violation of the Respectful Workplace Policy.
24. Sometime later Ms. Oursin prepared a summary of findings, which documented all of the people who had been interviewed by herself and/or Mr. Daniels. The document goes into some detail about each witness's statements to the investigators. The conclusion reached was that the allegations were not substantiated.
25. The same internal document goes on to detail the investigation into the various safety complaints brought against Mr. Emmerson. To summarize, the following are the allegations considered by the investigators:

Disruptive and excessive breaks during 2-week bridge training course.

Carrying a long piece of scaffolding over Mr. Emmerson's shoulder which led to a near incident involving three staff members.

Using scaffolding as a chin up and push-up bar during training.

Unsafe work practice - May 24, 2019 - working outside the secure work zone.

Unsafe work practice - May 28, 2019 - working outside of secured work zone, working within hazardous zones, performing unsafe acts in work zones e.g. push-ups off of Jersey barriers where by Mr. Emmerson's legs were close to a trailer backing up.

Unsafe work practices - May 29, 2019 - working within hazardous zones.

May 30, 2019 - unsafe work practices and working in hazardous zones.

June 4, 2019 - unsafe work practices and working in hazardous zones.

June 5, 2019 - unsafe work practices in hazardous areas; walking beside the vehicle door and the barriers almost being jammed between the two.

June 11, 2019 - unsafe work practices and working in hazardous zones amongst heavy equipment.

June 13, 2019 - unsafe work practices - not spotting as required.

June 19, 2019 - unsafe work practices [leaving a parked vehicle in neutral].

26. The conclusion concerning all of these safety allegations was that they had been substantiated. One of Ms. Oursin's conclusions read as follows:

It has been determined through this investigation that he displayed a complete disregard for workplace safety. This was supported by his

responses which were vague and contradictory. His credibility and trustworthiness were further diminished by his untruthfulness regarding the incident of June 13 where he repeatedly denied having a cell phone while performing his role as a spotter indicating he was paying attention the whole time.

27. This reference to Mr. Emmerson's untruthfulness concerns an incident where he was accused of being distracted and on his cell phone. He initially denied even having a cell phone on site, until confronted with a picture taken that day showing him using his cell phone, which caused him to retract his denial.

28. Mr. Emmerson was interviewed in connection with the safety concerns on June 21, 2019, after which he was placed on administrative leave pending an investigation into his safety practices. Approximately three weeks later, on July 12, 2019, Mr. Emmerson was dismissed from his employment. That letter, signed by the Deputy Minister of the Department, included the following statements:

The investigation has been concluded, the findings have been reviewed and it has been determined that your conduct in the above instances are in direct violation of the internal responsibility system outlined in the Occupational Health and Safety Act. More specifically:

Working in an unsafe and irresponsible manner by not complying with OHS policies, job procedures and work practices;

Not applying education and training on health and safety to your role as a bridge crew maintenance worker;

Not wearing personal protective equipment as required and instructed;

Repeatedly placing yourself and coworkers in unsafe situations;

Repeatedly disregarding your charge hand's directions and warnings.

Additionally, it has been determined through this investigation that you have displayed a complete disregard for workplace safety. This was

supported by your responses which were vague and contradictory. Your credibility and trustworthiness were further diminished by your untruthfulness regarding the incident of June 13 where you repeatedly denied having a cell phone while performing your role as a spotter indicating you were paying attention the whole time.

Considering the above circumstances span just over a two month period, as a probationary employee, I have concluded that your conduct constitutes an irreparable breach of the employment relationship and your employment has been terminated effective immediately.

29. As a unionized employee, Mr. Emmerson availed himself of the opportunity to file a grievance to the effect that he was unjustly dismissed after having filed a harassment complaint. That grievance was eventually withdrawn as the union concluded that it had little chance of success.
30. As a probationary employee, Mr. Emmerson would have faced additional barriers to achieving any redress because probationary employees are subject to a lower degree of just cause protection,
31. Union notes which were supplied to the Commission as part of its investigation show that the union interviewed a number of witnesses who Mr. Emmerson believed might be helpful to his grievance, however the Union determined that they would not be helpful.
32. Indeed, it must be observed that in none of the investigations or hearings did Mr. Emmerson produce a single witness who corroborated any of his evidence.
33. Mr. Emmerson elected to pursue a Human Rights Complaint, which brings us to where we are. On November 25, 2019, Mr. Emmerson filed his complaint under the *Human Rights Act*. This complaint referred to the same issues that had been brought to Ms. Oursin's attention, but also complained of some other conduct. He stated that he had been treated differently by

instructors who (he says) gave other (Caucasian) students preferential treatment.

34. When asked by the Complaint form how this behaviour affected him, he wrote:

I lost my livelihood/employment. Therefore I have gone without income. As a result, I have to live with family, and could not move into the apartment that I had planned to rent.

I had a lot of emotional impact, mentally, physically and spiritually. For example, struggled with sleeping, not eating properly, changed my personal practices, did not buy the pre-workout supplement beverage, and started buying a different beverage, which was bottles of Ensure

I stopped going to the gym regularly.

It had a negative impact on my social life, because I now feel uncomfortable around Caucasian people. The stress of being discriminated against and terminated from my employment led to the end of my romantic relationship with my girlfriend.

I have bills, as an example, car payments, internet, phone, insurance and I am dwelling on my financial situation.

35. This was written six years before the hearing before this board.
36. At the time of the hearing before this Board, Mr. Emmerson described the trajectory of his life since losing his job with the Department. He collected Employment Insurance and then qualified for some disability benefits. He has worked sporadically. He has been through a couple of motor vehicle accidents which have forced him to spend time on disability benefits.

The Hearing

37. I was appointed as Board of Inquiry Chair on September 21, 2021. The hearing of this matter was unfortunately delayed for various reasons but eventually took place over four days, September 15-18, 2025. This was followed by written submissions the last of which was received in November 2025.
38. At the hearing, Mr. Emmerson called no witnesses other than himself. He was assisted to a considerable degree by Commission counsel. He was extensively cross-examined by counsel for the Department.
39. His evidence in chief consisted mostly of a recitation of the concerns that he had expressed about the allegedly racist comments and attitudes that he experienced.
40. Most of the cross-examination by Department counsel concerned the many safety violations that he had been accused of. My impression of his evidence is that he had an excuse for everything. He was unwilling to concede that he did anything wrong and insisted that he was being singled out and subjected to a different standard. He seems convinced that “they” were out to get him.
41. In all, Mr. Emmerson was not a credible witness. He was evasive and argumentative, particularly in the area of safety. He tended to exaggerate. He was unwilling to concede points that reflected negatively on him.
42. The unfortunate effect of lacking credibility in one area is that it casts doubt on all areas of a witness’s testimony. Such doubt is capable of being resolved if there is corroborating evidence. Unfortunately, very little of what followed at the hearing corroborated his evidence.

43. The Department called as witnesses:
- a. Crystal Oursin (formerly Young), the HR Business Partner with the Public Service Commission
 - b. Adam Rushton, the colleague who was accused in connection with the jungle juice reference and also the “brother” reference.
 - c. Will MacDonald, a crane operator who was witness to several safety incidents.
 - d. Robin Creelman, a safety trainer who allegedly made the George reference.
 - e. David Josey, a course trainer, who had been alleged by Mr. Emmerson to give favourable treatment to other students.
 - f. Ray Daniels, the project engineer who was Mr. Emmerson’s direct supervisor, and who was part of the investigation into Mr. Emmerson’s complaints.
44. I will set out below some salient points raised by each of these witnesses, but as an overall observation I find that none of that evidence corroborated Mr. Emmerson’s version of the events.

Crystal Oursin (formerly Young)

45. Ms. Oursin was an experienced HR professional at the time of these events. She has extensive training in diversity and employment equity. She was familiar with relevant policies such as the Respectful Workplace Policy.

When she received Mr. Emmerson's June 6, 2019 email, she recognized a duty to investigate and immediately sprung to action. She involved Ray Daniels in the process and arranged to meet with Mr. Emmerson.

46. After meeting with Mr. Emmerson, she and Mr. Daniels concluded that the allegations, if proven, would breach the Respectful Workplace Policy.
47. She then set up a number of interviews, including people who were not called as witnesses at this hearing. She made extensive notes of these interviews.
48. Many of the witnesses, when asked about the allegedly racist comments, spontaneously raised concerns about Mr. Emmerson's lax approach to safety. It was for that reason that some of these co-workers tended to stay away from Mr. Emmerson.
49. She described her meetings with co-workers or trainers implicated in Mr. Emmerson's complaint. She also described her meetings investigating the safety complaints in the parallel investigation.
50. She was involved in the decision to terminate Mr. Emmerson, which she insisted had nothing to do with any racial issues and was purely as a result of his many safety violations.
51. As for the allegations of racism, she concluded that the more serious allegations could not be corroborated and that there were innocent explanations for what was confirmed. She and Mr. Daniels measured the credibility of the people they were interviewing, including Mr. Emmerson. They had a negative view of Mr. Emmerson's credibility because of conflicting statements that he made, plus his difficulty providing direct answers to questions. She found his evidence often confusing.

52. She and Mr. Daniels independently concluded that Mr. Emmerson's account of events could not be fully believed.

Adam Rushton

53. Mr. Rushton got along well with Mr. Emmerson though he came to notice his lax approach to safety.
54. Mr. Rushton testified, contrary to what Mr. Emmerson stated, that he himself passed the course taught by David Josey and did not need extra chances to retake the course.
55. He admitted that he was the source of the jungle juice reference, which was a term that he had been using for years within his family to refer to mixed drinks. He insisted that it had nothing to do with race and he did not know that Mr. Emmerson took offence to the term, especially as he also started referring to it as jungle juice. He denied ever saying that it had anything to do with monkeys.
56. As for the "brother" comment, he had no recollection of saying that.

Will MacDonald

57. Mr. MacDonald is the owner and operator of HubTown Crane. He has done a lot of work for the province and was doing work in Moose River where Mr. Emmerson was part of the crew. He described several minor safety concerns with Mr. Emmerson's behaviour, which he discussed with Mr. Emmerson.

58. Mr. MacDonald recalled hearing Mr. Emmerson refer to his drink as jungle juice. He also recalled hearing Mr. Emmerson say “me and the brothers were at the bar.”

Robin Creelman

59. Mr. Creelman is an employee of RUSafe, who taught a course that Mr. Emmerson took. He denied ever calling Mr. Emmerson George, but if he said George he might have been referring to George Taylor who was a crane operator on the site. He denied saying anything to Mr. Emmerson about his grandfather or ancestors. He does not consider the name George to have any reference to race or colour.
60. He also did not recall hearing the term jungle juice used in his presence.

David Josey

61. He is a safety coordinator with the Department. He recalled interacting with Mr. Emmerson during a Temporary Workplace Signage course. He recalled Mr. Emmerson sitting at the back of the room with Adam Rushton, who was consistently helping Mr. Emmerson find the correct references in the manual.
62. On several occasions he had to caution Mr. Emmerson to stay off his cell phone during the class.
63. The course ends with a 20-question multiple choice exam. Everyone passed except for Mr. Emmerson. No one was given favourable treatment.
64. He did not recall hearing the term jungle juice, or anything relating to race.

Ray Daniels

65. Mr. Daniels has been a Project Engineer since 2007. He is very safety oriented because of the nature of bridge work. He first met Mr. Emmerson at his job interview in April 2019 and then got to see him on the job as one of the workers in the chain reporting to him.

66. On June 4, 2019, he spoke to Mr. Emmerson on the job about some safety concerns, and the next day wrote an email to Robert Risser (direct supervisor) reporting that he had spoken to Mr. Emmerson about some safety concerns. This email included the following statements:

It didn't seem like he was registering what I was saying He was full of excuses. We will need to monitor him and take any safety infractions seriously.

67. He was alerted to Mr. Emmerson's concerns on June 6th by Ms. Oursin. He said that he was shocked. He recognized the need to meet with Mr. Emmerson. Thereafter, he and Ms. Oursin made a list of the people they thought should be interviewed.

68. After the investigation, he was not convinced that Mr. Emmerson had proved his contentions. He also noted that in many of the interviews, ostensibly about the racism allegations, safety concerns kept coming up.

69. He was part of the separate safety investigation, and shared Ms. Oursin's conclusion that those concerns were all substantiated.

Credibility of witnesses

70. In general terms, I found the witnesses called by the Department to be credible. They gave their evidence in a straightforward manner and were internally consistent.
71. Mr. Emmerson was a much less credible witness. His biggest problem was his unwillingness to own up to the concerns that others had about his safety practices. He was evasive. Also, he tended to exaggerate.
72. Given the lack of any corroborating evidence, and in the face of outright denials from the other witnesses, it is difficult to say that any of the allegations has been proved. The onus of proof was on Mr. Emmerson. Ms. Oursin and Mr. Daniels were reasonable in their conclusions to the effect that he had not met that onus. Having heard four days of testimony, I arrive at the same conclusion.
73. The following are my impressions and conclusions about the core allegations.

Jungle Juice

74. Mr. Emmerson was in the habit of drinking a protein rich fitness drink that he brought to work with him in a powdered form and mixed up with water. This seemed to amuse some of his co-workers, one of which (Adam Rushton) dubbed what he was drinking as “jungle juice.” This nickname caught on to the point that even Mr. Emmerson referred to it as jungle juice.

75. At some point Mr. Emmerson began to take offence, believing that the term jungle juice had some racist overtones. He claims that Mr. Rushton told him that jungle juice was associated with monkeys.
76. Mr. Rushton told the investigators at the time, and repeated at the hearing before this Board, that he never made such a statement. He had a much more innocent explanation about the origins of the jungle juice moniker. It turns out that jungle juice has a number of different connotations in popular culture. It can refer to a punch containing a mixture of different liquors. It is also a drink for kids on the menu of the restaurant chain Jungle Jim's. Mr. Rushton testified that it is a term used within his family and that it has nothing to do with monkeys and has no racist connotations.
77. The investigators for the Employer came to the conclusion that Mr. Emmerson had not proved that there was any mention of monkeys or any racist overtones.
78. Having listened to both Mr. Emmerson and Mr. Rushton, I come to the same conclusion.

The "brother" comment

79. Mr. Emmerson complained that one of his co-workers, Mr. Rushton, made a reference to another employee of apparent African Nova Scotian descent, as Mr. Emmerson's "brother."
80. The notion that all black men are "brothers" is potentially discriminatory in the most technical sense of the word, in that it suggests that there is some commonality amongst black men that they do not share with others of different racial backgrounds.

81. The evidence that this term was used, precisely when, and by whom, is wafer thin. That it was tinged with any racist sentiment is thinner still.
82. Even if it was used the one time alleged, there would not have been much that the Employer could have done, except perhaps to suggest to the guilty party that this was a poor choice of words.

George

83. Mr. Emmerson claims that one of his course instructors, Robin Creelman of RuSafe Inc., referred to him as George, which he found offensive because of the association with the children's book character Curious George who is, as most people know, a monkey.
84. Mr. Emmerson says that he engaged Mr. Creelman in conversation and told him that George was his grandfather's name, but not his.
85. In his testimony before this Board, and in previous interviews, Mr. Creelman did not recall any such exchange and said that he often just uses random names in discussing example situations and that it is possible that he chose George because it was the name of a crane operator on the site. He stated that he considers George just an ordinary name and does not associate it with race or colour.
86. I conclude that if the name George was used by Mr. Creelman, it was innocent and without any racist connotations. To associate it with a character in a children's book is far-fetched.

Differential treatment

87. Mr. Emmerson complained about being shunned by his co-workers and sometimes being left to complete tasks on his own.
88. There is not a whit of evidence to suggest that Mr. Emmerson was being singled out because of his race or colour. The evidence rather suggests that Mr. Emmerson developed a reputation on the job site for being casual about safety. Some of his co-workers may well have stayed out of his way because of these concerns.
89. The allegation that other students were given preferential treatment concerning an exam was denied by Mr. Josey (the instructor) and Mr. Rushton, the supposed beneficiary of preferential treatment. I believe their evidence to the effect that everyone else passed on the first try except for Mr. Emmerson. The contention that others were treated preferentially is unsupported. The most charitable view is that Mr. Emmerson utterly misconstrued what was occurring, casting further doubt on his credibility.

What was happening on June 6, 2019?

90. There is no doubt in my mind that Mr. Emmerson was in a bad way on June 6, 2019 when he reached out to Ms. Oursin. He was up late at night, losing sleep, ruminating on his situation. He had been taken aside and spoken to about his safety violations, as recently as June 4 by Mr. Daniels, and probably knew that formal complaints were being lodged. He knew he was still on probation.
91. He did not mention in his email of June 6 that he was facing safety complaints.

92. No one questions the degree to which he was suffering or took his concerns lightly. But I infer that much of his distress stemmed from the fact that he was under intense pressure for his safety record.

Did the Department satisfy its duty?

93. As set out earlier, once alerted to the allegations the Department had a positive duty to investigate and remedy the situation, if possible.
94. The authorities make clear that the investigation need not be perfect but rather must be reasonable.
95. In the situation here, Ms. Oursin responded immediately and took the matter very seriously. The first step she and Mr. Daniels took was to arrange to meet with Mr. Emmerson. That was entirely reasonable.
96. The next step was to identify a long list of witnesses to interview. Over the next few days meetings with these individuals were held and they were asked for pertinent information. Decent notes were taken at all these meetings so there is a record of what was said.
97. Lastly, they turned their minds to the allegations and asked themselves the appropriate question: were any of the allegations established on a balance of probabilities?
98. Their conclusion was a reasonable one.

99. There is no need to speculate about what the Department might have done had they found some reliable evidence, or plausible inference, that one or more of the allegations was established.
100. The one criticism I have with the investigation is that there was no effort made to separate the two investigative tracks. A more perfect process might have been to delegate the safety investigation to different people, but the way it unfolded it may not have been practical. But perfection is not the standard. I still believe that the investigation into Mr. Emmerson's complaints was fair and reasonable and was undertaken with the seriousness that it merited.

Conclusion

101. Mr. Emmerson has failed to meet his onus to prove on a balance of probabilities that he was subjected to differential treatment on account of his race and/or colour.
102. The Department took his allegations seriously and did a diligent investigation, coming to a conclusion with which I agree.
103. In the result, the Complaint is dismissed.

Eric K. Slone, Board of Inquiry Chair