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*Public Service Staff
Relations Act*

Before an adjudicator

BETWEEN

GHYSLAIN LAPLANTE

Grievor

and

**TREASURY BOARD
(Canada Border Services Agency)**

Employer

Indexed as
Laplante v. Treasury Board (Canada Border Services Agency)

In the matter of grievances referred to adjudication pursuant to section 92 of the
Public Service Staff Relations Act

REASONS FOR DECISION

Before: Georges Nadeau, adjudicator

For the Grievor: James G. Cameron, counsel

For the Employer: Simon Kamel, counsel

Heard at Sherbrooke, Quebec,
June 27 to 30, 2006 and January 30 to February 1, 2007.
(P.S.L.R.B. Translation)

I. Grievances referred to adjudication

[1] Ghyslain Laplante (“the grievor”), a customs inspector with the Canada Border Services Agency (“the employer”), filed two grievances: one against the employer’s decision to suspend him for an indefinite period without pay during an investigation that started June 21, 2004, and the other against the decision to dismiss him for misconduct on April 21, 2005.

[2] The employer alleges in its letter of dismissal that the grievor was involved in a plot to traffic cocaine in Canada in which he assisted his brother and his brother’s associate. The employer writes as follows:

[Translation]

On December 22, 2004, I received the investigation report from Internal Affairs and the information collected clearly shows your involvement in a plot to traffic cocaine in Canada in which you assisted your brother and his associate.

This is a very serious misconduct because it contravenes the very foundation of the CBSA’s Code of Ethics and Conduct. In effect, as a customs inspector you must enforce a wide range of legislative provisions. Accordingly, the position you hold requires that you adopt ethical conduct compatible with the laws that you are charged to enforce.

Moreover, under the Code and the Conflict of Interest Guidelines, it is prohibited, in official matters, to grant preferential treatment to relatives or friends in whom you, your relatives or your friends have an interest.

Despite the seriousness of the actions of which you are accused, I wanted to evaluate the extenuating circumstances that might mitigate in your favour, including your version of the facts. However, given that your actions were premeditated, I remain convinced that there are no circumstances that can rebuild the relationship of trust essential to the performance of your duties.

[3] The grievor’s representative claims that the grievor was not involved and that he is a victim of his brother’s activities by association.

[4] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, these references to

adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35.

II. Summary of the evidence

[5] The witnesses called at the hearing were those of the employer, along with the grievor. To provide context for the testimony, I will first summarize the uncontested facts.

[6] The grievor has been a customs inspector for many years. He works shifts, sometimes during the day, sometimes during the evening and sometimes at night. His substantive position is at the Frelighsburg, Quebec border crossing, but he also works shifts at other nearby border crossings.

[7] The authorities suspect one of the grievor's brothers, Serge Laplante, of importing cocaine. The employer alleges that on the night of June 20 to 21, 2004, the grievor, while on duty, allowed a drug shipment to cross the border, in the process becoming an accomplice in an operation conducted by his brother. The investigation revealed that the grievor's work schedule was found in Serge Laplante's wallet.

[8] The first witness is Corporal Denis Turcotte, a Royal Canadian Mounted Police (RCMP) officer. Corporal Turcotte has been an RCMP officer for 25 years and has been with the Lacolle, Quebec border services since May 2004. He oversees RCMP investigations and is responsible for four to five officers.

[9] Corporal Turcotte testifies that he first heard mention of the grievor on June 16, 2004 during a meeting at St-Jean-sur-Richelieu, and he met him on June 21, 2004. He states that he was assigned as the lead investigator in the case on June 16, 2004. He was responsible for gathering information and assigning tasks to the other police officers involved in the investigation. About 20 officers were present on the night of June 20 to 21, 2004 at the time of the grievor's arrest at the Frelighsburg border crossing.

[10] Corporal Turcotte adduces all of the documents related to the investigation that he compiled in four volumes, numbered I to IV (Exhibit E-1). He testifies that he is the person who prepared the summary of the investigation found in Appendix 2 of Volume I. He points out that Appendix 3 of the same volume contains the list of 41 exhibits included at the time that the document was prepared and adds that there are

now 44 exhibits in the file. He states that items 40 and 41 of that list refer to four compact discs and one DVD containing recordings of conversations and transcripts of those conversations. Appendix 8 contains the notes he took between June 16 and 21, 2004.

[11] Corporal Turcotte recounts that the investigation named “Projet Claquette” arose from two other RCMP investigations (“Projet Canala” and “Projet Cruiser”) and an investigation by the United States Drug Enforcement Agency (DEA) (“Project Busted Manatee”). He summarizes the investigation that led to the grievor’s arrest. Two individuals in the Valleyfield area, brothers Tony and Daniel (Dan) Roy, were under investigation for smuggling cocaine using truckers. The DEA used an agent who, under its direction, posed as a cocaine supplier. One of the Roy brothers contacted that person to negotiate the purchase of large quantities of cocaine. The first transaction took place on April 23, 2004. A trucker took possession of what he thought was 200 kg of cocaine (of which 190 kg was fake and 10 kg real) that he was to take to Quebec. He was stopped an hour later on what appeared to be a routine road check but what was, in fact, a DEA operation. The trucker, who refused to cooperate with police, received 11½ years in prison.

[12] The DEA agent only had Tony Roy’s pager number, and it was Tony Roy who contacted the agent by telephone. The DEA recorded all of the conversations between the agent and Mr. Roy. The DEA’s investigation report is in Appendix 31 of Volume III (Exhibit E-1). The four compact discs containing the recordings of the telephone conversations were adduced in evidence (Exhibits E-2 to E-5). The transcripts of those conversations are in Appendix 35 of Volume III (Exhibit E-1).

[13] Following the first trucker’s arrest, Tony Roy continued to have contact with the DEA agent. He wanted to proceed with a second deal. During those conversations, he explains to the agent that he put together a second team, that he has a “door,” that he has to pay for the crossing and that it will work “100%.” The operation was also to use a car or some vehicle other than a semi-trailer.

[14] Corporal Turcotte adduces the grievor’s work schedule (Exhibit E-1, Appendix 4), which was found in Serge Laplante’s wallet when he was arrested (Exhibit E-1, Appendix 5), along with the seizure report relating to the schedule (Exhibit E-1, Appendix 23). He also adduces the photographs taken of the rented vehicle used to transport the cocaine (Exhibit E-6), a Chevrolet Avalanche pickup truck,

and the report from the American intelligence officers following the arrest of the driver of the truck (Exhibit E-1, Appendix 6).

[15] Corporal Turcotte adduces the orders to acquire the records of calls made from telephones belonging to the grievor, Serge Laplante, Tony and Dan Roy, and the driver (Exhibits E-1 and E-7, Appendices 20 to 22). He also adduces a file containing information connecting those calls to the calls recorded by the DEA (Exhibits E-1 and E-8, Appendix 33). The file also contains the grievor's telephone records (Exhibit E-9) and his bank account records (Exhibit E-1, Appendices 24, 25, 26 and 27). Two wiretap reports are also adduced (Exhibit E-1, Appendices 32 and 33). The second document includes calls made between the suspects.

[16] Corporal Turcotte explains the circumstances and consequences of the cocaine deal that failed. The Roy brothers had taken the place of a major trafficker and had gotten in touch again with the person, who they thought was the supplier, in Miami. The cocaine came from Columbia and had a "street value" of \$4.5 million for 200 kg. Following their arrest, the Roy brothers were extradited to the United States and are serving 11 and 13 years respectively in prison. Others involved in this case were also extradited. American authorities did not charge Serge or Ghyslain Laplante. A new prosecutor has been appointed who is presently studying the case.

[17] Corporal Turcotte reviews the telephone conversations intercepted by the DEA that were adduced as four compact discs (Exhibits E-2, E-3, E-4 and E-5). The transcripts of those conversations are also adduced (Exhibit E-1, Appendix 35). He notes that it is after the first deal fails that Tony Roy informs the DEA agent, in the conversation intercepted on May 6, 2004 (Exhibits E-1 and E-2, Appendix 35), that he put together a new team and that he has a "door." During the conversation on May 10, 2004, Mr. Roy indicates that he is unable to give the agent more money, because he has to pay his entry into the country in advance to avoid any problems. The next day, May 11, 2004, Mr. Roy again states that he has to pay his entry into the country and adds that the members of the new team do not know each other. On May 12, 2004, Mr. Roy informs the agent that he will not use a semi-trailer but rather an automobile, because the "door" only accepts cars.

[18] Corporal Turcotte notes that the call records (Exhibits E-1, Appendices 33 and 34) indicate that on the evening of May 12 at 18:46, a five-minute call was made from Serge Laplante's cellphone to the grievor's home. He notes that the next morning,

May 13, at 09:19, a call was made from Serge Laplante's cellphone to the grievor's home and that immediately after, a call was made from the same cellphone to the driver who was subsequently arrested. The conversation on May 13, 2004 focused on whether the driver would use his own car or a rented vehicle, and Mr. Roy reconfirmed that he would pay to get across the border.

[19] Corporal Turcotte notes that on May 14, 2004, Serge Laplante contacts rental agencies. From May 16 to 21, 2004, eight telephone calls are made between Serge Laplante's cellphone and the grievor's home. On May 26, 2004, Serge Laplante contacts a car rental agency. During the conversation of June 4, 2004, Mr. Roy states, in referring to the "door," that he has to check when his "guy" is working. On June 7, 2004, Tony Roy indicates to the agent that this person, the "guy," is not working on the weekend, that he finishes Friday at midnight and that consequently, the driver has to arrive before midnight Friday or wait until the following Monday night. The DEA arrested the driver on June 17, 2004, and he agreed to cooperate with the investigation. Under the DEA's direction, he contacted Serge Laplante that same day to obtain instructions for crossing the border. Serge Laplante told him to show up on the night of June 20 after 00:30. Tony Roy also told the agent on June 20, 2004 that crossing the border was only possible in the early hours of the morning because "[translation] . . . my guy isn't working . . . only works Monday anyway." The arrests were made on the night of June 20 to 21, 2004 after the vehicle crossed the border. Tony Roy, who had still not been arrested, contacts the agent one last time on June 22, 2004 to express his astonishment that a second "trip" had been seized. He comments as follows during that conversation:

[Translation]

"all my guys are in jail,"

and adds,

"the police allowed the truck through my door . . . they arrested the door and arrested everyone,"

and short while later,

". . . the delivery guy was arrested, he is in jail," and, "There are three people . . . the driver, the door and his contact. They were all arrested." . . . "the guy crossed at the right time . . . but the police were driving his truck."

[20] Corporal Turcotte produces the videotape of the grievor's interrogation (Exhibit E-10) that was recorded immediately after his arrest. RCMP Sergeant Richard Delorme conducted the interrogation. The videotape is adduced, and Corporal Turcotte highlights the parts of the grievor's questioning that he judges important. He also submits in evidence the videotape of the vehicle containing the drugs entering customs.

[21] Corporal Turcotte indicates that after considering all of the evidence, he is convinced of the grievor's involvement.

[22] Under cross-examination, Corporal Turcotte acknowledges that this was a major drug deal and that the Roy brothers were only one link in the criminal hierarchy. According to the Roy brothers, the deal involving 150 kg of cocaine had a value of \$3 to 3.5 million. Corporal Turcotte states that the police seize about 5% of what crosses the border. The deal is important for the Roy brothers, because they had just lost one involving 200 kg. He adds that violence or the threat of violence is often present, especially at the lower levels of the criminal hierarchy, to maintain discipline in the ranks. Contacts between levels are kept to a strict minimum for security reasons.

[23] Responding to questions, Corporal Turcotte states that in his opinion, Serge Laplante is Tony Roy's contact for the "door" and for the driver and that Tony Roy did not know the door or the driver. He also confirms that once the driver was arrested, the only person that he could identify to cooperate with police and reduce his sentence was Serge Laplante.

[24] Questioned about the changes in the anticipated dates for crossing the border with the drugs that were noted in Tony Roy's recorded telephone conversations, Corporal Turcotte confirms that in the conversation on Monday, June 7, 2004, the driver was supposed to cross before midnight on the following Friday night, June 11, 2004, or to wait until the following Monday night. He confirms that the grievor was not working the night of June 11, 2004. Corporal Turcotte testifies that it is possible that Tony Roy or Serge Laplante was mistaken and adds that it was the only date that was not possible. Questioned about the fact that the driver mentions in the June 9, 2004 conversation that he would have to leave early on June 10, 2004 to arrive before midnight on June 11, 2004, Corporal Turcotte states that this too was an error attributable to Serge Laplante. Corporal Turcotte acknowledges that the paper found

on Serge Laplante (Exhibit E-1, Appendix 4) clearly establishes that the grievor was not working on June 11, 2004.

[25] Asked to explain why he did not try to get a wiretap order for Serge Laplante's telephone, Corporal Turcotte states that it would have been impossible to do between June 16 and 20, 2004, since there was not enough time.

[26] Corporal Turcotte reiterates that in his opinion, based on all of the conversations, the indication that the crossing had to take place before midnight on June 11, 2004 was a mistake. He did not consider the option that the "door" simply did not exist and that Serge Laplante simply lied to Tony Roy. He confirms that the deal was delayed from June 10 to 17, 2004, which subsequently delayed the border crossing to the evening of June 20, 2004 after midnight (June 21, 2004). Corporal Turcotte acknowledges that the grievor worked the nights of June 18 to 20, 2004 (Exhibit E-1, Appendix 4) but notes that it was overtime, which did not appear on the schedule (Exhibit E-1, Appendix 5) that Serge Laplante had in his possession.

[27] Corporal Turcotte acknowledges that before June 10, 2004, the grievor was not a suspect and that according to telephone records obtained under the warrant, he never communicated with the Roy brothers, and his only contact was with his brother, Serge Laplante. Corporal Turcotte also confirms that the warrants obtained to verify the bank accounts of the grievor and his spouse did not reveal anything unusual but adds that it is rare to find "[translation] sale money" in a bank account.

[28] With respect to the RCMP's questioning of the grievor after his arrest, Corporal Turcotte confirms that the grievor was not required to answer but still chose to answer questions for an hour. He acknowledges that his notes (Exhibit E-1, Appendix 8) show that there was not enough evidence to prove that the grievor knew that there was 150 kg of cocaine in the vehicle.

[29] Gabriel Duteau was the next witness. Mr. Duteau is the head of intelligence operations for Quebec's land borders with the Canada Border Services Agency (CBSA). He has held the position since April 2003. In this capacity, he supervises CBSA intelligence officers who liaise and share information with police and para-police agencies on both sides of the border.

[30] Mr. Duteau testifies that he received a call on June 16, 2004 from Sergeant Rick Hilton of the St-Jean-sur-Richelieu RCMP, who wanted to meet with him to inform him of a potential corruption case involving a customs inspector. At the meeting, Sergeant Hilton explained the scenario envisaged by the RCMP and invited him to be present for the police operation on the night of June 20 to 21, 2004.

[31] Mr. Duteau testifies that he then met with Normand Robert, Director of Internal Affairs, CBSA, and Gilles Parent, Regional Director. Mr. Duteau adduces the sworn statement that he prepared in November 2004 (Exhibit E-12). He states that the reason he prepared a statement was that it was very difficult to obtain information from the DEA. The RCMP was unsuccessful in getting DEA information and was therefore unable to provide any to the director of internal affairs. Mr. Duteau contacted Corporal Turcotte, who allowed him to consult the undercover officer's report and to reread the transcripts of the telephone conversations. Mr. Duteau testifies that based on those documents, he prepared the statement so that the Internal Investigations Branch could begin an investigation.

[32] Mr. Duteau testifies that on June 20, 2004, he went to St-Jean-sur-Richelieu for the start of the police operation. He learns at that time of the arrest of the driver who had the task of collecting the cocaine in Florida. He also learns of Serge Laplante's involvement. He notes that Serge Laplante was known to Border Services because he was suspected of smuggling drugs or currency. A border lookout had been issued for him. Mr. Duteau also testifies that he learned at that time that Serge Laplante was working for the Roy brothers. During the police operation, he was stationed in St-Jean-sur-Richelieu where he listened to communications in the area. He states that the covering officer (a police officer liaising between the police and the undercover officer in the criminal network) informed them of the content of the conversations between the undercover officer and the grievor. (Counsel for the grievor objected to the introduction of this evidence indicating that it was hearsay. I sustained his objection, noted that it was hearsay and informed the parties present that I would give it the appropriate weight.)

[33] Mr. Duteau acknowledges that he consulted the undercover officer's report to prepare paragraph 7 of his statement (Exhibit E-12) and notes that the description in the undercover officer's notes (Exhibit E-1, Appendix 10) corresponds to what he read at that time and to what he reported in paragraph 7 of his statement.

[34] Mr. Duteau testifies that after the grievor's arrest, he contacted his superior to inform him of the events. With respect to the content of paragraph 8 of his statement (Exhibit E-12), Mr. Duteau states that he consulted the telephone records and was able to see that the grievor had communicated with his brother, Serge Laplante. As for the next paragraph, he explains that Superintendent Luke Bury met with the employee to discuss the situation concerning his brother, Serge Laplante, who had left a customs office without permission when the vehicle he was driving was to have been searched.

[35] Under cross-examination, Mr. Duteau confirms that what he says in his statement is either information obtained from the RCMP or what he heard from the covering officer or from Mr. Bury.

[36] The employer's representative called Mr. Bury as the next witness. Mr. Bury works as a superintendent with the CBSA. He supervises about 15 employees in the commercial section, where commercial goods are cleared through customs. To cover for employees on leave, he also works in the travellers' section. Mr. Bury testifies that when he is assigned to the travellers' section and works outside normal work hours, he has responsibility for satellite offices, which are small offices surrounding a main office. It was in this capacity that he supervised the work at Frelighsburg.

[37] Mr. Bury adduces photographs of the Frelighsburg border station (Exhibit E-13). He indicates that generally one or two customs inspectors are assigned to the day shift, while only one is assigned to the night shift. The inspector assigned to that border crossing provides primary and secondary inspection and also acts as an immigration officer. A slight overlap between shifts happens at the beginning and end of each shift. Three work shifts are scheduled, from 08:00 to 16:00, from 16:00 to 24:00 and from 24:00 to 08:00. Following consultations with the union, the Frelighsburg crossing had a so-called non-conventional schedule because employees work more hours per day than normally scheduled but work fewer days per year. The collective agreement requires that the work schedule be posted 15 days in advance of the 8-week schedule that it covers. Management, employees and spouses are the only persons with access to the schedule. The schedule is not posted and cannot be viewed by the public.

[38] Mr. Bury testifies that schedule changes are done very informally. In small offices, it is done by email or by a simple written note. Employees change shifts among

themselves. Management expects the shifts to be covered and corrections are shown on the timesheets.

[39] Mr. Bury describes the duties of a customs inspector. The inspector's first responsibility is to establish a person's eligibility to enter the country by asking questions about citizenship and place of residence. The inspector must then determine the eligibility of goods, determine the duty to be paid and ensure that the traveller does not have any prohibited or controlled goods. Customs inspectors are responsible for preventing illegal goods from entering Canada.

[40] Mr. Bury elaborates on the type of questions that custom inspectors ask. They must determine the name, citizenship and location of residence of persons, along with the length of time they have been out of the country. The inspector must determine the effects and goods in the traveller's possession. In response to the question of whether a traveller can identify himself or herself by first name only, Mr. Bury states that this is not enough and that such an answer would trigger further questions as to whether the traveller has a passport, birth certificate or other proof of identity. Comments such as "[translation] . . . it is in the back . . . there are too many people here . . ." should lead the inspector to question the traveller about his goods. A customs inspector's role is to determine if the goods can enter the country.

[41] Mr. Bury testifies that his superior, Alain Aubut, asked him to meet with the grievor about a border lookout concerning his brother. The discussion focused on the grievor's relationship with his brother. The grievor told Mr. Bury that he hardly ever spoke to his brother, that he only saw his brother twice a year and that he only learned through a colleague that his brother was a trucker. However, he knew about the story of his brother crossing the border at Abercorn without stopping and defended him. Mr. Bury indicates that he offered the grievor the opportunity to work at a location where he would not be alone for the remainder of the border lookout to avoid having to search his brother. The grievor then said that his brother never went across at Frelighsburg. At that time, Mr. Bury was satisfied with the grievor's answers. Following the events of June 20, 2004, Mr. Bury prepared an email to his superior to describe the conversation that he had had with the grievor regarding the border lookout (Exhibit E-14). He also prepared a written note on the meeting for Mr. Duteau, the head of intelligence, on the same subject (Exhibit E-15). Mr. Bury also adduces the border lookout on Serge Laplante (Exhibit E-16).

[42] Under cross-examination, Mr. Bury acknowledges that certain types of trucks use the Frelighsburg border crossing, such as those transporting “wood logs” or goods, provided the paperwork is in order. He also mentions that people who live nearby who do local deliveries use that border crossing. Mr. Bury acknowledges that the East Pinnacle customs office closes at midnight and that it has no barrier. A notice asks travellers to report to another crossing. Mr. Bury is not aware of the number of crossings that occur at the Moores Line, East Pinnacle or Frelighsburg border crossings without vehicles stopping. He testifies that closed customs offices are the RCMP’s responsibility. He does not know the RCMP’s patrol schedules.

[43] Asked what a customs inspector is supposed to do if someone dangerous, who is the subject of a border lookout, shows up, Mr. Bury states that an inspector who is afraid for his safety is to withdraw and call the police.

[44] The employer’s representative called Mr. Aubut to testify. Mr. Aubut has been the head of operations for the St-Armand sector since August 1995 and has over 35 years of service in the federal public service. He heads a team of six primary supervisors who oversee the work of customs inspectors. He is responsible for ensuring the administration of customs and immigration programs for nine border crossings. The Quebec region has 10 districts under the supervision of regional directors, each with 3 or 4 heads of operations or assistant directors.

[45] Mr. Aubut testifies that in December 2003, he received a call from the director informing him that a brother of the grievor, Serge Laplante, was the subject of a border lookout. He asked Mr. Bury to offer to relocate the grievor.

[46] Mr. Aubut testifies that the role of a customs inspector is to protect the Canadian population and economy by controlling the access of travellers and goods to Canada.

[47] Mr. Aubut states that if an individual identifies himself or herself only by first name, unless it is someone he knows, he would ask the person to identify himself or herself and to provide an official document with a photograph. He adds that comments that the traveller has goods and there are too many people around would raise his suspicions. He would ask the traveller what he was transporting.

[48] Mr. Aubut testifies that a few hours before the June 20, 2004 operation he received a call from the director of the Montérégie district, who informed him of the possible involvement of a customs inspector in drug smuggling. He took the necessary action to get a replacement for that employee in the event that he was arrested. The next day, he gave the grievor notice of his suspension due to an investigation.

[49] The next witness called by the employer was the RCMP undercover officer whom I will identify by the letters "AI". AI has worked for the RCMP since 1990 in the special investigations section. AI states that undercover work is an investigation technique used to gather evidence on an individual, group of individuals or an organization to substantiate criminal or other allegations. To become an undercover officer, he had to successfully complete specific RCMP training. Before becoming an undercover officer, he was an investigator and patrol officer for the RCMP in the Northwest Territories and Nova Scotia. He has been a full-time undercover officer since 2002.

[50] AI describes the role that he played on the night of June 20 to 21, 2004. He began by taking possession of a Chevrolet Avalanche pickup truck on the American side. The vehicle was involved in smuggling 150 kg of cocaine. His role was to replace the pickup truck's driver, arrested in the United States, and cross the border. AI identifies the notes that he wrote following the events (Exhibit E-1, Appendix 9).

[51] AI testifies that he always works with a covering officer who acts as liaison with the police and gives him his objectives. He received orders to go to the border crossing and ask for someone called Serge, and if the customs inspector let him go through without talking, he was to engage him in conversation. The goal was to determine whether the customs inspector was involved in the plot to facilitate entry into Canada.

[52] AI testifies that when he arrived at the border crossing, he was questioned by a Caucasian person who spoke French. The customs inspector asked him his name. AI said it was Alain because that was the first name of the person arrested in the United States. The inspector asked him how long he had been in the United States. AI said two weeks. AI asked the inspector if Steve was nearby. The inspector said that he did not know Steve. AI added, "[translation] Steve was supposed to wait for me here." The inspector then said, "[translation] Do you mean Serge?" AI winked at him and said that that was whom he meant. The inspector asked him if he was familiar with the area, and AI replied in the negative and added, "[translation] I do not want to wander around with it . . . Serge was supposed to meet me here." He drove off and parked about

45 metres away. A few minutes later, the inspector came to his vehicle with a piece of paper. AI indicates that the inspector asked him if he had Serge's telephone number. AI told him that his cellphone had died around 15:00 that afternoon and that he was to meet Serge at this location at 00:30. AI added that he had gotten lost, which is why he was a little late. AI testifies that he told the inspector that he had spoken to Serge at 13:30 and that they had agreed to meet at the border. AI asked the inspector if he could call Serge, because his cellphone was not working in that location. The inspector indicated that he did not like using the crossing's telephone for "[translation] this business." AI insisted saying, "[translation] Call Serge, tell him that his friend has arrived." AI testifies that the inspector then asked him if he was familiar with the area, and he replied in the negative. The inspector then showed him a photocopy of a map showing the road to Dunham, saying that Serge should be in that area, indicating Dunham. The inspector asked him if he had a meeting place. AI testifies that he again said that Serge was supposed to wait in the area, meaning the border crossing. AI asked if there was a gas station in Dunham, and the officer said that there was one. AI then asked the inspector to call Serge and to tell him that he would be at the gas station in Dunham. The inspector asked AI to wait while he went to call Serge. While the inspector was in the building, two vehicles crossed the border, including that of the covering officer. AI then backed up to the border crossing and told the inspector he would wait in Dunham because there were too many people. The inspector told him not to worry, because they were regulars. The inspector told him that he was having trouble with his calling card. AI told the inspector he would be at the gas station in Dunham. The inspector then showed him on the map to be careful to turn right on highway 213 and not to continue on highway 207. AI again told the inspector to call Serge and then left.

[53] AI testifies that he then contacted his covering officer to inform him of his conversation with the customs inspector. The covering officer told him to drive to Dunham. At Frelighsburg, he encountered a car parked on the opposite side of the road with its headlights on. It was a red Acura. The car followed AI's vehicle and that of the covering agent. The covering agent then told AI that it was Serge and that he should park on the shoulder as soon as he had the chance. Serge then passed the covering officer's vehicle. When he was parked on the shoulder, the RCMP arrested Serge Laplante. AI wrote a report from his notes on his laptop computer between 10:10

and 11:40. AI testifies that throughout the operation his cellphone did not work and that he communicated using a police transmitter.

[54] AI testifies that he crosses the border occasionally in his free time and that he was surprised that the inspector did not ask him for his last name and that he did not ask him about the goods that he was carrying. He was also surprised to be given a map without asking for one. This was the first time that had happened to him at a border crossing.

[55] AI testifies that when he arrived at the border crossing, he acted as if he was nervous. He adds that when he asked for Steve, the inspector looked surprised. AI states that at no time was he aggressive nor did he threaten the inspector physically or verbally. His role was to drive the vehicle across the border and meet with Serge. When crossing the border he was to try to determine if the inspector was facilitating the entry into Canada. He wanted to confirm that the inspector knew Serge and had knowledge of his arrival in Canada.

[56] Under cross-examination, AI states that his first point of contact is the covering officer. The covering officer gives him his objectives and assures his safety. He confirms that his first objective was to get the truck across the border and that his secondary role was to see if the customs inspector was corrupt.

[57] Replying to questions, AI states that he noticed that when he arrived in Enosburg (a town on the American side of the border) that his cellphone was not working. AI testifies that he then decided to use a police transmitter that was hidden in the pickup. To his knowledge, no recording device or camera was in the vehicle. AI testifies that he has not seen the videotape that was made when he crossed the border. AI reports that court authorization is needed to make recordings. In this operation, he had to present himself at a border crossing. There were no threats to his safety and therefore there was no need to listen to any conversations.

[58] Questioned about his notes on the events (Exhibit E-1, Appendix 9), AI acknowledges that what was reported in his notes was not word for word and that in some situations, perceptions come into play. AI confirms that he only identified himself to the customs inspector by a first name, "Alain," and was surprised that the inspector did not ask him for a last name before moving on to the next question. If the grievor was involved, it is reasonable that he would have known Alain Charron, in AI's

opinion. AI also indicates that he deliberately used the first name “Steve” rather than “Serge.” AI acknowledges that he did not mention in his notes that he winked at the grievor but states that in rereading his notes, he remembered doing so. It was after this exchange that the grievor asked him if he was familiar with the area. AI had not indicated at that point in the conversation that he had been lost. AI explains that it was only later in the conversation that he told the grievor that he had been lost in the United States. AI confirms that it was at his own initiative that he parked about 30 metres away and not at the customs inspector’s suggestion.

[59] AI testifies that it was the customs inspector who asked him if he was familiar with the area and if he had a meeting place. With respect to the passengers of the two vehicles that crossed the border, AI maintains that the grievor told him that they were regulars. AI states that he remembers the key points in his notes, that he is testifying because it is his duty to do so and that he is testifying to the best of his knowledge.

[60] Under re-examination, AI states that his perception was that the customs inspector was involved. When AI asked the customs inspector to call Serge, he said, “[translation] I do not like to use the telephone for these types of things.”

[61] The grievor was the next witness. He had been working as a customs inspector for slightly less than 22 years at the time he was dismissed. He confirms that he had a clean file. He has been married since 1993 and is the father of three children, a girl aged 12 years and twin boys aged 7 years. He states that his work was important to him. He considered himself privileged to have a government job and was expecting to be transferred soon to an office job so that he could stop working shifts. At that time, he expected to work for about 13 more years before retiring.

[62] The grievor testifies that he is the youngest of a family of eight children consisting of two girls and six boys. His brother Serge is the fourth child. The oldest in the family is 64 years old, he is 45 and Serge is 57 years old.

[63] Questioned about relations between him and his family, the grievor states that he last saw his oldest brother, Ronald, in 1993 when he got married. As for his second brother, Yvon, he last saw him in 1987 when their mother died. He sees his sister France five or six times a year and she lives close to him. He sees his brother Mario two or three times a year. He has a mental illness and the grievor calls him regularly at

home. His brother Normand is dead. His sister Muriel lives in Washington, and he sees her twice a year and speaks to her often on the phone.

[64] With respect to his relationship with his brother Serge, the grievor states that he normally sees him two or three times a year at a restaurant for his brother Mario's birthday or at brunch at his sister France's home at Easter. He also saw his brother at a corn husking party that he organized when his sister Muriel came in the summer. Until 2004, he did not speak to his brother Serge on the phone unless there was a death in the family. The last few times he had seen his brother Serge was at his sister France's home at Easter in 2004 and at the funeral of his uncle, Henri Laplante, on May 22, 2004. He mentions that Serge called him in February 2004 to tell him that he had a shipping container for him.

[65] Regarding that container, the grievor states that in October 2003, at his brother Mario's birthday, he mentioned at the restaurant table that he wanted to build a shed. He states that Serge suggested that he might have a container that could be used as a shed. His brother worked in the transportation field. The grievor indicated at that time that he was interested and asked his brother to let him know when a container might be available. He then said that there were many calls about the container but that many of his calls were unanswered and were picked up by the answering machine. He testifies that at one point, Serge told him that he had a container and that he wanted to meet him in Iberville to show it to him. The grievor went to the meeting. The container was suitable, but it was on a trailer that was frozen in ice. The brothers agreed that when it was possible to move the container, Serge would deliver it. A few calls were subsequently made about the delivery, which was always postponed. In the end, the container was sold to someone else.

[66] The grievor told his brother that the best time to deliver the container was when he worked the night shift, because he was home during the day. He had to be there to help with his truck or his tractor to unload the container from the trailer. He testifies that he gave his brother the information that was on the paper showing his work schedule (Exhibit E-1, Appendix 6) on May 22, 2004 and that on the same day, May 22, 2004, his brother Serge called him in the morning to ask him what time the funeral was for his uncle and if he was going. He told him that he was not going to the funeral but that he was about to leave the house to go to the town of Sutton. The grievor also

states that he owns a workshop in Sutton where he putters around. Serge Laplante went to the workshop to see him before attending the funeral.

[67] The grievor testifies that Serge asked a few questions during the meeting. Serge wanted information about the border crossing closest to Shelby Lake. The grievor states that he told him there were two crossings close by, East Pinnacle and Frelighsburg. He asked his brother Serge why he wanted the information. Serge told him that he wanted to buy a boat in Shelby Lake and that one of his friends was going on holidays to the United States and was to come by Shelby Lake on his way back to attach the trailer and collect the boat. Shelby Lake is very close to the border. The grievor testifies that his brother also told him that he was going to have a container and asked him when the best time was to deliver it. That was when he passed on the information about the night shifts that he would be working. He states that he always carried a copy of his work schedule in the sun visor of his truck.

[68] The grievor testifies that he subsequently had phone conversations with Serge regarding an inheritance from another uncle for which all the nephews and nieces were heirs. Serge also communicated with him to find out if he could export a vehicle to the United States through any American border crossing. The grievor checked with his American colleagues and provided Serge with the information. He adds that the conversations were of the question-and-answer type and not of the invitation-to-a-restaurant type. He states that his brother also contacted him to locate a former work colleague who lived in Sutton. He also states that he found the telephone number and gave it to his brother.

[69] The grievor continues his testimony by describing what happened on June 20, 2004. He states that he left his house around 22:00. He went to the village to meet some people, because it was voting day on the amalgamation or separation of the municipality. He was interested in the results. Then, on the way to work, he stopped at the East Pinnacle border crossing to chat with the customs inspector, Claude Benoit. He did that regularly when Mr. Benoit was on duty. An American border patrol officer was with Mr. Benoit, whom the grievor also knew. He then went to Frelighsburg. The grievor states that he worked the night shift from June 19 to 20, 2004.

[70] The grievor continues testifying, stating that around 00:15 a pickup truck driven by an American crossed the border. That person regularly crosses the border to buy fruits and vegetables at the central market in Montréal. He states that he had a short

conversation with that person. The second vehicle to cross the border was the Chevrolet Avalanche pickup truck. When that vehicle arrived, he asked the driver to identify himself, and the driver answered with the name "Alain Charron." The grievor states that he then asked how long he had been away. The driver told him two weeks. The grievor asked if he had bought or received anything, and the driver responded in the negative. He also states that at this point, he had reached the end. He said to him, "[translation] Okay, that's fine," because he was satisfied with the client's answers. It was then that the driver said, "[translation] I got lost on the small roads before getting here." The grievor responded, "[translation] You are not the first, there are lots of people who get lost" and asked, "[translation] Are you from the area?" The driver said that he was not. The driver asked him if he had seen a red car, and he responded in the negative. The grievor states that the border crossing is often used as a meeting place. The driver of the Chevrolet Avalanche pickup truck asked if he could park a little further on using a hand sign. The grievor said that he could park at the end of the yard so that he would not be "in the way" if a truck arrived. The driver of the pickup truck then parked at the end of the yard.

[71] The grievor continues his testimony by stating that he then went into the office. He states that he hoped that the driver would leave, because he was tired, since he had not slept in the last 24 hours. The day before, he had worked a night shift on overtime and had spent the day at a family party in Longueuil. When a vehicle arrives at the border crossing, a bell rings, meaning a customs inspector can doze between clients. The grievor states that he wanted the pickup truck to leave so that he could take a nap. Noting that the driver was still waiting, he decided to take a road map and show him how to get to Dunham. It is a map that the town or chamber of commerce provides to tourists. He took the map and headed to the pickup truck.

[72] When he got to the vehicle, the driver rolled down the window in the door. The grievor said, "[translation] You are not familiar with the area?" The driver said that he was not. The grievor then gave him the map and explained that he could get to Dunham by following the route he had outlined. The reason that he directed him to Dunham was that from there, a person could go in all directions. From Dunham, it is possible to get to St-Jean-sur-Richelieu, Cowansville, Granby or Sutton. When he gave him the map, the driver thanked him, and it was then that the driver asked if he had seen Steve. The grievor testifies that he hesitated and then answered, "Steve?" He states that at that moment, he did not know to whom the driver was referring. The

driver again asked, “[translation] Have you seen Steve?” It was then that he made the connection with his brother Serge and said, “[translation] Do you mean Serge?” He made this connection because his brother Serge had spoken to him about a friend with a pickup truck who was to pick up a boat at Shelby Lake, and the driver had asked him if he had seen a red car. His brother Serge drives a red car. The grievor testifies that he told the driver that he had not seen his brother. The driver asked him to call Serge. The grievor states that he then asked the driver, “[translation] Do you not have a cellphone?” The driver told him that he did but that the batteries had been “dead” for three hours. The driver repeated his request: “[translation] Can you call Serge?” The grievor replied, “[translation] Not really, but I will try” and explains that he said “not really” for several reasons. The telephone at the crossing is not a public telephone and employees may not make long distance calls at the employer’s expense. He adds that he does not like disturbing people at midnight, because it is not a reasonable hour.

[73] The grievor testifies that he left the pickup truck and returned to the office. He tried to call his brother Serge using his calling card two or three times, but the card did not work. In the meantime, two vehicles crossed the border: a grey Honda automobile with two occupants (a man and a woman) and a Nissan van driven by a man. The occupants of both vehicles indicated that they had not bought anything. He testifies that he then contacted the operator to obtain instructions on using the calling card. That was when he heard the horn from the Chevrolet Avalanche. The driver had backed up toward the crossing. He does not know how long he had been there and did not notice him until after he honked. Leaving the office, he told the driver that he was unable to reach his brother, to which the driver answered, “[translation] That’s okay, it is not important.” The driver told him that he needed to fill his gas tank. The grievor testifies that he told him that in fact, on the map, as he entered Dunham, there was a gas station on the left and that he could not miss it. He showed him on the map and gave him directions for going through Frelighsburg. The driver thanked him and left very quickly. The grievor indicates that he regretted not telling him to look out for deer and added that when the truck backed up to the office, the driver said, “[translation] There is a lot of traffic here.” He responded, “[translation] No, it is regular.” After the pickup truck left he tried again to reach his brother Serge but was only able to leave a message on his answering machine.

[74] With respect to AI’s statement, the grievor testifies that when asked to identify himself, AI responded with the name “Alain Charron” and that in the 22 years of his

career, no one had ever answered by just giving his or her first name. If that had happened, he would have asked for the full name. He adds that the discussion about Steve took place when the Chevrolet Avalanche was parked at the end of the yard and that AI never said, “[translation] I do not want to wander around with this.” AI asked him if he could park at the end of the yard. The grievor testifies that AI never said to him, “[translation] Serge told me to meet him here around half-past midnight.” He reiterates that the discussion about Serge took place at the end of the yard. He affirms that he never told AI that cellphones did not work and that it was AI who told him that the batteries in the cellphone were “dead.”

[75] The grievor continues by stating that AI did not ask him if he had a telephone in the office and states that when AI asked him to call, he answered, “[translation] Not really, but I will try.” AI never told him to call Serge and tell him that “his friend” had arrived. The grievor states that they discussed the map before talking about Serge and that the reason he went to the pickup parked at the end of the yard was to give AI the map so that he would leave the premises. When AI backed up to the office, he told the grievor that he needed to get gas. The grievor states that AI did not report the discussion in the correct sequence. He explains that it was when AI backed up that he told AI that he could not reach Serge. He adds that the recording shows that AI takes out the map and that he gives him information on which direction to take. The grievor notes that his hand gesture can be seen on the recording. He claims that he never said, “[translation] They are regulars” but rather, “[translation] It is regular.” He adds that he could not have said “[translation] They are regulars,” because the second vehicle was driven by the covering officer who was definitely not a regular. He states that he did not tell AI that he had problems with his calling card but rather that he was unable to reach Serge. He adds that he had understood that AI needed to fill his gas tank. AI thanked him but did not ask him to contact Serge again.

[76] The grievor states that during the RCMP interrogation, the officer told him that the telephone at the Frelighsburg border crossing had been tapped. At that time, he replied, “[translation] No problem, I have nothing to hide.” He testifies that he was aware that that had already been done in customs offices and that he knew that it was a possibility.

[77] Asked to comment on the level of difficulty of the work of customs inspectors in the Frelighsburg, East Pinnacle and Morris Line area, the grievor states that it was

easy to smuggle contraband across the border. He states that there is no surveillance and that the RCMP has not patrolled since 1993. He has worked in all of those locations, among others, when replacing colleagues absent on sick leave. He indicates that at East Pinnacle, after midnight, the door is locked and the key hidden. American officers will call to say that trucks or cars are crossing, and those facts are noted for statistical purposes. He states that it is very easy to cross without stopping at that location.

[78] The grievor testifies that since the RCMP are no longer available to answer their calls, customs inspectors must contact the Surété du Québec. During the night shift, the Surété du Québec has only one or two vehicles to cover an area that the grievor describes as immense.

[79] With respect to the Frelighsburg border crossing, the grievor testifies that if a vehicle arrives from the United States and it goes through without stopping, there is little chance of identifying it. One does not see the vehicles coming from a distance. In his opinion that means that there is a lot of smuggling of cigarettes and alcohol and maybe even drugs.

[80] Questioned about why his brother would have chosen Frelighsburg if it is so easy, the grievor answers that his brother knew that no searches are performed at night. The customs inspector is alone, he has no replacement and he is not armed. He states that his brother knew this because he had told him so earlier, during a family discussion. In his view, his brother wanted to take advantage of his night shifts because he knew that he would not perform a search. He states that he never discussed a \$100,000 payment with his brother Serge. The grievor believes that his brother used him to get more money by making his accomplices think that he needed a door. In reality, he did not need one.

[81] The grievor points out that there is nothing unusual in his bank accounts and that he is not someone who spends a lot. He does not have new vehicles, and he has only three years left to pay off his mortgage.

[82] Under cross-examination, the grievor reiterates that he had little contact with his brother before fall 2003. He had contact about three or four times a year. He remembers having seen him in Frelighsburg maybe once but could not say when. He was not close to his brother. In 2004, he had more contacts for the reasons given

earlier in his testimony. He claims that he never told the RCMP that he had not had contact and simply forgot to mention the container. The grievor states that on the advice of his lawyer, he should have said nothing. He believed it was a tempest in a teapot. He states that he never received the container but did say that he made concrete blocks in his basement in anticipation of its arrival.

[83] With respect to the phone calls about the inheritance from an uncle, the grievor states that all of his brothers and sisters were heirs but that his brother Serge was late in signing. One of his sisters asked him to tell Serge that they were waiting for him to sign. The grievor states that his sister France did not have Serge's telephone number and that his other sister lives in Washington. He does not recall how many times he spoke with Serge about the matter but adds that he reached Serge's answering machine numerous times.

[84] In response to questions, the grievor confirms that he saw that the Chevrolet Avalanche had a commercial licence plate beginning with the letter "F". He indicates that even with commercial vehicles, he is not required to ask for an identification card. The person had nothing to declare. Customs inspectors sometimes have statistics to complete on commercial vehicles.

[85] The grievor confirms that with respect to the discussion of Steve/Serge with AI, he did not confirm that AI was actually speaking about his brother Serge. He did not think it was important to do so. He was not aware whether his brother had already been arrested. He states that he was not worried that someone was looking for his brother, even if he had already crossed without stopping. He would never have thought that his brother would get him involved in such things and states that his brother had done him wrong without his knowledge. He saw his brother a month after the incident at a funeral for his nephew, who had died in a motorcycle accident.

[86] Questioned about whether he was uncomfortable giving his brother his work schedule, the grievor responds that he was not, because he did it to get the container. He also indicates that he pointed out the road to Dunham because he wanted AI to go away. He did not know where the boat was; it was his brother's problem, not his. He acknowledges that it is not part of a customs inspector's duties to give directions but that he can assist a traveller.

[87] Questioned about his answers to questions from the police officer who interrogated him on the morning of June 21, the grievor states that he was tired and that he had worked the day before from 06:00 to midnight and was back on the night of June 20, 2004.

[88] Asked whether he considered it strange that AI mentioned that there was a lot of traffic at the border crossing, the grievor states that at that point in the conversation, his customs work had completed. AI was looking for his brother and he thought it was about the boat. There was nothing to be worried about.

[89] The grievor confirms that in his opinion, the East Pinnacle and Morris Line border crossings were “[translation] veritable sieves” like other crossings. He notes that people cross without stopping in broad daylight at East Pinnacle and Frelighsburg. Asked why his brother would have smuggled the drugs through Frelighsburg, the grievor states that his brother should be asked that question. He adds that his brother knew that they do not perform searches at night. He had told him that at the table during a discussion of customs services. There is no security and no replacement, and custom inspectors are not armed. The grievor states that he would not grab someone by the arm who had cocaine and possibly a weapon. If he suspected drugs, he was supposed to call the St-Amable crossing and identify the vehicle and the licence plate number. He would not risk his life. According to the grievor, his brother Serge knew that by crossing at Frelighsburg, there was no risk to his \$100,000 bonus. Asked why his brother would have involved him without his knowledge, the grievor states that it was to make \$100,000. He adds that it was his brother Serge who had offered the container. He mentions that his sisters have not spoken to Serge since the incident.

[90] With respect to the fact that he did not mention during the interrogation that he had tried to reach his brother Serge, the grievor essentially states that he did not think to mention it because he had not spoken to him. He reiterates that when AI mentioned a red car, he thought that he was looking for his brother.

[91] Asked about the moment when he gave his schedule to his brother Serge (Exhibit E-1, Appendix 33), the grievor replies that he did not give it to his brother on June 4, 2004 but on May 22, 2004 at his uncle’s funeral. He adds that he went to the trouble of making concrete blocks for the container and that the blocks were still at his house. He never received the container and no longer wants it; he wants nothing more from his brother.

[92] As for the fact that AI claims that the grievor did not ask him for his surname, the grievor states that he believes that AI is lying to add weight to his investigation. He mentions that in the statement he signed on December 1, 2004 (Exhibit E-19), it shows at page 7 that he met his brother at his uncle's funeral. He ends by stating that he always fully cooperated.

III. Summary of the arguments

A. For the employer

[93] The employer's representative states at the outset that if the preponderance of evidence shows that the grievor was involved in a plot to import drugs, then dismissal is an appropriate disciplinary measure. He cites *Dionne v. Treasury Board (Solicitor General of Canada — Correctional Service)*, 2003 PSSRB 69, in which it is mentioned that there are forms of misconduct that are incompatible with the public office held by an employee, especially if the duties of that office involve enforcing the law.

[94] According to the employer's representative, the facts in this matter support the grievor's involvement in a plot to import drugs. It is not a simple coincidence, because there are too many anomalies in the facts. The evidence in the case makes it more likely that the customs inspector was involved than not involved.

[95] The employer's representative points out that I must evaluate the credibility of the witnesses, the two RCMP officers and the grievor. He notes that the grievor stated when testifying that the RCMP lied "[translation] to have [his] head." The employer's representative cites *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (QL), in which it is mentioned that even if a witness testifies with confidence, his testimony must be analyzed in light of all of the facts. This is especially true when the grievor essentially claims that the RCMP officers plotted against him. He cannot make such a statement without consequences.

[96] The employer's representative questions the credibility of the grievor's version of events. He points out that the grievor not only claims that the plot to import narcotics occurred without his knowledge but also that the RCMP undercover officer (AI) deliberately fabricated the evidence to implicate him. He claims that AI invented the sequence of events on the night of June 20 to 21, 2004. In the opinion of the employer's representative, those are serious accusations that must be supported by evidence. Without any supporting evidence, that statement is pure fantasy. He notes

that the RCMP officers were not cross-examined about their real motivation or about whether they were pressured by their superiors. He further points out that the grievor never presented any evidence showing that he filed a complaint to the police ethics board concerning fabricated evidence. The representative also relies on *Ayangma v. Treasury Board (Department of Health)*, 2006 PSLRB 64, in which the adjudicator dismissed similar unsupported allegations of a plot.

[97] The employer's representative states that the good faith of the RCMP witnesses must be assumed and that unless proven otherwise, the undercover officer's version of the events confirms the grievor's involvement. He mentioned *Jalal v. Treasury Board (Solicitor General — Correctional Service Canada)*, PSSRB File No. 166-02-27992 (19990421), which reiterates the criteria to be used to determine the credibility of a witness. He notes that Corporal Turcotte found out that the drugs were to be smuggled across the border at Frelighsburg the same night that the grievor was working and that the undercover officer had to verify this information and determine if the inspector was involved. The employer's representative points out that the drugs crossed as they were supposed to.

[98] According to the employer's representative, some of the grievor's explanations are surprising. For example, the reason that he gave his brother his work schedule and the story of the container were offered more than two years after the dismissal. The grievor handed over his schedule despite knowing that his brother might lie and that he had knowingly crossed the border without stopping, and the grievor did so without asking any questions. As a customs inspector, the grievor should have asked questions. Why did Serge Laplante apparently need his work schedule from May 17 to June 24, 2004? Is it chance that the work schedule ends the same night that the narcotics crossed the border? The employer's representative further notes that the three attempts to deliver narcotics recounted by Corporal Turcotte and detected by the wiretap were all to have taken place between May 17 and June 21, 2004. The employer's representative does not find the grievor's version credible; a career customs inspector duped by his brother despite admitting that his brother had asked him several questions about customs offices and his work schedule.

[99] The employer's representative notes that on several occasions, the grievor stated that he was not close to his brother, but the facts show otherwise. The evidence shows that the brothers exchanged services. The grievor does not hesitate to contact

American customs to obtain information for his brother about exporting a vehicle. He performs research to find a former colleague, and Serge Laplante is ready to find him a container. However, the grievor also says that Serge does his own thing, that he does his and that he does not even know where Serge lives. The employer's representative submits that the grievor is much more aware of his brother's activities than he claims. It would be very surprising for a brother with whom he has not associated before 2004 to reappear in his life asking all sorts of questions about customs without it ringing alarm bells. The employer's representative submits that the employee made up a story using the RCMP documents, while the undercover officer adduced the notes that he took at the time of the events on the night of June 20 to 21, 2004.

[100] The employer's representative further points out that the grievor attributes his answers during the RCMP questioning to being tired and to the fact that he thought that it was not a serious situation. Despite the fact that the interrogation was a key opportunity for him to try to prove his innocence, the grievor preferred to play word games, stressing that he never spoke to his brother that night when, in fact, he had tried to reach his brother from the border crossing.

[101] The employer's representative adds that the grievor gave a copy of a road map to the undercover officer showing him how to get to Dunham without even knowing the officer's plans. The representative notes that although the grievor claims that he wanted the undercover officer to leave the border crossing so that he could take a nap, when the undercover officer does leave, the grievor tries to reach his brother. If he was in such a hurry to take a nap, why did he take the time to call his brother? The employer's representative further notes that the grievor's explanations about why he thought the undercover officer was looking for his brother do not make sense. If that had been the case, the grievor would have verified his understanding of the situation with the undercover officer.

[102] With respect to the argument that the smugglers could have used one of the other unmonitored border crossings, the employer's representative points out that the importance of the shipment meant that the smugglers needed to be sure of crossing the border. He states that the telephone records establish that Serge Laplante contacted the grievor's residence on June 20 around 18:00 (Exhibit E-1, Vol. II). Furthermore, he stresses that the wiretap of Tony Roy's conversations with the American agent establishes that as of May 11, 2004, Tony Roy confirmed that the

passage of the narcotics at the border was 100% guaranteed (Exhibit E-1, Vol. III, Appendix 33).

[103] The employer's representative points out that the grievor did not ask his brother Serge Laplante any questions during their conversations and was not interested in what was going on with Mr. Charron, whom the undercover officer was replacing at the time that he crossed the border. The grievor makes his own deductions, which he does not verify. If he is to be believed, the entire story with Mr. Charron is not his concern. The employer's representative notes that this is exactly what he was supposed to do — not ask questions and let Mr. Charron cross the border.

[104] The employer's representative notes, however, that the grievor confirms several facts related by the undercover officer, such as the conversation using the first names of Steve and Serge and providing the road map without being asked. The employer's representative adds that what the grievor is doing is changing the order of things so that it agrees with his explanations, and when the undercover officer's testimony is too incriminating, the grievor claims that it was made up.

[105] The representative states that the circumstances presented are very similar to the situation described in *MacKenzie v. Treasury Board (Revenue Canada — Customs, Excise and Taxation)*, PSSRB File Nos. 166-02-26614 and 26615 (19970203), and *Charbonneau v. Treasury Board (Revenue Canada — Customs, Excise and Taxation)*, PSSRB File Nos. 166-02-25889 and 25890 (19950523), where it was found that the customs officers were complicit.

[106] The employer's representative notes that if one looks at the frequency of telephone calls, it is evident that Serge Laplante is suddenly busy preparing the deal and that between those calls, by chance, he calls the grievor. Taken individually, it could be seen as coincidence, but when all of the coincidences are combined, it can be concluded that it is more probability than coincidence.

[107] The employer's representative brings to my attention *Rose v. Treasury Board (Revenue Canada, Customs and Excise)*, PSSRB File Nos. 166-02-27307 and 27308 (19961216), where it is mentioned that it is not a matter of proving beyond a doubt the actions alleged against the customs officer but rather of establishing the conduct of the customs officer on the balance of probabilities. The employer's representative

reviews the testimony of the undercover officer and notes that the latter had no interest in attacking the grievor.

[108] As for the issue of the delay between the indefinite suspension and the dismissal, the employer's representative argues that it is attributable to problems with obtaining the necessary information from the RCMP and the DEA to complete the administrative investigation. He refers me to *Decae v. Treasury Board (Revenue Canada — Excise)*, PSSRB File No. 166-02-26796 (19960513), where such a delay was not considered unreasonable.

[109] The employer's representative concludes by stating that the grievor created a gap in the security system of Canada's borders. The duty of a customs inspector is to determine the eligibility of persons and goods to enter Canada. Section 21 of the *Criminal Code* states that everyone who omits to do anything for the purpose of aiding any person to commit an offence is a party to the offence. The employer's representative states that the decision to dismiss the person is appropriate in these circumstances.

B. For the grievor

[110] The grievor's counsel begins his arguments by drawing my attention to *Alberta and Government of Alberta and Alberta Union of Provincial Employees (Khan)*, 131 L.A.C. (4th) 118, which mentions that in the absence of a criminal conviction, the employer must provide sufficiently strong evidence to establish reasonable grounds for dismissal.

[111] Reviewing the case law submitted by the employer's representative, the grievor's counsel points out that the criterion that appears in *MacKenzie* is the same as that found in *Dionne*. The issue is to determine whether the grievor was or was not involved in the activity of which he is accused, given the fact that this activity is incompatible with the office held by the employee. However, he notes that there are important differences between the present circumstances and the circumstances described in those decisions.

[112] The grievor's counsel points out that in *MacKenzie*, a witness directly implicated the customs officer. That customs officer provided no coherent explanation, and the evidence showed that he had purchased an expensive jewel by paying in cash. In this case, that is not the situation at all. With respect to *Charbonneau*, the grievor's counsel

notes that the court found that the customs officer knew very well that his brother was involved in smuggling alcohol, that he received gifts from his brother and that he did not ask any questions when his brother arrived at the border crossing. The grievor's counsel alleges that that did not happen in this case. The grievor's counsel notes that in his opinion, *Rose* is vastly different from the situation in which the grievor finds himself and that in particular, Manon Rose received large sums of money and had no valid explanation for where they came from.

[113] Commenting on the reference to section 21 of the *Criminal Code*, counsel for the grievor notes that to determine the guilt of an individual, it is necessary to establish that that person intended to commit a crime. Unlike the cases adduced by the employer's representative, in the opinion of the grievor's counsel, there is no such evidence in this matter.

[114] The grievor's counsel points out that the employer's representative acknowledges that he has the burden to convince me, on the preponderance of evidence, that the grievor knew that there was an illegal deal and, wanting to help with the deal, he closed his eyes. He agrees that if I come to this conclusion, I should dismiss the grievance.

[115] Returning to *Dionne*, the grievor's counsel argues that there is no solid evidence justifying the dismissal. On the contrary, counsel for the grievor argues that the evidence shows that his client is an honest individual who was used by his brother. He adds that a review of the grievor's testimony and the overall facts lead to the conclusion that it is unlikely that he intended to allow a large quantity of narcotics to cross the border.

[116] In the opinion of the grievor's counsel, there are three key testimonies in this matter: the testimonies of the two RCMP officers; the testimonies of Corporal Turcotte and AI; and the testimony of the grievor. With respect to Corporal Turcotte's testimony, he notes that several important points came out under cross-examination.

[117] Counsel for the grievor points out that it is known that this was an extensive police operation involving about 20 RCMP officers and a half-dozen DEA agents. A large quantity of cocaine was involved. Four of the people involved are in prison (the Roy brothers and the two drivers who were to transport the narcotics).

[118] The grievor's counsel notes that the evidence revealed that the second smuggling attempt was originally to have taken place between June 4 and 10, 2004. He points out that according to the transcript of the telephone conversation with the American agent on Monday, June 7, 2004 (Exhibit E-1, Vol. III), Tony Roy tells the agent that his guy at the border is on leave beginning midnight Friday and is not back at his post until the following Monday night. A verification of the grievor's schedule shows that in fact, the grievor worked the night of Saturday, June 12 and Sunday, June 13, 2004. There is therefore a significant difference between the grievor's schedule and the information obtained from the wiretap. The grievor's counsel believes that there can only be two plausible explanations for the discrepancy: either someone other than the grievor was involved or no one at the border was involved. Corporal Turcotte did not have an explanation for the discrepancy.

[119] Counsel for the grievor states that the third attempt was to have taken place between June 17 and 20, 2004. He emphasizes that the transcript of the June 17, 2004 telephone conversation between Mr. Charron and Serge Laplante clearly shows that the crossing could not be made before June 20, 2004 at midnight. However, he notes that his client worked from June 18 to 20, 2004. This does not match the employer's claims.

[120] The grievor's counsel points out that Corporal Turcotte admits that the grievor was not under suspicion before June 10, 2004 and then was only considered because of the family tie. Corporal Turcotte also admits that in none of the taped telephone conversations are there any conversations between the grievor and the Roy brothers or Mr. Charron. He acknowledges that the searches of the bank accounts of the grievor and his wife turned up nothing. He acknowledges that during the grievor's interrogation, despite instructions from his lawyer not to answer questions, the grievor answered the investigator's questions. He also admits that the notes (Exhibit E-1) show that there is not enough evidence to incriminate the grievor because it is not possible to prove that he knew that there was 150 kg of cocaine in the vehicle that crossed the border.

[121] The grievor's counsel believes that there is no solid evidence to implicate his client. The evidence is solely circumstantial, and if the facts around the work schedule are analyzed, counsel argues that they lead to the conclusion that either the "door" was someone else, or that there simply wasn't one. One thing is certain: in the opinion

of the grievor's counsel, it was not the grievor. Counsel for the grievor adds that Mr. Duteau admitted that he had no reason to doubt the grievor before June 16, 2004.

[122] With respect to the grievor's testimony, his counsel states that he explained his relationship with his brother Serge Laplante. From all indications, the family is not very close. The grievor also explained what happened on the night of June 20 to 21, 2004. The grievor's counsel points out that I will have to judge the credibility of his client's testimony. He notes that the grievor gave a clear explanation of the reasons for the telephone calls with his brother Serge, an explanation that he considers perfectly legitimate. He also notes that the grievor confirms that he was the one who gave his work schedule to Serge Laplante.

[123] The grievor's counsel points out that there are two versions of the events of the night of June 20 to 21, 2004: that of the undercover agent, AI, and that of the grievor. While there are many common points between the two versions, there are also important differences. Counsel theorizes that it is possible that each witness is giving his honest version of the events. He states that the June 2004 work schedule (Exhibit E-1) confirms that the grievor worked overtime on June 19 from 18:00 to 24:00 at East Pinnacle and that he worked from 00:00 to 07:45 on the morning of June 20 at Frelighsburg. The grievor's testimony tells us that he then went to Longueuil to a family party celebrating Father's Day and then returned to work the night of June 20 starting at 23:30 in Frelighsburg. The grievor's counsel mentions that it is quite possible that the grievor was tired, as he stated in his testimony. Counsel states that it is therefore also possible that the grievor missed some of the comments made by the undercover officer. In his opinion, there is no evidence that he understood that there was an illegal substance and that he knowingly allowed that substance across the border. The grievor's counsel adds that it is also because he was tired that the grievor gave the undercover officer a map, because he wanted him to leave the perimeter of the border crossing.

[124] Counsel for the grievor notes that there are two versions of how the undercover officer presented himself at the border crossing: one claims that he only gave the first name "Alain," while the other claims that he used the complete name "Alain Charron." Having said this, both agree that the next question was "[translation] How long have you been in the United States?" Counsel for the grievor argues that if, as the employer

claims, the recognition code was identifying using the first name only, then once the identification was made, why ask the second question?

[125] The grievor's counsel points out that the undercover officer stressed in his testimony the fact that he told the grievor that there was too much traffic and that he wanted to leave the crossing as quickly as possible, to which the grievor replied that it was "[translation] regulars." For his part, the grievor maintains that he simply said, "[translation] It is regular." The grievor's counsel notes that the two vehicles that crossed the border did not contain regular travellers because one of them was the covering officer.

[126] The grievor's counsel argues that the undercover officer, AI, could have been mistaken about the sequence of events. What strikes him is the fact that the RCMP took the time to post agents in the woods to film the scene but did not have enough foresight to install an electronic listening device in the office and in the truck that AI was driving. In his opinion, the explanation about how hard it is to get a warrant is questionable.

[127] He goes on to argue that the decision to dismiss is essentially based on the testimony of a single witness who implicates his client. He points out that the RCMP has the responsibility, through its investigation, to establish satisfactory evidence of the grievor's involvement, a customs inspector with over 22 years of service. The RCMP decided not to provide effective listening devices, which would have either implicated or exonerated the grievor.

[128] The grievor's counsel urges me to examine the grievor's answers to the questions asked by the employer's representative, which were frank and convincing. He refers to the following answer: "[translation] I did not think my brother would involve me, I was surprised and angry... I have never spoken to him since..." Counsel for the grievor also stresses that the grievor's sisters have not spoken to Serge Laplante since the events.

[129] The grievor's counsel concludes by stating that the burden of proof is on the employer and that the employer must convince the Board that the grievor was knowingly involved in a drug deal or that he closed his eyes to such a deal. Counsel for the grievor argues that this was not proven.

C. Employer's rebuttal

[130] In rebuttal, the employer's representative claims that in his opinion, the grievor's counsel is trying to introduce a concept of criminal law into adjudication. It is not necessary to provide evidence beyond a reasonable doubt but rather to establish the grievor's involvement on the preponderance of the evidence. The degree of involvement is not significant.

[131] As for the date on which the narcotics crossed the border, the instructions given by Serge Laplante to the driver, Mr. Charron (Exhibit E-1, Vol. III), corresponded to the period during which the grievor was to work, according to the schedule. In that way, Serge Laplante was making sure to minimize the risks to the operation. The representative adds that the fact that there was no contact between the grievor and Mr. Charron or the Roy brothers is typical of the strategy used by drug traffickers to ensure that people do not know each other.

[132] The employer's representative notes that the grievor is accusing the RCMP of plotting against him, while his lawyer is talking about two possible versions of the same event.

[133] The employer's counsel mentions that in *Rose*, the employee's clean record did not reduce the penalty.

[134] As for the fact that no criminal charge was laid against the grievor, the employer's counsel mentions that at that time, people were waiting for information from the DEA and that regardless, the burden of proof is different in adjudication. He concludes by indicating that the two processes should not be confused.

IV. Reasons

[135] The grievor, a customs inspector, was dismissed in April 2005 based on a report that in the opinion of the CBSA Regional Director clearly showed his involvement in a plot to assist his brother and his brother's associate in trafficking cocaine in Canada.

[136] The burden was on the employer to show that involvement based on the preponderance of evidence. It is not a matter in this instance of determining the grievor's criminal involvement beyond a reasonable doubt.

[137] I also believe it is important to reiterate the statement of the Federal Court of Appeal in *Flewelling v. Canada*, [1985] F.C.R. no. 1129 (QL), cited by Adjudicator Léo-Paul Guindon in *Dionne* and also cited in *Faryna*:

...

It appears to me that there are forms of misconduct which, whether they are prohibited by regulations or by the Criminal Code or by any other statute, are of such a character that they are readily recognizable by any reasonable person as incompatible and inconsistent with the holding by one involved in such conduct of a public office and in particular of an office the duties of which are to enforce the law.

...

[138] Accordingly, if I find that in fact, the grievor was willingly involved in the plot, then dismissal would be the only logical conclusion.

[139] Unfortunately, after a careful examination of the evidence presented to me, I reach that conclusion.

[140] The evidence showed that after the traffickers, the Roy brothers, had their initial plot to import narcotics fail, they established contact with the grievor's brother, Serge Laplante, to get a second large shipment of cocaine across the border.

[141] The telephone conversations recorded between one of the Roy brothers and an American DEA agent reveal the preparations that were made to ensure the cocaine's acquisition in Miami and its routing to Canada. On several occasions during the conversations, mention is made of a "door" at the border that must be paid.

[142] During the conversation recorded on June 4, 2004 (Exhibit E-1, Vol. III), Tony Roy tells the agent that he has to check whether his guy is working on Thursday, June 10 or Friday, June 11 or even Saturday, June 12, and agrees to call the agent on the following Monday. That Monday, Tony Roy informs the agent that the deal has to be completed by Thursday afternoon so that the driver, Mr. Charron, can get across the border before midnight on Friday, June 11; otherwise, he will have to wait until the following Monday (Exhibit E-1, Vol. III). This plan does not at all match the grievor's work schedule that was adduced in evidence (Exhibit E-1). While this evidence might

lead us to conclude that the grievor was not involved in the plot, the rest of the evidence adduced weighs in favour of his involvement.

[143] The evidence revealed that Mr. Charron met the agent to give him the agreed amount of money to purchase the cocaine. However, the DEA postpones taking possession by one week, the time needed to put the police operation in place. On June 17, 2004, Mr. Charron was arrested by the DEA when he took possession of the drugs. He agrees to cooperate with the DEA and confirms the involvement of Serge Laplante in the plot to smuggle the cocaine into Canada. He agrees to contact Serge Laplante to tell him that he has the drugs and to find out what to do. That conversation is recorded and reveals that Serge Laplante informs Mr. Charron to go ahead without any concern because the “door” is open on the night of June 20 to 21 after midnight (Exhibit E-1, Vol. III). The plan coincides with the grievor’s work schedule (Exhibit E-1) and tends to incriminate him.

[144] It should be noted that at the time of his arrest, Serge Laplante was in possession of a document containing information about the grievor’s work schedule (Exhibit E-1). The grievor admits giving information about his schedule to Serge Laplante. He explains that he did so on May 22, 2004 at his uncle’s funeral to facilitate delivery of a container that his brother Serge had promised him. He indicated to his brother the dates that he was working the night shift. I am not convinced by this explanation. The schedule as provided only shows the night shifts even though the grievor is also at home and able to receive the container on his rest days and when he works evenings. Moreover, information contained in the document includes the dates before May 22, 2004. I do not see any logical reason that Serge Laplante, on May 22, 2004, would have noted the night shifts from May 17 to 21, 2004. The fact that the grievor admitted that he gave the information to Serge Laplante, the fact that only the night shifts are noted on the document found in Serge Laplante’s possession and the fact that likely, it was not the day of the funeral, May 22, 2004, that this information was provided leads me to believe that the grievor was involved in the plot.

[145] The undercover officer, AI, replaced Mr. Charron. Unfortunately, no audio recording was made of the conversation between AI and the grievor when the undercover officer crossed the border. Although the versions are different on certain points, they are nonetheless similar on certain key points. The testimonies agree that AI states that he is looking for someone called Steve and that the grievor mentions that

he is perhaps looking for Serge. To explain the fact that he does not ask AI any questions to verify his assumption other than “[translation] Do you mean Serge?”, the grievor states that the driver of the pickup truck, AI, asked first if he had seen a red vehicle before asking for Serge. He then suddenly remembered that his brother Serge, who drives a red vehicle, spoke to him about a friend who was to help him move a boat from the United States. That explanation does not convince me. AI’s version does not mention that he informed the grievor that he was looking for a red vehicle (Exhibit E-1, Vol. I). Moreover, during his interrogation on June 21, 2004 after his arrest, which was videotaped (Exhibit E-10), the grievor denies suggesting the name of Serge to AI, who asked for Steve. He goes as far as to ask the investigator “[translation] Who is this guy?” However, in his testimony at adjudication, and in the summary of the December 1, 2004 interview (Exhibit E-9), he confirms having suggested the name of Serge remembering that Serge, who drove a red car, was waiting for a friend to help him get a boat. The testimonies also agree on the fact that at AI’s request, the grievor did not hesitate to try to contact his brother Serge in the middle of the night to inform him of the arrival of his friend. However, the conversation does not take place because he is only able to reach the answering machine. It is difficult to attribute to tiredness the grievor forgetting to say to the investigator that he identified AI as a friend of Serge Laplante, who was supposed to help him tow a boat. That omission tends to incriminate him and at the very least makes his version less credible. Furthermore, that version is not corroborated by any evidence.

[146] The evidence shows that the vehicle containing the drugs crossed the border without being searched and continued on its way until Serge Laplante signalled his presence. At that moment, the RCMP arrest Serge Laplante. The grievor is arrested at his work shortly afterwards.

[147] Reviewing the recording of the grievor’s interrogation that the RCMP made the morning after his arrest, I noted that the grievor denies on several occasions having spoken to his brother the previous day and denies on two occasions trying to reach him by telephone. However, the record of telephone calls (Exhibit E-1, Vol. III) confirms that there were two calls between Serge Laplante’s telephone and the grievor’s home on June 20, 2004 and confirms that at 01:15 on June 21, a collect call was made from the border station to Serge Laplante’s cellphone. Moreover, during his testimony, the grievor acknowledges making these calls and attributes the answers that he gave to the investigator to tiredness and to his lawyer’s instructions.

[148] The summary of the interview conducted on December 1, 2004, as part of the CBSA's internal affairs investigation was also adduced in evidence (Exhibit E-19). Each page of that summary is countersigned by the grievor. In it, he states, "[translation] I have no contact by telephone, mail, etc. with my brother Serge Laplante" However, the evidence shows through the telephone call records (Exhibit E-1, Vol. III) that he has quite frequent phone contact with his brother Serge. During his testimony, the grievor explains that his brother promised him a container that was to be used as a shed and that this promise led to the telephone calls. Moreover, the delivery of that same container is the reason given for providing his brother Serge with information about his work schedule. During his testimony, the grievor also gave various reasons for the contact with his brother Serge, including looking for a work colleague and obtaining information on exporting cars to the United States. All of this tends to confirm the existence of a closer relationship between the two brothers; a relationship that, apparently, the grievor took the time to acknowledge.

[149] Although the initial dates identified for crossing the border do not coincide with the grievor's work schedule, overall the evidence adduced leads me to conclude that there is a preponderance of evidence showing that the grievor was involved in the plot. The consequence of that involvement can only be dismissal of the grievance.

[150] For all of the above reasons, I make the following order:

(The Order appears on the next page)

V. Order

[151] The grievances are dismissed.

October 4, 2007.

P.S.L.R.B. Translation

**Georges Nadeau,
adjudicator**