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**File:** 566-02-6662

**Citation:** 2014 PSLRB 40



*Public Service  
Labour Relations Act*

Before an adjudicator

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BETWEEN

**ANDRÉ NICOLAS**

Grievor

and

**DEPUTY HEAD  
(Department of Fisheries and Oceans)**

Respondent

Indexed as

*Nicolas v. Deputy Head (Department of Fisheries and Oceans)*

In the matter of an individual grievance referred to adjudication

**REASONS FOR DECISION**

***Before:*** Linda Gobeil, adjudicator

***For the Grievor:*** Amarkai Laryea, Public Service Alliance of Canada

***For the Respondent:*** Martin Desmeules, counsel

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Heard at Gaspé, Quebec,  
October 29 to 31 and November 1, 2013.  
(PSLRB Translation)

## **I. Individual grievance referred to adjudication**

[1] On April 20, 2010, the grievor, André Nicolas, filed a grievance under paragraph 209(1)(b) of the *Public Service Labour Relations Act* (“the Act”). In his grievance, he contested the decision of the Department of Fisheries and Oceans (“the employer”) to terminate his employment on March 29, 2010. When terminated, Mr. Nicolas was a fishery officer with the employer. In its termination letter dated March 29, 2010, the employer alleged among other things that the grievor

[Translation]

...

*communicated confidential information to persons outside the department;*

*possessed and consumed illicit drugs;*

*associated with drug traffickers and fishermen who were subjects of DFO investigations;*

*endangered other fishery officers' safety; and*

*used his powers as a fishery officer inappropriately.*

...

[2] Mr. Nicolas's grievance reads as follows:

[Translation]

*I am filing a grievance against my dismissal; I rely on all the articles of my collective agreement and all other applicable legislation and policies.*

*I ask that my dismissal be withdrawn and that I return to work. I ask not to be subject to financial losses or pain and suffering. I request all other applicable corrective action and all possible reparations.*

## **II. Summary of the evidence**

### **A. For the employer**

[3] Yves Richard was the first witness for the employer. He has been Chief of Fisheries Regulations in the Quebec Region since 2011 and was Field Supervisor in the Magdalen Islands (“the Islands”) from 2003 to 2010. In that capacity, he supervised three fishery officers, including the grievor. At that time, Yves Richard reported to Jean

Richard, Area Chief, who also worked on the Islands. Yves Richard testified that between 2006 and 2010, five fishery officers, including the grievor, reported directly to him and to another supervisor, Albert Cyr.

[4] In his testimony, Yves Richard explained that a fishery officer's duties consist mainly of carrying out inspections, enforcing legislation and regulations that govern the fisheries, and supporting organizations such as the Sûreté du Québec (SQ) and the Royal Canadian Mounted Police (RCMP) (Exhibit E-1). Yves Richard stated that one of a fishery officer's roles is to conduct investigations under both the *Fisheries Act* and the Canadian *Criminal Code*. According to Yves Richard, a fishery officer can execute search warrants, conduct searches and make arrests. The kinds of offences that a fishery officer can investigate vary from unreported fish landings to using non-compliant fishing instruments, fishing in a prohibited period or zone, poaching, etc. According to Yves Richard, investigations are often conducted following a patrol, complaint or accusation.

[5] Yves Richard explained that the Islands are small and that everyone there knows everyone else, which sometimes complicates fishery officers' work. Yves Richard indicated that fishery officers often have to work closely with the SQ and the RCMP.

[6] Yves Richard explained that fishery officers have been peace officers since 1996; they are armed for their safety because they sometimes deal with violent criminals. For example, a fishery officer could end up in the middle of a drug deal. Yves Richard stated that fishery officers often deal with the same offenders as do SQ and RCMP officers. Some people often poach or carry out other illegal activities involving the fisheries to pay their drug debts.

[7] In his testimony, Yves Richard emphasized that fishery officers, SQ officers and RCMP officers share a lot of information about potential or actual offences under the *Fisheries Act* or the Canadian *Criminal Code*. Yves Richard explained that offences involving fishery officers sometimes go wrong, necessitating the SQ's immediate involvement. Yves Richard also testified that fishery officers not only work closely with the SQ and the RCMP on investigations but also share resources, such as snowmobiles, planes, etc.

[8] In his testimony, Yves Richard explained that each vessel has to have a "black box" that must be turned on that gives the vessel's precise location. From the "black

box,” fishery officers can track a vessel’s movements, which can be useful in times of emergency response. The “black box” provides the vessel’s location and exact movements. It also enables fishery officers to surveil a vessel moving suspiciously, which could suggest that an offence is about to be committed. According to Yves Richard, the “black box” system is managed in Newfoundland, but fishery officers, such as the grievor, have access to the data they transmit. Yves Richard testified that sometimes “black box” information is deemed of interest to the SQ or the RCMP and is shared with them.

[9] Yves Richard testified that a fishery officer’s work occasionally involves surveillance, and since everyone knows everyone else on the Islands, a fishery officer must exercise judgment. Yves Richard indicated that management asks fishery officers not to place themselves in situations in which they would have to intervene with their family members or friends. Yves Richard emphasized that thus, on the Islands, a certain distance must be maintained from the residents, and that fishery officers and their families often have to keep to themselves, even outside work hours (Exhibit E-1, pages 18 and 19), especially when the fishery officer has to act under the *Code of Conduct* (“the *Code*”) (Exhibit E-8). According to Yves Richard, in a small community like the Islands, fishery officers are identified even when they are not in uniform and even outside work hours. Thus, they must have an ethical lifestyle and act in compliance with the *Code* that applies to them, even outside work hours (Exhibit E-9).

[10] In his testimony, Yves Richard indicated that one of the factors considered in the grievor’s termination was that while he was a fishery officer, he associated with individuals who had trouble with the law, with either fishery or drug offences.

[11] On that point, in his testimony Yves Richard provided a list of names of people who, in his opinion, were friends or acquaintances of the grievor while he was a fishery officer. He specified that given his duties, the grievor should not have associated with those individuals.

[12] Yves Richard testified that the following persons were the grievor’s friends or acquaintances and that they were connected to poaching or drug trafficking. He mentioned Mr. “A.,” who was apparently arrested for drug trafficking and had a history of poaching. As for the “B.” brothers, he indicated that they were known for being violent and quick to fight. In addition, according to him, many poaching complaints had been received about them. In addition, they were under surveillance for drug

trafficking. As for Mr. "C.," Yves Richard affirmed that he was also found guilty of poaching in 2007 and is suspected of trafficking drugs on the Islands. He also affirmed that this same Mr. C. was the subject of a surveillance operation in 2006 that was aborted because of the grievor. He also mentioned Mr. "D.," another individual associated with the drug world, who had been convicted many times for fishery-related offences. According to him, all those individuals were closely or distantly associated with poaching or drugs and belonged to the grievor's circle of friends or acquaintances.

[13] Yves Richard affirmed that the grievor moved to the Islands in 1997. Therefore, Yves Richard was his supervisor from 2003 until his termination in March 2010. Yves Richard testified that in 2006, an operation was underway to catch Mr. C., who was suspected of poaching. However, on the day of the operation, Mr. C., who was fishing with a snorkel, came out of the water without any fish. According to Yves Richard, Mr. C., while still in the water, was apparently informed that fishery officers were watching and waiting for him to come out of the water with fish so they could fine him. Yves Richard explained that on that day, he was in the office but that one of his other fishery officers told him that while the operation was underway, the grievor made himself very visible on top of Cap de l'hôpital with the employer's well-identified truck to let Mr. C. know that he was being watched and that he should exit the water without any fish.

[14] According to Yves Richard, the grievor had been told to wait before letting himself be seen, but he did not wait. On the contrary, the grievor made himself highly visible on the Cap de l'hôpital to warn his friend Mr. C. According to Yves Richard, when the grievor's co-worker saw him in plain view atop the Cap, he tried to radio him to tell him to move, but the grievor did not answer, claiming afterward that his radio was not working.

[15] Yves Richard testified that the grievor was friends with Mr. C. and that he often gave Mr. C. a ride in his car. Yves Richard affirmed that after the 2006 incident, the other fishery officers became suspicious of the grievor and believed that he was providing information to his friends and acquaintances so that fishery officers would not catch them when they were poaching. Yves Richard also indicated that on the day after the 2006 incident, he told the grievor that if he found himself in a conflict of interest because an operation involved a friend, he was to notify his supervisor.

According to Yves Richard, contrary to what the grievor claimed, his radio had been working correctly.

[16] Yves Richard testified that a similar operation, again involving Mr. C., was conducted in 2007, but without the grievor's participation; he had been excluded. According to Yves Richard, the officers were able to catch Mr. C. poaching in 2007. He felt that it was better not to let the grievor know about the 2007 operation because Yves Richard and the other fishery officers had become suspicious of him.

[17] Yves Richard testified that in March 2008, another supervisor, Mr. Cyr, informed him that an SQ officer, Donald Bouchard, had notified him that he did not trust the grievor, who was suspected of sharing information with poachers and drug traffickers, including the B. brothers. Yves Richard affirmed that at that time, he shared the information with his superior, Jean Richard, who was already aware of it. During cross-examination, Yves Richard acknowledged that if the grievor's 2008 performance appraisal did not mention anything about illegally sharing information, it was because he and his superiors did not think that they had a solid enough case and that it was very delicate and that it was better to await further developments (Exhibits E-2 and G-2). Yves Richard explained that despite everything, he often criticized the grievor in the past for not issuing enough tickets and for being too complacent with offenders. He also affirmed that he did not act against the grievor based on Mr. Cyr's information because the case was in the hands of his superior, Jean Richard. For Yves Richard, the situation was annoying, and the employer did not know how to deal with it. He testified that he and his superiors believed that confronting the grievor at that stage, without having all the information, would have risked compromising the case and "blowing" the informants' cover. According to Yves Richard, he and his superior agreed to retain the grievor and wait until they had more evidence against him before acting against him. In his testimony, he acknowledged that the information that the SQ provided was reliable and that he had no reason to doubt it.

[18] Yves Richard affirmed that after March 2008, he changed his interaction style with the grievor and shared as little information as possible with him. For example, the grievor was no longer copied on received complaints, and when the grievor was nearby, the other fishery officers turned off their radios so that he could not hear what was being said.

[19] Yves Richard testified that Jean Richard called him in 2009 and told him that the grievor's case had evolved, that there were new facts and that a meeting with SQ officers should be scheduled.

[20] During cross-examination, Yves Richard confirmed that he had never seen the grievor take drugs and had never seen him with Mr. C. He also explained that giving information to poachers or drug traffickers could be dangerous for other fishery officers because it would create a risk of an ambush, and some poachers and drug traffickers were violent and unpredictable.

[21] Jean Richard also testified for the employer. He has been Area Chief, Conservation and Protection, for the employer since 2002. At the time of the facts at issue, he supervised Yves Richard and Mr. Cyr.

[22] Just as Yves Richard had done before him, Jean Richard emphasized in his testimony the close co-operation in terms of information and resource sharing between fishery officers and SQ and RCMP officers. As area chief, Jean Richard explained that he represented the employer, particularly to the SQ.

[23] In his testimony, just like Yves Richard had done before him, Jean Richard listed the names of the same friends and acquaintances of the grievor who poached or were linked to drug trafficking, adding a certain "Mr. E." to the list.

[24] According to Jean Richard, SQ officer Bouchard would have informed him in March 2008 that the grievor had informed Mr. E. that in fall 2007, fishery officers were working on a case involving the B. brothers and that the SQ was surveilling Mr. D. as part of a drug case. According to Jean Richard, at that time, the grievor was aware of the surveillance operation targeting the B. brothers. In addition, the grievor was allegedly aware of the SQ operation targeting Mr. E. because the fishery officers were discussing it among themselves and, in addition, the grievor had access to the departmental violations system, in which such information was stored. Jean Richard testified that in 2007, after two weeks of work, the operations against the B. brothers and Mr. D. were aborted because they had already been warned that fishery officers were watching them. According to Jean Richard, people spoke among themselves that the grievor associated with poachers and persons implicated in drug trafficking. According to Jean Richard, thus, it was possible to conclude that the grievor had given them the information.

[25] Jean Richard testified that after receiving the information from SQ Investigator Bouchard in March 2008, he met with Yves Richard and Mr. Cyr and spoke to his superior, John Chouinard, who worked in Quebec City. According to Jean Richard, it was agreed that they would not speak to the grievor and that they would wait and see what happened. Jean Richard explained that at that time, he was afraid that if he acted too quickly, he would “burn” the information sources. Thus, it was decided to hide information from the grievor to keep him in the dark about everything as much as possible. For example, not all the information about a surveillance operation was entered in the departmental information system that the grievor had access to.

[26] According to Jean Richard, from March 2008 to July 2009, the approach of hiding information from the grievor by turning off radios had an impact on his unit’s activities. It was becoming difficult to work, given the small number of fishery officers. He testified that therefore he contacted Jonathan Jauron of the SQ on July 9, 2009, for an update on the grievor (Exhibit E-3).

[27] Jean Richard testified that he received a reply from the SQ signed by Mr. Bouchard on September 10, 2009, explaining that in May 2007, the grievor stashed illegal material for a drug trafficker in his home, that he allegedly gave privileged information to traffickers, and that he had been seen in June 2009 with Mr. C., an individual connected to cocaine trafficking (Exhibit E-3).

[28] In his testimony, Jean Richard affirmed that in the past he had seen the grievor with Mr. C. He also affirmed that although he had never seen the grievor consume drugs, he had heard numerous comments that the grievor used drugs. However, he admitted that he never raised that issue with the grievor because he did not like to intrude into people’s private lives.

[29] Jean Richard testified that he received information from the SQ in October 2009 about the grievor’s other unlawful activities. The report indicated that in September 2009, the grievor was a drug user and, to tip off traffickers, he resorted to codes to prevent the poachers and traffickers from going ahead with their plans (Exhibit E-6). Jean Richard stated that from that point on, significant pressure arose to investigate the grievor’s conduct. The investigation began in October 2009.

[30] In cross-examination, Jean Richard maintained that it could be dangerous for other fishery officers if one of their co-workers leaked information because they risked



being ambushed by tipped-off traffickers. When questioned about the actions taken against the grievor to protect the other fishery officers, Jean Richard maintained that before October 2009, he discussed the issue with his superior, Mr. Chouinard, and they decided that there was not yet enough information and that they did not want to “burn” their sources. Nevertheless, Jean Richard specified that they decided not to enter information about certain operations in the departmental system that the grievor had access to. As to why they waited at least a year to start an investigation after receiving the information from the SQ, Jean Richard reiterated that they did not have enough information at the time and that they could not risk “burning” the sources.

[31] Mr. Bouchard also testified for the employer. He was an SQ investigator on the Islands from 1990 to July 2013. He indicated that 90% of his work on the Islands was dedicated to fighting drug traffickers. He explained that as part of his work, he often received information from people who had seen something in the field. Mr. Bouchard stated that drugs arrived on the Islands by boat and plane and sometimes even by bus. Mr. Bouchard revealed that Mr. D.’s boat was often under SQ surveillance.

[32] Mr. Bouchard also testified that the SQ and the employer collaborated closely and shared information because they had “common clients” and that the SQ occasionally borrowed resources from the employer, such as its plane, which allowed the SQ to photograph suspect vessels.

[33] Mr. Bouchard also enumerated a list of the grievor’s friends and acquaintances, which corresponded to the list mentioned in the testimonies of Yves and Jean Richard. Mr. Bouchard reiterated that Mr. C. had been involved in and convicted of drug trafficking. He also affirmed that the B. brothers are violent and that they had been convicted of a fishery violation and that Mr. E. was arrested in 2008 and found guilty of cocaine trafficking. Mr. Bouchard also added the name of a “Mr. F.” to the list of the grievor’s friends and acquaintances. He affirmed that Mr. F. was arrested in 1990 for drug trafficking and that he was convicted.

[34] Mr. Bouchard testified that in May 2007, an inside source informed him that the grievor was stashing drugs at his home for Mr. F. Mr. Bouchard explained that to qualify as an inside source, the source’s credibility first has to be tested and that sometimes, sources are paid for the information they provide, and sometimes, they prefer not to be paid. Mr. Bouchard also stated that he never acts based on a single inside source; he always corroborates the source’s version of the facts through another

inside source. Mr. Bouchard indicated that four different inside sources informed him that the grievor was a drug user, but since the grievor was not trafficking drugs, Mr. Bouchard was not very interested, testifying that he decided not to search the grievor's home.

[35] In his testimony, Mr. Bouchard affirmed that he usually informed the employer the day after he received information. He also affirmed that in March 2008, he notified the employer's representatives that the grievor was "leaking" protected information when one of his inside sources told him that the grievor had informed Mr. E. that Mr. Bouchard had met with the employer's representatives to prepare an intervention involving the B. brothers and Mr. D.'s fishing boat. According to Mr. Bouchard, the fact that poachers and traffickers knew about the meeting was a big disappointment. According to Mr. Bouchard, the fact that the grievor and Mr. E. were also friends explained why the grievor would have given him the information.

[36] Mr. Chouinard also testified for the employer. He has been Director, Conservation and Protection, for the Quebec Region since 2000. He explained that approximately 70 people reported to him and that he was responsible for grievances and for applying the collective agreement. He mentioned that he reported to Patrick Vincent, who reported to Director General Richard Nadeau.

[37] Mr. Chouinard testified that he has known the grievor since 1974 and that he has indirectly worked with him. According to him, the grievor had a reputation as a fishery officer who avoided giving tickets to poachers.

[38] Mr. Chouinard revealed that in 2006, he obtained information that an operation failed because the grievor tipped off the poacher, Mr. C. Mr. Chouinard affirmed that he was very concerned by that information. He asserted that he then asked Jean Richard to monitor everything and that if it occurred again, they would have to act. He explained that he opted to let things go because he was convinced that if the grievor was indeed tipping off poachers and other traffickers, it would reoccur. According to Mr. Chouinard, "What goes around comes around." Mr. Chouinard indicated that he did not have enough information about the 2006 incident, and he preferred to be vigilant. Mr. Chouinard also indicated that he felt it was a good idea not to mention that affair to the grievor because he feared that it would tip him off, and if the grievor was indeed leaking information, he would change his *modus operandi*, which would make it harder to intervene.

[39] Mr. Chouinard indicated that between 2006 and 2008, the SQ informed him that leaks were coming from the officers and that an SQ operation involving Mr. D.'s boat had been aborted because the grievor had revealed in advance the existence of that operation to a trafficker. Mr. Chouinard admitted that he was very concerned by the situation and its impact on his fishery officers' safety.

[40] Mr. Chouinard testified that in 2009 the SQ informed him that the grievor was providing advance warning to poachers and traffickers about operations being run by the employer and the SQ. He affirmed that he met with Mr. Bouchard on the Islands in September 2009 to validate certain information. Mr. Chouinard indicated that at that time, he felt that the SQ began to keep its distance from the employer because it feared that the grievor would pass the information to traffickers. Mr. Chouinard then decided to start an investigation under the *Code*. Jacinta Bernier and Marcel Picard, both of whom work for the employer, and a third party from the private sector, Guy Beauparlant from the Bureau d'enquêtes civiles du Québec, were mandated to conduct the investigation (Exhibits E-7 to E-10).

[41] In his testimony, Mr. Chouinard referred to articles of the employer's *Code* that the grievor allegedly violated (Exhibit E-8). According to Mr. Chouinard, under article 15 of the *Code*, fishery officers must conduct act in an exemplary manner, even outside their work hours. According to Mr. Chouinard, that is even truer in a small environment like the Islands. According to him, the grievor did not enforce the legislation, transmitted information to poachers and traffickers, caused operations to be aborted in 2006 and 2007, and compromised the safety of the other fishery officers, and he uses illegal drugs.

[42] Mr. Chouinard testified that the grievor was suspended without pay for the duration of the investigation, which started on October 26, 2009 (Exhibit E-11).

[43] Mr. Chouinard testified that once the investigation report was complete, he went to the Islands to meet with the grievor and his union representative, Carole Turbide, to obtain to his comments. Mr. Chouinard testified that although Mr. Nadeau made the decision to terminate the grievor, Mr. Chouinard was convinced that the grievor could not resume his duties because the bond of trust with him had been broken forever along with the other fishery officers and SQ officers (Exhibit E-12).

[44] During cross-examination, Mr. Chouinard admitted that he believed that the information that the SQ provided to the employer was accurate and reliable. As for the information obtained in March 2008 from the SQ, he testified that it was not as detailed and precise as that included in the SQ's report of September 10, 2009 (Exhibit E-3). Mr. Chouinard explained that in March 2008, he received a call about a leak but was not given any details, which was why he asked Jean Richard to be vigilant and to remain alert. Mr. Chouinard indicated that in the past he was criticized for acting too hastily with conduct investigations. Therefore, he preferred to wait for more information before taking action. According to Mr. Chouinard, "[translation] In 2008, things were starting to gel, but I still didn't have enough."

[45] Mr. Chouinard affirmed that he did not receive any more information from the SQ in 2008. He indicated that Jean Richard contacted him in 2009. Mr. Chouinard said that when he met with Mr. Bouchard in July 2009, Mr. Bouchard told him that the grievor was using codes to warn poachers (Exhibit E-6). Mr. Chouinard also said that in the disciplinary meeting, the grievor admitted to taking drugs and to growing marijuana. According to Mr. Chouinard, the grievor would also have admitted to associating with poachers and traffickers but denied giving them any information.

[46] Ms. Bernier also testified for the employer. Ms. Bernier has been Director, Conservation and Protection, for the Maritime Region since March 2012. Before that, she was Chief, Policy and Procedure, for the employer, where she worked on revising the *Code* and helping conduct investigations under it (Exhibit E-8). Ms. Bernier indicated that she conducted six investigations under the *Code* from 2006 to 2011. In the past, Ms. Bernier had also been a fishery officer for the employer.

[47] Ms. Bernier acknowledged being mandated to investigate five allegations against the grievor in October 2009 (Exhibit E-11). The allegations are as follows:

- transmitted confidential information to persons outside the department;
- possessed and consumed illegal drugs;
- associated with drug traffickers and fishermen who were subjects of DFO investigations;
- compromised other fishery officers' safety; and
- used your powers as a fishery officer inappropriately.

[48] Ms. Bernier testified that she met with the grievor as part of her investigation on October 30, 2009. The other members of the investigation committee were also present, as were the grievor and his union representative, Ms. Turbide. Ms. Bernier asserted that at the end of the interview with the grievor, she gave him a copy of the questions and his answers so that he could comment before leaving (Exhibit E-13).

[49] Ms. Bernier testified that she first wrote a draft investigation report (Exhibit E-14) and that the final report with the committee's conclusions was sent to Richard Steele in Ottawa on November 27, 2009. Ms. Bernier indicated that the grievor sent his comments on the final investigation report to Mr. Steele (Exhibit E-16).

[50] In cross-examination, Ms. Bernier affirmed that it is not uncommon during an investigation to examine facts dating back three years, and although no one directly saw the grievor give information to poachers or traffickers, the committee still found that, on a balance of probabilities, he was guilty of the allegations indicated in the investigation mandate.

[51] Mr. Nadeau was the employer's last witness in this case. Mr. Nadeau has been Director General for the Quebec Region since 2008. He reports directly to the deputy head with respect to labour relations matters.

[52] Mr. Nadeau testified that in summer 2007, Mr. Chouinard informed him that the grievor was suspected of leaking information to poachers and traffickers. Mr. Nadeau testified that he received the investigation committee's final report and waited for the grievor's response to it (Exhibits E-15 and E-16). Mr. Nadeau indicated that he then consulted with Mr. Chouinard and Mr. Steele in Ottawa before making the decision to terminate the grievor on March 29, 2010, retroactive to the date on which the grievor had been suspended without pay during the investigation, i.e., November 2, 2009 (Exhibit E-12).

[53] Mr. Nadeau stated that he decided to terminate the grievor because the bond of trust was broken that should exist between employee and employer. According to Mr. Nadeau, the grievor no longer had credibility with his co-workers, supervisors or other stakeholders, such as the SQ, to continue to work as a fishery officer. Mr. Nadeau affirmed that he tried to find the grievor another job with the employer or even with the Coast Guard, but given the circumstances and the fact that the grievor would have

had to work with such organizations as the SQ and the RCMP, he had not been able to find another position.

[54] Mr. Nadeau attested that in his decision, he considered that the grievor had admitted to taking drugs. He emphasized the fact that fishery officers have a major responsibility and that the specific context of the Islands had to be understood: fishery officers are very visible, everyone knows everyone else, and fishing is a very important source of revenue to the Islands, and consequently, all public servants who work in the fisheries environment must demonstrate integrity and maintain credibility with the entire population. According to Mr. Nadeau, a person wearing the uniform must demonstrate exemplary conduct; the organization's credibility depends on it. Mr. Nadeau pointed out that since the grievor's departure in late October 2009, the fishermen told him that things were going much better, that it was a good thing that the grievor was terminated and that they had regained confidence in the fishery officers.

#### **B. For the grievor**

[55] The grievor testified that he had worked for the employer for 25 years, including 12 years as a fishery officer on the Islands, from 1997 to November 2, 2009, the date of his suspension.

[56] The grievor stated that he had never been subject to any disciplinary measures before his termination. The grievor also suffers from deafness, so he had to carry out administrative duties from late March 2009 to the day of his suspension during the investigation. As examples of his administrative duties, the grievor mentioned tasks related to the vessel monitoring system (the "black box" system) and that he looked after the departmental violations system.

[57] During his testimony, the grievor explained in detail the content of the statement he gave to the investigators on October 30, 2009 (Exhibit E-15).

[58] Thus, for the 2006 incident, in which the grievor allegedly made himself very visible so that the poacher Mr. C. would realize that fishery officers were watching him, the grievor explained that he first received a call telling him to take up a position on the Cap de l'hôpital because a diver was in the water. The grievor indicated that he went to the specified location, that his radio was not working properly and that the

other fishery officer was whispering his instructions so that the diver would not hear him. The grievor indicated that he and the other fishery officer were about 200 to 300 feet from the diver. He affirmed that given the fact that he could not hear well and that his radio was defective, he did not understand all the instructions given by the other fishery officer, which explains why he might not have been in the right spot. The grievor emphasized that he did not know that it was Mr. C. in the water.

[59] The grievor explained that right after that failed operation, a meeting was held in the office with a co-worker who was angry with him and who accused him of deliberately letting Mr. C. see him to warn Mr. C. that fishery officers were watching him. The grievor testified that he was angry too and that he explained that he had not done anything wrong. The grievor also affirmed that he told Yves Richard the next day that he had not done anything wrong, that the radio was not working properly and that he was deaf. According to the grievor, Yves Richard understood, and the incident was closed. In cross-examination, the grievor admitted that he should not have placed himself in plain view on the Cap de l'hôpital and that although he was having problems with his mobile radio, he could not remember whether the radio in the employer's truck was working.

[60] As for the poacher, Mr. C., the grievor explained that he had known him from the time he arrived on the Islands in 1997 or 1998 and that Mr. C. had repaired his car in the past. However, since Mr. C. does not have a car, the grievor would sometimes give him a lift as a favour because Mr. C. did not have enough money to own a car. In addition, the grievor admitted that occasionally, two or three times a week, Mr. C. would visit his home for a beer and a game of dominoes and that everyone knew it. The grievor admitted consuming marijuana at home because marijuana relieves the pain of a past injury. The grievor also admitted that he did not have a medical certificate authorizing the use of marijuana and that he grew it at his home for personal use and for curative purposes. In cross-examination, the grievor asserted that he produced his own marijuana, did not buy it on the Islands and had not used cocaine since his arrival on the Islands in 1997. He also admitted that Mr. C. occasionally used marijuana when he visited the grievor. He testified that he does not use cocaine but that he had seen Mr. C. use some at a hotel. The grievor indicated that the hotel was located next to the employer's office on the Islands and that poachers, drug traffickers and fishery officers hung out there.

[61] In his testimony, the grievor admitted that Mr. C. was a poacher and that he had told him many times that if he caught him poaching he would “[translation] knock his head off.” However, he emphasized that Mr. C.’s poaching activities were small and that Mr. C. often resorted to poaching to put food on the table. He testified that he had never spoken to Mr. C. about the employer’s operations.

[62] The grievor also testified that the B. brothers and Mr. E. were acquaintances, not friends, and that he occasionally ran into them at the hotel, but they have never been to his home. According to the grievor, Mr. E. and the B. brothers have reputations as cocaine dealers, and the B. brothers have a reputation for brawling and for being violent. The grievor stated that between 2006 and 2007, the B. brothers and Mr. E. apparently approached him at the hotel to ask him where they could poach. The grievor testified that he told his supervisor about the B. brothers and Mr. E. approaching him at the hotel and that his supervisor laughed about it.

[63] The grievor also testified that Mr. D. was an acquaintance whom he sometimes met at the hotel but that he was not a friend. The grievor indicated that Mr. D. had committed many drug-related offences in the past. The grievor attested that he did not know about the aborted operation in 2007 involving the SQ that targeted Mr. D., among others. As a result, he could not have been the person who informed Mr. E., since he was unaware of the operation.

[64] In his testimony, the grievor also referred to Mr. F., who was far from being a friend and who, according to the grievor, was a real gangster. In cross-examination, the grievor explained that he had loaned money to Mr. F., who never paid him back. However, the grievor admitted that before Mr. F. took his money, Mr. F. had been a drug trafficker and had come to his home.

[65] The grievor explained that Mr. A.’s son had lived at his home in 2008 while on probation and that everyone knew about it. The grievor explained that Mr. A.’s son had been convicted of cocaine trafficking in the past and apparently had been to prison. The grievor asserted that he just wanted to help Mr. A.’s son.

[66] In his testimony, the grievor rejected the argument that officers’ safety would be at risk if information about the employer’s surveillance operations were known. According to the grievor, the worst thing that could happen is that the poachers or drug traffickers would change their plans and not show up at the arranged location.



[67] The grievor admitted that he had access to the departmental information system and that information about the SQ might be in it, but he denied sharing any information about the employer's or the SQ's operations with his friends or acquaintances. The grievor also agreed that the fact that he used marijuana discredited his employer, but he did it anyway because it helped him relax. In his testimony, the grievor emphasized that no one had ever criticized him about his associations or about his marijuana use.

[68] As for the allegations in Exhibit E-3 that he apparently stashed drugs for a trafficker in May 2007 and passed information in March 2008 to poachers and traffickers to abort an operation, the grievor denied everything. He also denied using codes to warn poachers or traffickers about upcoming operations, contrary to the allegations in Exhibit E-6.

[69] The grievor concluded his testimony by denying sending information to people outside the department and by denying using his powers as a fishery officer inappropriately or jeopardizing his co-workers' safety. However, the grievor admitted to possessing and using drugs. He also admitted to associating with drug traffickers and poachers that the employer and the SQ had under investigation. He explained that he has been drawing a pension as a former public servant since May 2010 and that he works 25 to 30 hours a week in a supermarket.

### **III. Summary of the arguments**

#### **A. For the employer**

[70] Counsel for the employer strongly emphasized that the grievor had to conduct himself in a manner beyond reproach, given his duties. According to counsel for the employer, the grievor carried a weapon and had the power to make arrests, so his conduct had to be exemplary, especially in a small community, both at work and after hours (Exhibit E-8, page 3). According to counsel for the employer, in this case I must also consider that the grievor's duties brought him into close contact with other entities, such as the SQ and the RCMP, and that according to Mr. Chouinard, the SQ began to distance itself from the employer in its operations because of the grievor. Counsel for the employer repeated that the grievor had access to the departmental information system while at work, which provided him with privileged information on operations that he then shared with poachers or drug traffickers.

[71] According to counsel for the employer, although the grievor's supervisors were apprised of the 2006 incident, in which the grievor placed himself in plain view of the poacher, Mr. C., it is normal that they would not have spoken to the grievor or taken action because they were not quite sure and did not want to "burn" their source. With respect to the 2006 incident, counsel for the employer maintained that the facts spoke for themselves and that there were no other explanations for the grievor's behaviour other than that he was trying to warn Mr. C. about the presence of the fishery officers. As for the information the SQ received in March 2008 that the grievor allegedly provided information to Mr. E. and the B. brothers, which apparently caused an SQ operation to fail, counsel for the employer maintained that the employer was justified in not taking action because the information was incomplete, and once again, it did not want to "burn" the sources. Counsel for the employer referred me to Mr. Chouinard's testimony and pointed out that again in March 2008, the employer wanted to give the grievor another chance before launching an investigation into his conduct. Counsel for the employer submitted that in 2009, after it realized that the situation was "no longer manageable" and that the SQ reported that the grievor was using codes to communicate with poachers and drug traffickers, it decided to investigate the grievor's conduct (Exhibit E-6). Counsel for the employer reviewed the testimony of Mr. Bouchard of the SQ and emphasized that the SQ's inside sources were credible and that I should trust them and conclude that, on the balance of the evidence, the grievor indeed committed the offences that the SQ reported in 2009 (Exhibits E-3 and E-6).

[72] According to counsel for the employer, it was demonstrated that the grievor had friends who were poachers and drug traffickers, that they regularly visited him at his home, and that he associated with them and occasionally gave them information so that neither the employer nor the SQ would catch them in their illegal activities.

[73] As for the grievor's drug use, counsel for the employer argued that the grievor admitted to using drugs, which is unacceptable for a law-enforcement representative like him. The employer's credibility depends on it. Again, counsel for the employer maintained that the employer took no action before 2009 because it did not have any evidence before then of the grievor's illegal use, and the grievor's supervisors never witnessed him using drugs. According to counsel for the employer, the grievor should have asked the employer for help. The employer could not have guessed that the grievor had a usage problem.

[74] According to counsel for the employer, it is clear that the alleged incidents involving the grievor in 2006 and 2008 took place and that he passed privileged information to poachers and drug traffickers. Counsel for the employer maintained that the grievor admitted to using illicit drugs, which undermined the employer's credibility among the Islands' population. The grievor also admitted to associating with poachers and traffickers, although he tried to minimize his connections with certain drug traffickers. According to counsel for the employer, the grievor's actions put his co-workers' safety at risk. Counsel for the employer concluded that the grievor used his powers as a fishery officer inappropriately by disclosing privileged information.

[75] To support his arguments, counsel for the employer referred me to *Bahniuk v. Canada Revenue Agency*, 2012 PSLRB 107; *Richer v. Deputy Head (Correctional Service of Canada)*, 2012 PSLRB 10; *R. v. Smith*, [1992] 2 S.C.R. 915; and *R. v. Leipert*, [1997] 1 S.C.R. 281.

#### **B. For the grievor**

[76] The grievor's representative indicated first that his client no longer wished to be reinstated in his position as a remedy.

[77] The grievor's representative asked me to still allow the grievance for the main reason that the employer breached its duty of procedural fairness by allowing too much time to pass between the date on which it was apprised of the allegations against him in March 2008 and the date of termination, March 29, 2010. The grievor's representative also argued that the employer failed to demonstrate that the grievor disclosed information to poachers and drug traffickers, that he jeopardized other fishery officers' safety and that he used his powers as a fishery officer inappropriately.

[78] The grievor's representative pointed out that the essence of the employer's evidence was based on information from Mr. Bouchard of the SQ and that the employer qualified that information as credible and reliable. The grievor's representative pointed out that Mr. Bouchard testified that he warned the employer in a timely manner, in the few days after he had information against the grievor. Thus, according to the grievor's representative, it is logical to conclude that based on the testimonies of Yves and Jean Richard and Mr. Bouchard, already in March 2008, the employer's representatives were notified of the allegations against the grievor. Furthermore, according to the grievor's

representative, both Yves and Jean Richard also testified that in March 2008, Mr. Bouchard of the SQ informed them that the grievor shared information with Mr. E. and the B. brothers, causing an SQ operation to be aborted.

[79] According to the grievor's representative, since Mr. Bouchard asserted that he always informed the employer a few days after being notified by an inside source about allegations against the grievor and that Yves and Jean Richard and Mr. Chouinard testified that they trusted the information provided by Mr. Bouchard of the SQ, it must be concluded that the employer had enough information in June 2007, and definitely in March 2008, to take action against the grievor, but instead, the employer waited nearly two years before acting and terminating the grievor's employment in April 2010. For the grievor's representative, the employer's argument that it did not have enough information to act in 2007 and in March 2008 cannot stand. The grievor's representative argued that the time to take disciplinary action begins when an employer has the facts, and if the facts turn out to be true, they justify disciplinary action. On that subject, the grievor's representative referred me to *University of Ottawa v. IUOE* (1994), 42 L.A.C. (4th) 300.

[80] According to the grievor's representative, there is no doubt that, according to their testimonies, Yves and Jean Richard and Mr. Chouinard were aware of the allegations against the grievor at least by March 2008. They preferred not to act but to wait until late March 2010 to take action. For the grievor's representative, the long delay was prejudicial to the grievor, who was never confronted or questioned in a timely manner about the events of March 2008. In addition, the mere passage of time is prejudicial to the grievor, who thus could not adequately defend himself.

[81] In case I was not convinced that the employer's representatives knew about the allegations against the grievor in March 2008, the grievor's representative asked in the alternative that I conclude that, at the very least, the evidence showed that the employer's representatives were aware of the allegations against the grievor in June 2009, July 2009 and September 2009 and that they still did not act. According to the grievor's representative, the employer's representatives were required to take prompt action, which they did not do. Finally, the grievor's representative argued that another six months passed without the employer taking action, from the start of the conduct investigation to the termination in March 2010, which is completely unacceptable and non-standard, considering the jurisprudence. See *Tobin v. Treasury*

*Board (Correctional Service of Canada)*, 2011 PSLRB 76; *Thibault v. Treasury Board (Solicitor General Canada - Correctional Service)*, PSSRB File No. 166-02-26613 (19960909); *Singaravelu v. Deputy Head (Correctional Service of Canada)*, 2009 PSLRB 178; *Ontario Public Service Employees Union v. Ontario Public Service Staff Union*, [2011] O.L.A.A. No. 191 (QL); and *Lawrence v. Treasury Board (National Defence)*, PSSRB File No. 166-02-21341 (19910704).

[82] In his submissions, the grievor's representative admitted that the grievor used and possessed drugs at home and that he associated with poachers and drug traffickers. However, according to the grievor's representative that was out in the open for all to see, and the employer never felt that it should discuss it with the grievor, who was never given a warning. Again, the employer knew but preferred not to take action. The grievor's representative referred me to the decisions *Ville de Sorel-Tracy c. Syndicat des pompiers du Québec, section locale de Sorel*, 2002 T.A. AZ-02142038, and to *Lapostolle v. Deputy Head (Correctional Service of Canada)*, 2011 PSLRB 138, which decided that an employee should be warned before being disciplined.

[83] However, the grievor's representative maintained that no evidence exists that the grievor passed information to poachers and drug traffickers or that he used his powers as a fishery officer inappropriately. According to the grievor's representative, the burden of proof remained with the employer, and I am not bound by the investigation report's findings, as decided in *Trenholm v. Staff of the Non-Public Funds, Canadian Forces*, 2006 PSLRB 66. According to the grievor's representative, the employer's evidence is based on hearsay, which is insufficient ground for termination. See *Pugh v. Deputy Head (department of National Defence)*, 2013 PSLRB 123.

[84] The grievor's representative concluded by asking me to allow the grievance, reverse the termination, and give the parties 90 days reach to an agreement and otherwise, for me to remain seized of this matter.

#### **IV. Reasons**

[85] First, I note the grievor's decision not to be reinstated in his functions.

[86] In its letter of termination, the employer referred to five reasons justifying the termination, as follows:

1. Transmitted confidential information to persons outside the department;
2. Possessed and consumed illegal drugs;
3. Associated with drug dealers and fishermen who were subjects of DFO investigations;
4. Compromised other fishery officers' safety; and
5. Used your powers as a fishery officer inappropriately.

[87] For the purposes of this decision, I decided to group the reasons for termination 1, 4 and 5 because, in my opinion, they are closely related. As for reasons 2 and 3, since the facts that gave rise to those allegations have been admitted to, I will deal with them together.

**A. Transmitted confidential information to persons outside the department, compromised the safety of other fishery officers and used his powers as a fishery officer inappropriately**

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[88] In this case, the employer claimed that the grievor passed confidential information, compromised other fishery officers' safety and used his powers as a fishery officer inappropriately, basing its claim in one part on the allegation that in 2006, the grievor allegedly caused an operation being carried out on the Cap de l'hôpital to be aborted and in the other part on other events, referred to in Exhibits E-3 and E-6.

[89] I will review the essentials of those events and then discuss the argument of the grievor's representative that the employer waited too long before taking disciplinary action.

**Evidence with respect to the events**

[90] I will first deal with the 2006 incident. In my opinion, on the balance of the evidence, the employer demonstrated that the grievor arranged to be seen during an operation targeting the poacher, Mr. C., thus causing the operation against him to be aborted. During the investigation interview and at the hearing, the grievor admitted to being a friend of Mr. C. and that Mr. C. regularly went to his home to play cards and

dominoes. Although the grievor denied signalling his presence and that of his co-workers on the Cap de l'hôpital by his behaviour, I must say that I was not convinced by his explanations. I wonder how the grievor, an experienced fishery officer, could have placed himself in plain sight of the poacher, right next to the vehicle identified as belonging to the employer for any reason other than to signal his presence and those of his co-workers to his poacher friend. Furthermore, the grievor's assertion that the radio was not working did not seem credible to me, and Yves Richard also clearly contradicted that version of the facts by explicitly asserting that the grievor's radio was working at the time of the incident. Such conduct on the part of a fishery officer is simply unacceptable.

[91] The employer also maintained that, as indicated in Exhibit E-3, the grievor stashed cocaine in his home for a known trafficker. The grievor refuted that assertion, and the employer did not provide any evidence to that effect. Therefore, I consider that this allegation was not proved.

[92] The employer also alleged that in 2008 the grievor apparently passed information to drug traffickers and poachers (Exhibit E-3). The employer's evidence was that the grievor allegedly informed Mr. E. that poaching and drug surveillance operations involving the SQ and targeting the B. brothers and drug trafficker Mr. D.'s boat were under way, which again caused the operations to be aborted. The employer's evidence was based on the information and testimony of SQ Officer Bouchard. He struck me as a credible and disinterested witness. Mr. Bouchard asserted that in March 2008 he told the employer that his informants had apparently notified him that the grievor had warned Mr. E., who had then warned the B. brothers and Mr. D. that the employer and the SQ were planning operations that would have incriminated them. According to Mr. Bouchard, the information passed on to the traffickers and poachers caused the operations to fail.

[93] In his testimony, Mr. Bouchard explained how information provided by informants was checked and double-checked. On the preponderance of the evidence, I decided to believe the information gathered by Mr. Bouchard and concluded that the grievor indeed informed Mr. E. about the upcoming operations of the employer and the SQ, with the result that the operations had to be cancelled. I also want to point out that at certain moments in his testimony, the grievor indicated that Mr. E. was a friend, and at other times, he denied it. However, the fact that Mr. E. was at least an "acquaintance"

of the grievor was not challenged. Mr. E. and the grievor occasionally got together, and at one point, by the grievor's admission, Mr. E. and the B. brothers approached him in the "Centrale" bar in an attempt to obtain information from him about where they could poach in peace. That fact, added to the fact that I noticed that the grievor's testimony at the hearing was rather evasive and sometimes contradictory, led me to conclude that, on the preponderance of the evidence, the grievor indeed passed privileged information to Mr. E. I would like to add that the grievor should never have placed himself in a situation in which the question of "ideal poaching spots" would be brought up in the presence of notorious traffickers and poachers, even if in jest. The grievor knew that he was supposed to keep his distance from offenders, which he did not do.

[94] The grievor admitted to the allegation that he was seen in Mr. C.'s company in 2009, which is mentioned in Exhibit E-3. He even acknowledged that Mr. C. often visited him at his home to play dominoes, drink beer or consume marijuana.

[95] The employer also tried to demonstrate that the grievor "[translation] burns jobs by using codes, such as 'there's a full moon tonight; it's nice out'" (Exhibit E-6). The grievor maintained that he never used such a code to warn offenders. No other part of the employer's evidence corroborated that assertion. On the preponderance of the evidence, and despite the fact that I have my doubts as to the grievor's actions, I must conclude that the employer failed to demonstrate that the grievor used codes to warn offenders.

[96] In addition, although the grievor admitted to using marijuana, the employer was unable to demonstrate that, as alleged in Exhibit E-6, the grievor was a cocaine user, and the grievor vehemently denied that claim and asserted that he has not used cocaine since his arrival on the Islands.

[97] In its letter of termination, the employer also indicated that by his actions, the grievor compromised his co-workers' safety and used his powers as a fishery officer inappropriately. I agree. In their testimonies, Yves and Jean Richard explained that poachers and drug traffickers can be aggressive when confronted and might want to trap fishery and SQ officers. Therefore, if the poachers and drug traffickers have information about the comings and goings of fishery and SQ officers, they could, for example, ambush the law enforcement representatives and do their worst. It is a real risk, and I understand why the employer does not want to take any chances. Therefore,



I conclude that by disclosing information, the grievor also compromised other officers' safety. I note that in his testimony the grievor denied that his actions could have jeopardized his co-workers' safety. In my opinion, his attitude demonstrated that he did not understand the consequences of his actions.

[98] As for the employer's allegation that the grievor used his fishery officer powers inappropriately, I must also conclude that that was indeed so. The evidence showed that the grievor used privileged information on the operations of the employer and the SQ. The information was obtained because of his duties and his status as a fishery officer. Passing that information on to third parties, at the very least, was a very poor use of the grievor's powers as a fishery officer. Furthermore, the evidence demonstrated that by acting that way, the grievor also jeopardized the collaboration between the employer and the SQ. I accept Mr. Nadeau's testimony that since the grievor's departure, confidence between the two organizations has been restored.

[99] Therefore, I conclude that, on the preponderance of the evidence, the employer demonstrated that the grievor passed confidential information to persons outside the department on at least two occasions. They are very serious violations for a fishery officer, whose key role is respecting the law. In addition, through his actions, the grievor endangered his co-workers' safety and most certainly did not carry out his duties appropriately. However, I accept that the employer did not demonstrate that the grievor used or stashed cocaine in his home or that he used codes to warn his friends.

**Did the employer wait too long before terminating the grievor?**

[100] In his arguments, the grievor's representative maintained that the employer breached its duty of procedural fairness by waiting too long between the alleged offences and the termination. Although the grievor's representative emphasized that the employer should have acted in 2008, nevertheless, I will go as far back as the 2006 incident on the Cap de l'hôpital, since I understand that it was one of the reasons for the termination.

[101] As indicated earlier, I have already concluded that the grievor indeed warned Mr. C. in 2006 that fishery officers were watching him, thus disclosing privileged information. The employer's witnesses indicated that they did not confront the grievor with that allegation because they deemed it a sensitive issue and preferred to wait before taking action. I must say that I had a hard time understanding the employer's

reasons for at the very least not bringing the issue up with the grievor at the first opportunity. It seems to me that the employer had all the necessary information at the time to act. Although I still think that the grievor was well aware that it was completely unacceptable to inform a poacher of an ongoing operation, I still conclude that the explanations of the employer's witnesses for not taking action cannot be considered and that, under the circumstances, the employer could not use an incident that occurred in 2006 to terminate the grievor in 2010. The employer's delay before acting with respect to the 2006 incident was unjustified and unacceptable, especially since the investigation conducted later by Ms. Bernier added nothing to the evidence the employer had in 2006. Although I understand that it is not easy to confront an employee with such an allegation, the fact remains that the employer had a duty to act immediately when the grievor's co-workers reported that he had clearly indicated to Mr. C. that he was being watched. The facts were not reported by third parties but by the grievor's co-workers. The grievor was entitled to be informed about the employer's doubts within a reasonable time after the offence. In all fairness to the grievor, the employer had a duty to act swiftly, which it did not do. It was too late to rely on that reason to terminate the grievor. Therefore, for the purposes of this decision, I conclude that the 2006 incident cannot be held against the grievor.

[102] The grievor's representative argued that already in March 2008, the SQ informed the employer about the allegations against the grievor, but the employer decided only in October 2009 to act and investigate. The employer's representative pointed out that in their testimonies, the employer's witnesses affirmed that they considered credible the information the SQ provided. Under the circumstances, the grievor's representative wondered why the employer did not confront the grievor as soon as it was informed, i.e., in March 2008. According to the grievor's representative, the employer decided to do nothing, and it was too late in October 2009 to conduct an investigation. The grievor's representative also maintained that not only was the delay between March 2008 and the termination in March 2010 unreasonable, it was also unacceptable for the employer to take five months, from October 26, 2009, to March 29, 2010, to investigate and to decide to terminate the grievor. Under the circumstances, the grievor's representative felt that the employer's delays in this case were unjustified, and as a result, the termination should be dismissed.

[103] The employer's evidence was that it was alleged that in 2008 the grievor informed Mr. E. about certain operations involving the B. brothers and Mr. D., that he

associated with and harboured poachers and drug traffickers, and that he was using illegal substances (Exhibit E-3). I must specify that the SQ notified the employer about those allegations only in 2008. In my opinion, the employer's way of dealing with those allegations differed from the 2006 incident. In 2008, although the employer's witnesses considered the SQ's information reliable, unlike in 2006, the employer had no control over the evidence available and had to rely on a third party, albeit a reliable one, to draw its conclusions. Under the circumstances, I understand that the employer wanted to be cautious and wanted all the necessary information before taking action.

[104] The employer's representatives affirmed that they relied on the SQ as a source of information; they also testified about choosing to exercise caution with that information and that in March 2008, to wait while taking precautionary measures before acting and confronting the grievor. I accept the explanations of witnesses Jean Richard and Mr. Chouinard that such a situation requires tact and that sometimes, acting too quickly can make things worse. I also understand that the employer wanted to make sure that the allegations were founded and that it wanted to flesh them out with more evidence. In addition, it appears from the testimonies of the employer's witnesses that not only did it not want to act too hastily so as not to burn its sources, but also, as Mr. Chouinard testified, the employer considered that the allegations against the grievor were serious, and it did not want to act impulsively.

[105] Under the circumstances, I do not find that the employer's delay before acting was unreasonable with respect to the allegations communicated to it in 2008.

[106] The grievor's representative referred me to arbitral awards, for example, *Ontario Public Service Employees Union* and *University of Ottawa*, in which the arbitrator considered it unreasonable that the employer waited four months before imposing disciplinary measures. Having read the decisions that the grievor's representative cited, I acknowledge that in some situations, the fact that an employer did not take action against an employee at the first sign of misconduct could constitute a breach in procedural fairness that could challenge the employer's actions. However, in my opinion, it should be remembered that every situation is unique and deserves to be assessed on the facts of the case. Thus, in this case, although the employer received information from the SQ in 2008 that it considered reliable, it still wanted to take the time required to confirm its suspicions as to the allegations against the grievor. From the outset, the allegations were serious and involved sources, of course, but also the

grievor's credibility. I can understand that in a more closed community, where it is not always easy to quickly distinguish between what is proved and what is still just suspected, the employer chose to be cautious and, in so doing, wanted to give the grievor more chances. It is not hard to imagine that in an environment that involves dealing with poachers and drug traffickers, making a hasty decision could have consequences not only for the sources, but also for the grievor.

**B. Possessed and consumed illegal drugs and associated with drug dealers and fishermen who were subjects of the employer's investigations**

[107] During the investigation and at the hearing, the grievor candidly admitted to using marijuana in his home for 40 years and stated that it helped him relax. He also admitted to occasionally consuming marijuana in his home with his friend, Mr. C., who, I recall, was found guilty of poaching and drug possession.

[108] In his arguments, the grievor's representative asserted that although the grievor consumed marijuana at home, there is no evidence that he used it during work hours, and that, in any case, with all the rumours circulating about the grievor and his drug use, the employer should have known and acted against him sooner. According to the grievor's representative, the employer's lack of action at that time prevented it from raising that reason to terminate the grievor. I disagree. In my opinion, it is clear that a fishery officer, who is responsible for enforcement, carries a weapon, can make arrests for offences under the *Fisheries Act*, and works with the SQ and the RCMP by helping them carry out their mandate to combat drug traffickers, must comply with the legislation and cannot place himself above it. The grievor admitted in his testimony that he has used marijuana for 40 years and does not seem to understand that it discredits the entire organization. The employer's reputation is at stake. How can anyone expect the employer to be taken seriously by the population for whom the fishing industry is paramount if the behaviour of one of its officers is completely contrary to the reason he was hired? The grievor's actions were completely unacceptable. In addition, paragraph 15 of the *Code* clearly describes how fishery officers are to conduct themselves outside work hours (Exhibit E-8):

[Translation]

...

***General***

*The off-duty activities of fishery officers may reflect on both the department and the Government of Canada. To ensure the department retains the confidence and respect of the public, fishery officers shall conduct themselves in a manner that will not discredit the department. Fishery officers must be strict in their observance of the law and shall refrain from engaging in any activities that could adversely affect or appear to affect the performance of their duties or their dealings with other law enforcement agencies or discredit the department.*

...

[109] In this case, there is no doubt that the grievor's conduct of using illegal drugs damaged the employer's reputation and those of other enforcement organizations, in this case, the SQ. It is especially so given that the grievor's actions occurred in a small community where everyone knows everyone and that the grievor not only used marijuana on numerous occasions outside his work hours but also that he did so with Mr. C., who was the subject of investigations and was convicted for poaching and drug trafficking, as the evidence showed. I disagree with the argument of the grievor's representative that the grievor never concealed the fact that he used drugs and that the employer should have acted sooner. The grievor was an experienced employee working in a difficult environment, and his role was to enforce legislation. It was not up to the employer to remind him that using and growing illegal drugs was not only against the law but also entirely at odds with the very reason for his work. The *Code* is very clear as to the expected conduct of employees.

[110] The grievor also admitted to associating with poachers and those in the drug world. During his testimony, he tried to downplay the significance of his associations by asserting that in some cases, he acted as a good Samaritan when he welcomed Mr. C. to his home and when Mr. A.'s son lived there. According to the grievor, he acted in good faith to help those individuals, and in any case, he never disclosed any information about upcoming operations to anyone. Although I do not doubt the grievor's intentions with respect to those individuals, the fact remains that a fishery officer who has to respect the law must avoid associating and socializing with known poachers or drug traffickers or those who are likely to be subjects of investigations by the employer or the SQ the next day. Furthermore, a fishery officer cannot have under his roof anyone whose past can reasonably raise questions as to that fishery officer's impartiality and neutrality. Once again, the grievor might not have had bad intentions by providing shelter to and welcoming into his home people connected with poaching

and drugs; however, he should have realized that those actions would irretrievably undermine his trustworthiness and credibility in the employer's eyes.

## **V. Conclusion**

[111] Therefore, I conclude that, on a balance of probabilities, the employer demonstrated the essence of the allegations indicated in the grievor's termination letter. Although I found that the time that passed between the 2006 incident and the termination was unacceptable and that the employer did not prove that the grievor consumed cocaine or used codes to warn offenders, I still conclude that the other incidents, including sharing privileged information with Mr. E., openly taking illegal drugs, and associating with and providing shelter for poachers and traffickers are serious enough to warrant his termination.

[112] In my opinion, the grievor's conduct was completely unacceptable given that he was a fishery officer whose main duty was to enforce legislation. There is no doubt in my mind that the grievor knowingly leaked privileged information to poachers and drug traffickers. Through his actions, the grievor also jeopardized other fishery officers' safety.

[113] Furthermore, I note that the grievor does not seem to take seriously the fact that as a fishery officer responsible for law enforcement, he used illegal drugs and sought the company of individuals who poached or who were connected with the drug world. During the hearing, the grievor seemed to find his behaviour normal and did not seem to realize the seriousness of his offences. In addition, although he acknowledged at the hearing that his actions discredited the employer, I note that in his replies to the investigator, Ms. Bernier, he found that "[translation] the fact that a fishery officer is seen as a drug user by the public does not discredit the department because it is hearsay and no worse than someone who is always drunk and is seen leaving and driving government vehicles" (Exhibit E-15, page 21). In my opinion, that statement that the grievor made to Ms. Bernier during the investigation accurately reflects his thoughts on this issue.

[114] In my view, it is clear that the grievor's actions discredited the employer's operations to such an extent that at one point, the SQ questioned its collaboration with the employer. I agree that the bond of trust between the employer and the grievor has been irreparably broken and that his termination was justified under the

circumstances, even though the employer was unable to prove some of the incidents that led to the termination or that the 2006 incident could not be considered, given how much time has passed. I still find that the other alleged offences that have been proven were serious enough to warrant termination.

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

*(The Order appears on the next page)*

**VI. Order**

[116] The grievance is dismissed.

March 28, 2014.

PSLRB Translation

**Linda Gobeil,  
adjudicator**