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**Citation:** 2014 PSLRB 52



*Public Service  
Labour Relations Act*

Before an adjudicator

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BETWEEN

**SUZANNE ALLAIN ET AL.**

Grievors

and

**TREASURY BOARD  
(Royal Canadian Mounted Police)**

Employer

Indexed as  
*Allain et al. v. Treasury Board (Royal Canadian Mounted Police)*

In the matter of individual grievances referred to adjudication

**REASONS FOR DECISION**

***Before:*** Steven B. Katkin, adjudicator

***For the Grievors:*** Douglas Hill, Public Service Alliance of Canada

***For the Employer:*** Christine Diguier, counsel

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Heard at Bathurst, New Brunswick,  
July 3 to 5, 2013.

## REASONS FOR DECISION

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

[1] This matter concerns 38 individual grievances filed on January 15, 2008 and January 5, 2009. At the relevant time, all the grievors were members of the Clerical and Regulatory (CR) Group, classified at the CR-04 group and level and employed in the Canadian Firearms Centre's Central Processing Site (CPS) located in Miramichi, New Brunswick. The grievances were referred to adjudication on August 28, 2012, pursuant to paragraph 209(1)(a) of the *Public Service Labour Relations Act* ("the Act"), which concerns the interpretation or application of a collective agreement provision. As required by subsection 209(2) of the Act, the grievors had the approval of, and were represented by, their bargaining agent, the Public Service Alliance of Canada ("the union"). A complete list of the grievors and the corresponding Public Service Labour Relations Board (PSLRB) file numbers is annexed to this decision.

[2] The grievances concern article 64, "Pay Administration," of the Program and Administrative Services Group bargaining unit collective agreement concluded between the Treasury Board ("the employer") and the union and having an expiry date of June 20, 2011 ("the collective agreement"). The relevant provisions of article 64 read as follows:

***Article 64***  
***Pay Administration***

...

***64.02*** *An employee is entitled to be paid for services rendered at:*

*(a) the pay specified in Appendix A-1 for the classification of the position to which the employee is appointed, if the classification coincides with that prescribed in the employee's certificate of appointment;*

*or*

*(b) the pay specified in Appendix A-1 for the classification prescribed in the employee's certificate of appointment, if that classification and the classification of the position to which the employee is appointed do not coincide.*

...

**64.07**

*(a) When an employee is required by the Employer to substantially perform the duties of a higher classification level in an acting capacity and performs those duties for at least three (3) consecutive working days or shifts, the employee shall be paid acting pay calculated from the date on which he or she commenced to act as if he or she had been appointed to that higher classification level for the period in which he or she acts.*

...

[3] The grievances allege that the employer required the grievors to perform the duties of a higher classification level but failed to compensate them at the rate of the higher classification, thus violating article 64 of the collective agreement. Although the grievances are not identical, their wording is similar:

*I grieve that the employer is not paying me appropriately for the duties I am performing. I am asked to perform duties of a higher position. As a result, the employer is not following the provisions of Article 64 of the Collective Agreement.*

[4] As corrective action, the grievors requested that they be paid at the higher classification level retroactive to January 13, 2004, being the date on which they allege they began to perform the duties of the higher classification, as follows:

*That I be paid in accordance with the collective agreement for the performance of the duties mentioned retroactive to the date on which the performance of these duties began, January 13, 2004.*

[5] According to clause 18.15 of the collective agreement, an employee may file a grievance no later than the 25th day after the date on which the employee is notified of or on which the employee first becomes aware of the actions or circumstances giving rise to the grievance. The union acknowledged that should it be successful, retroactive pay would be limited to the period beginning 25 days before the filing of each individual grievance and ending on March 31, 2009.

**II. Summary of the evidence****A. Background**

[6] It is useful at this stage to set out certain facts entered into evidence concerning which there is no dispute between the parties.

[7] The Canadian Firearms Program (“the firearms program”) was established in 1998 under the aegis of the Department of Justice. In 2003, the firearms program, including the CPS in Miramichi, was transferred to the then Department of the Solicitor General. In 2008, responsibility for the firearms program was transferred once again, this time to the Royal Canadian Mounted Police (RCMP).

[8] Initially, the two position work descriptions at the CPS relevant to this matter were of a client service officer, dated April 30, 2001 (Exhibit G-1, Tab 1), and of a firearms transfer clerk, dated August 14, 2002 (Exhibit G-1, Tab 2). Each of these positions was classified at the CR-04 group and level.

[9] In an email dated January 13, 2004 (Exhibit G-1, Tab 3), the grievors were informed that effective that same day, the duties of those two positions would be combined. As a result, the grievors requested an updated work description, as they believed that they were performing the duties of a higher classification level.

[10] On September 15, 2006, the grievors received a work description for the position titled “client services agent” (CSA), classified at the CR-04 group and level, with an effective date of May 24, 2006 (Exhibit G-1, Tab 4). This CSA position included the duties of the former firearms transfer clerk position.

[11] A number of employees were dissatisfied with the CSA work description and requested a review of the classification. The classification review decision, dated December 7, 2007 (Exhibit G-1, Tab 5), confirmed the CSA work description at the CR-04 group and level with an effective date of April 1, 2007. Twelve of the grievors filed grievances against this decision.

[12] The CSA position was again reviewed, and in a decision dated December 2, 2008 (Exhibit G-1, Tab 6), it was confirmed as being at the CR-04 group and level. This decision was grieved by the remaining 26 grievors.

[13] On September 27, 2007, the CPS announced the creation of an “Enhanced Screening Unit” project and called for volunteers from among the CR-04 employees (Exhibit G-3). The position title for employees working in that unit as set out in the work description approved by management on January 28, 2008, was “enhanced screening agent,” classified at the CR-04 group and level (Exhibit G-1, Tab 7).

[14] In 2009, the CSA and enhanced screening agent positions were combined into a single work description titled “CSA,” and a request for a classification of the new position with an effective date of April 1, 2009, was made on August 19, 2009 (Exhibit E-1). A classification evaluation committee report dated December 31, 2009, classified this new CSA position as CR-04, effective April 1, 2009 (Exhibit G-1, Tab 9).

[15] CPS management requested a review of this decision. As indicated in the classification committee report, the review of the work descriptions was conducted on December 15, 2010 (Exhibit G-1, Tab 10). On January 31, 2011, employees were notified that the CSA position had been reclassified to the PM-01 group and level, with an effective date of April 1, 2009 (Exhibit G-1, Tab 8).

[16] The union called two witnesses. The first, Krista Tulle, was among the 12 grievors who filed grievances challenging the December 7, 2007, classification decision. Roma MacDonald, one of the 26 grievors who challenged the December 2, 2008, classification decision, was the second witness. The union and the employer agreed that the testimonies of Ms. Tulle and Ms. MacDonald would serve for the other grievors in their respective groups. At the request of the union’s representative, I ordered the exclusion of witnesses.

## **B. For the grievors**

### **1. Testimony of Ms. Tulle**

[17] Ms. Tulle is a CSA, classified PM-01, and has been employed in the firearms program from its beginnings in 1998. She was a union steward in 2006 and 2007.

[18] Ms. Tulle stated that initially, her duties encompassed parts of the work descriptions of the client service officer (Exhibit G-1, Tab 1) and of the firearms transfer clerk (Exhibit G-1, Tab 2). When she and other employees were provided with the CSA work description combining the duties of a firearms transfer clerk and a client service officer effective May 24, 2006, they expressed their dissatisfaction with the work description as drafted. Ms. Tulle was part of a committee of employees and team leaders formed to generate what they believed was a more appropriate work description. The employees and management accepted this work description, and it was sent for classification. As a result of the decision dated December 7, 2007 that classified the CSA position CR-04, Ms. Tulle filed her grievance on January 15, 2008,

alleging that the employer asked her to perform the duties of a higher classification while paying her as a CR-04.

[19] Ms. Tulle referred to the Canadian firearms officer (“firearms officer”) work description, updated August 22, 2001 (Exhibit G-2). While the version entered into evidence was in draft form, it appears from the evidence that the firearms officer position was classified at the PM-01 group and level. Ms. Tulle testified that she performed many of the firearms officer duties.

[20] The firearms officer work description sets out the following duties under the heading “Client-Service Results”:

*Processing of live transfers of firearms, processing of licensing, processing of authorization to transport permits and carrying permits, processing registration applications, issuance of licence cards and registration certificates, verification of non-restricted, restricted and prohibited firearms on the Firearms Reference Table (FRT), and responding to spousal calls on behalf of the Provincial/Territorial Chief Firearms Officers and the Registrar of the RCMP. Monitoring and responding to security concerns at CPS Miramichi, N.B.*

[21] Ms. Tulle testified that she performed these duties except for the following: processing of authorization to transport permits and carrying permits; responding to spousal calls on behalf of the provincial/territorial chief firearms officers and the registrar of the RCMP; and monitoring and responding to security concerns at CPS Miramichi.

[22] The “Key Activities” section of the firearms officer work description reads as follows:

- *As delegated by the Chief Firearms Officers of the provinces and territories: performing CPIC/FIP [Canadian Police Information Centre/Firearms Interest Police] queries on individual transferees, reviewing and approving transfers of validated firearms, issuing Transfer Authorization Numbers/or New Certificate Numbers of validated firearms; reviewing and approving license applications, card replacement applications, authorizations (and extensions of authorizations) to transport or carry firearms, and authorizations (and extensions of authorizations) of temporary borrowing licenses.*

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- *Supporting the call centre operation on legislative matters, and by responding to spousal safety concerns, jurisdiction-specific inquiries from Provincial firearms officers, Members of Parliament, businesses, members of the public and other interested parties.*
  - *Liaise with the Registrar's office and RCMP firearms technicians.*
  - *Performing complex queries (e.g. off-line searches) against the CFRS [Canadian Firearms Registration System] database and performing complex queries against CPIC database. This includes CPIC property gun queries of serial numbers (prohibited, restricted and non-restricted firearms), restricted firearms owner numbers and RWRs [Restricted Weapon Registration System] numbers.*
  - *Providing information to operating partners on processes to be followed prior to the issuance of license cards and registration certificates.*
  - *Conducting security investigations in relation to security of the building including, but not limited to, CPIC individual vehicle queries.*
  - *Analyzing and testing the reliability of probability mechanisms (e.g. point rating system) that have been implemented through the accreditation system to ensure the quality of license decisions.*

[23] Ms. Tulle stated that she performed the following duties set out in the first bullet of that description: reviewing and approving transfers of validated firearms; issuing transfer authorization numbers or new certificate numbers of validated firearms; and reviewing and approving license applications and card replacement applications. Concerning the second bullet, Ms. Tulle said that she and the other grievors were the call centre for legislative matters. She performed the duties of the third bullet. In the fourth bullet, Ms. Tulle performed only complex queries against the CFRS database. She performed the duties of the fifth bullet.

[24] The next section on page 3 of the firearms officer work description titled "Information for the Use of Others," provides as follows:

**Work Characteristics  
Responsibility  
(1) Information for the Use of Others**

*Responsible for individuals insofar as to provide support services to individuals reporting concerns about spouses or ex-spouses in relationships to firearms safety i.e. safe storage of firearms, family violence concerns, spousal notification in relation to schedules one and two on Possession and Acquisition licences.*

*Responds to specific information enquiries from businesses and the general public on procedures and transactions concerning firearms transfers and firearm license applications, in support of the call center.*

*Provides and exchanges information and interacts with firearms businesses with respect to the maintenance of records on firearms inventories.*

*Responds to general and specific questions related to transfers of NR [non-restricted] firearms from provincial/territorial firearms officers and the public.*

*Responds to general questions from Central Processing Site (CPS), departmental and Human Resource and Development Canada (HRDC) staff on processes followed for the receipt, capture and processing of licensing and registration applications, and the issuance of licence cards and registration certificates.*

[25] Concerning the first paragraph of that section, Ms. Tulle said that the grievors performed the duties concerning the safe storage of firearms but did not handle any calls relating to spousal safety concerns. She stated that the grievors performed the duties set out in the remaining paragraphs.

[26] The section of the firearms officer work description, titled “Physical Assets and Products,” reads as follows:

**Work Characteristics  
Responsibility  
(5) Physical Assets and Products**

***Building Security***

*Responsible for maintaining the security of the building. This includes identifying potential security risks, setting the building alarm, escorting visitors, ensuring surveillance equipment is functioning and monitoring the safety of staff*



*in and around the building. In relation to security incidents: responsible for briefing supervisor, and if applicable, debriefing employees; performing database queries; liaising with law enforcement agencies.*

*Operates and cares for a micro computer and software for personal use in the preparation of reports and other documents on a daily basis. These items are easy to replace but may be costly.*

*Uses and cares for office supplies, furniture and audiovisual equipment for personal use to carry out daily operations. These items are easy to replace although some are costly (e.g. laptops).*

[27] Ms. Tulle stated that the second paragraph of that section pertained to the duties performed by the grievors.

[28] Ms. Tulle did not address the section of the firearms officer work description titled "Work characteristics - Responsibility - (6) Ensuring Compliance".

[29] The section of the firearms officer work description, titled "Job Content Knowledge," reads as follows:

***Work Characteristics***

***Skills***

***(7) Job Content Knowledge***

*Working knowledge of firearms and safety procedures related to retrieving, storing, handling, disposing of firearms.*

*Knowledge of handling procedures related to confidential and classified information derived from CPIC/FIP queries.*

*Knowledge of computer systems and programs. Ability to perform data entry and knowledge of the procedures, manipulation and retrieval techniques used in working with data in an automated information system.*

*Ability to identify anomalies during database inquiries.*

*Knowledge of organizational methods and practices requires organizing and prioritizing own workload.*

*Ability to write clearly and concisely.*

[30] Ms. Tulle asserted that of those paragraphs, only the second did not pertain to the work performed by the grievors.

[31] The section of the firearms officer work description titled “Contextual Knowledge” provides as follows:

***Work Characteristics***

***Skills***

***(8) Contextual Knowledge***

***A. Own Unit:***

*Knowledge of the roles, responsibilities and programs and work operations of the Canadian Firearms Central Processing Site Miramichi is required to participate in daily activities and to provide firearms transfers, registration and licensing services to clients.*

*Knowledge and understanding of the Canadian Firearms Program and the Canadian Firearms Registration System specifically as it relates to CPS Miramichi is required to perform daily administrative duties.*

***B. Own Department:***

*Knowledge of the mandate, mission, organization, programs, service delivery, information systems of the Department of Justice of Canada as well as the activities of other divisions is required to exchange information and ensure compatibility and compliance to departmental programs, policies and operational procedures.*

***C. Other Departments:***

*Understanding the priorities and positions of other Central Processing Sites in B.C. and Quebec, other levels of government, other federal departments and agencies, police agencies, firearms businesses, and special interest groups is required to provide assistance and to respond to inquiries on work operations at CPS Miramichi, N.B.*

***D. Canadian Public and Private Sectors:***

*Knowledge of the Canadian Firearms Registration System Operating Partners involved in firearms control, such as the Registrar, all law enforcement agencies, provincial and municipal agencies, is required to provide and exchange information and to secure their cooperation.*

*Knowledge of the procedures followed by Canadian businesses involved in firearms transactions is required to respond to specific enquiries and to obtain information on the maintenance of firearms inventories.*

***E. International Private and Public Sectors:***

*Knowledge of Interpol and the FBI is required to provide and exchange information on CPIC/FPI queries on individuals.*

*F. Legislation and Regulations:*

*Knowledge of the Canadian Firearms Act (Bill C-68) and Regulations, the Criminal Code of Canada, the Customs Act, Bill C-17, the Privacy Act and provincial/territorial policies and procedures is required to carry out the designated duties on behalf of the provincial and territorial Chief Firearms Officers and the registrar of the RCMP, for the Department of Justice Canada.*

[32] Ms. Tulle testified that all the above paragraphs, save paragraph E, pertained to the work done by the grievors.

[33] The next section of the firearms officer work description is titled “Work Characteristics - Skills - (9) Communication.” The first part deals with “Communication In,” namely, listening and reading skills, while the second part, “Communication Out,” addresses verbal and writing skills. Ms. Tulle stated that both were part of the grievors’ work.

[34] Ms. Tulle said that the section of the work description titled “Work Characteristics - Skills - (10) Motor and Sensory Skills,” namely, physical dexterity to operate a computer keyboard and other office equipment, pertained to the grievors’ duties.

[35] The section of the firearms officer work description titled “Intellectual Effort” provides as follows:

***Work Characteristics  
Effort  
(11) Intellectual Effort***

*Intellectual effort is required to identify anomalies during database inquiries and to assess if there is sufficient concern to warrant further investigation. Effort is intensified by the need to protect and maintain public safety while ensuring the privacy of client(s).*

*Intellectual effort is required to assess the urgency of requests for information, to identify the best sources, and the best ways to collect, analyze, revise and disseminate information. Effort is enhanced by the necessity to respond to requests tight deadlines.*

*Intellectual effort is required in providing consistent, accurate information to the public and private sector organizations and members of the public.*

*Intellectual effort is required in using sensitivity and discretion in dealing with applicants and applicant's (ex) spouses who have a history of family violence.*

*Intellectual effort is required to develop a thorough understanding of the policies, rules, processes and procedures applicable within a specific jurisdiction.*

[36] Ms. Tulle stated that those paragraphs pertained to the grievors' work, although as she had testified, the grievors did not deal with issues of spousal safety.

[37] The remaining sections of the firearms officer work description were not addressed by Ms. Tulle. These are: "Work Characteristics - Effort - (12) Sustained Attention"; "Work Characteristics - Effort - (13) Psychological/Emotional Effort"; "Work Characteristics - Effort - (14) Physical Effort"; "Work Characteristics - Working Conditions - (15) Work Environment"; and "Work Characteristics - Working Conditions - (16) Risk to Health."

[38] Ms. Tulle asserted that she had substantially performed the duties of a firearms officer.

[39] Ms. Tulle said that the Enhanced Screening Unit was introduced as a pilot project on September 27, 2007, and that she began working in that unit on November 28, 2007 (Exhibit G-3). During the pilot project, she only performed the duties of an enhanced screening agent.

[40] Ms. Tulle referred to the CSA work description effective April 1, 2009 (Exhibit G-1, Tab 8), which was reclassified to PM-01. In that decision, the key activities of the CSA position were set out as follows:

KEY ACTIVITIES - ACTIVITÉS PRINCIPALES

<i>Provides services to Canadian and International clients* regarding the requirements of the Firearms Act, Regulations and restrictions as well as their rights and obligations to acquire, transfer, carry or otherwise possess firearms in Canada; provides Internet assistance to clients trying to access on-line firearms services. *Clients represent a diverse public who contact the Canadian Firearms Program via the</i>	20%
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<i>1-800 call centre and through internet requests.</i>	
<i>Researches information in the Firearms Reference Table (FRT) to identify firearms in the initiation and completion of registration and/or transfers; explains to clients, individuals and businesses, the specific requirements, restrictions and procedures as they relate to specific needs, interests and obligations or the status of applications; follows protocol to input returned information provided by clients who have received notices; provides information and guidance on options available to clients whose licence has expired and/or whose registrations have been revoked.</i>	20%
<i>Scopes and assesses information from applicants and references to support or deny an application for a firearms licence under the provisions of the Firearms Act. Responses to questions often require further probing to elicit information that will influence the outcome of the client's application. Responses are analyzed for consistency to support risk and further assessment by the Chief Firearms Officer.</i>	20%
<i>Verifies and authenticates the identity of clients; researches information in the Canadian Firearms Information System (CFIS) and flags lost, stolen and recovered firearms licences; conducts research on complex files, clarifies discrepancies, processes credit card payments, validates applications amends the CFIS database and forwards to the Registrar for completion of findings; reissues licence cards and registration certificates; completes, validates or refers licence and transfer applications from Canadian and Foreign clients; obtains and analyzes data from Canadian Firearms Information System (CFIS), Restricted Weapons Registration System (RWRS) on behalf of the Registrar, Chief Firearms Officer, other Client Service Delivery (CSD) units and partner agencies within the Public Safety portfolio such as Canada Border Services Agency, Fisheries and Oceans, Natural Resources, RCMP and other law enforcement agencies.</i>	20%
<i>Reviews firearms licence applications to gain knowledge of the applicant and the relationship to the references provided; conducts interviews with applicants and their references, guided by a written script; elicits replies which are designed to offer insight into the history, nature and character of the applicant, his/her views and activities from which it may be possible to derive a balanced assessment of</i>	20%

<i>the individual in question; determines any inconsistencies in replies or conflicts in facts presented and notes reluctance to be forthcoming which could indicate a potential risk of firearms ownership; forwards written comments to the Chief Firearms Offices [sic].</i>	
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[41] Ms. Tulle stated that the activities set out in the first, second and fourth boxes were a combination of CSA and firearms transfer clerk duties. She asserted that she was performing those duties at the time she filed her grievance.

[42] Ms. Tulle said the activities in the third and fifth boxes were drawn from the enhanced screening agent work description and that she was not carrying out those duties at the time of her grievance.

[43] Ms. Tulle referred to the “committee deliberation” section of the classification committee report (Exhibit G-1, Tab 10), which set out the reasons for the selection of the PM group for the CSA position. Among other things, the report refers to the expansion of the “Firearms Reference Table” (FRT) and notes that the CSA positions were “. . . front-line delivery for the Firearms Program.” Ms. Tulle stated that at the time of her grievance, she was working with the FRT and was doing “front-line delivery.”

[44] In cross-examination, Ms. Tulle stated that when the client service officer and firearms transfer clerk positions were combined into the CSA position, employees had to perform the duties of both jobs. Concerning the firearms officer position, Ms. Tulle said that although she was never appointed to that position, she had performed some of its duties at the time she filed her grievance, while acknowledging that her grievance did not state that she had done so.

[45] As for the Client-Service Results section of the firearms officer work description, Ms. Tulle said that she did not know what the firearms officers did in relation to the “processing of licensing.” When she performed this function, she ensured that files were complete and were submitted for approval and validation. As for the “issuance of licence cards and registration certificates,” Ms. Tulle said that she did not exercise judgment as to whether a licence card was issued or whether an applicant was entitled to be issued a registration certificate.

[46] Concerning firearms transfers, Ms. Tulle testified that when firearms transfer clerks handled transfers, the transfers had to be validated by firearms officers. When the client service officer and firearms transfer clerk positions were combined, transfers were no longer sent to firearms officers for validation, as they were done automatically through the CPIC.

[47] Ms. Tulle referred to the classification decision of December 7, 2007 that had classified the CRA position CR-04 (Exhibit G-1, Tab 5), which prompted her to file grievances against it. Ms. Tulle stated that she had filed a work description grievance, which was withdrawn; a classification grievance, which did not result in a higher classification; and the present acting pay grievance. She said that while one of the key activities of the CSA position stated “searches Canadian Firearms Information System (CFIS),” she did in-depth research of the CFIS and pointed to her comments on the “employee’s statement” page, as follows: “The job description is too generalized and does not accurately reflect the depth of some of the research and investigation that is required on a daily basis. I do not agree with the classification.”

[48] That exhibit also contains an email dated December 10, 2007, which Ms. Tulle sent to, among others, a representative of her union. The email reads in part as follows:

...

*I have received a copy of my job description which is a slap in the face, in my opinion. Our duties and responsibilities have increased while our point factor by rating has decreased. We are actually now only 23 points from CR3 where in previous job descriptions we were closer to CR5 where in my opinion we should be if not PM. ...*

...

[49] Ms. Tulle said that after management had requested a review of the CSA classification, a desk audit was conducted by Vanessa Fuller, a member of the classification committee, who sat with Ms. Tulle while she performed enhanced screening agent duties. She did not recall whether she was asked to provide comments to Ms. Fuller and added that while Ms. Fuller listened to calls, Ms. Tulle provided examples of types of calls she would receive.

[50] Ms. Tulle did not know how management decided on the date of April 1, 2009, as the effective date of the CSA position reclassification to PM-01.

## **2. Testimony of Ms. MacDonald**

[51] Ms. MacDonald was initially employed in the firearms program as a part-time employee and was trained only to perform firearms transfers. When she became an indeterminate employee some six months later, she performed the duties resulting from the 2004 merger of the duties of the client service officer and firearms transfer clerk. Ms. MacDonald has been a union chief steward for approximately five years. Ms. MacDonald filed her grievance following the classification decision of December 2, 2008. She had also filed a classification grievance, which was unsuccessful.

[52] Ms. MacDonald referred to the firearms officer work description (Exhibit G-2). Concerning the Client-Service Results section, the duty she did not perform was the processing of authorization to transport permits. As for “[m]onitoring and responding to security concerns at CPS Miramichi, N.B.,” since entry to the premises was gained by scanning a card, she was trained to ensure that no unauthorized person entered by following her.

[53] In the “key activities” section, Ms. MacDonald did not perform the following duties in the first bullet: performing CPIC/FIP queries and approving license applications. In the second bullet, she responded to spousal safety concerns and dealt with jurisdiction-specific inquiries from provincial firearms officers. She performed the duties of the fifth, sixth and seventh bullets.

[54] Ms. MacDonald asserted that during the time of her grievance, she was substantially performing some of the duties of the firearms officer work description. She did not participate in the enhanced screening pilot project, and before the CSA position reclassification to PM-01, her experience was in client service officer and firearms transfer clerk positions.

[55] Referring to the key activities section of the CSA position reclassified from CR-04 to PM-01 effective April 1, 2009, Ms. MacDonald said that at the time of her grievance, she performed only the duties set out in the first, second and fourth boxes.



[56] Ms. MacDonald referred to the “committee deliberation” section of the classification committee report (Exhibit G-1, Tab 10) and stated that at the time of her grievance, she was doing “front-line delivery.”

[57] In cross-examination, Ms. MacDonald said that she was never a firearms officer and that she did not know those duties. She acknowledged that those duties might have differed from her duties and that the processing they did might not have been the same as what she was doing. She further acknowledged that while she did not know which key activities the firearms officers performed, she nevertheless believed that she performed some of those duties. She stated that that was her interpretation based on the firearms officers’ activities that corresponded to her duties. Ms. MacDonald said that she chose the firearms officer position work description as a comparison because firearms officers carried out some of the duties she performed. As their position was classified PM-01, she believed her position should have had the same classification.

[58] In re-examination, Ms. MacDonald said that at the time of filing her grievance, she processed live transfers of firearms, as specified in the Client-Service Results section of the firearms officer work description. She stated that she performed the transfer activities mentioned in the first box of the CSA work description effective April 1, 2009.

[59] Ms. MacDonald said that the “verification of non-restricted, restricted and prohibited firearms on the Firearms Reference Table” in the Client-Service Results section of the firearms officer work description corresponds to the second box of the CSA work description effective April 1, 2009. Ms. MacDonald stated that at the time of filing her grievance, she performed the activities set out in the fourth bullet in the key activities section of the firearms officer work description, which she said were reflected in the fourth box of the CSA work description.

### **C. For the employer**

#### **1. Testimony of Gilles Maillet**

[60] RCMP Superintendent Gilles Maillet assumed the direction of the firearms program at CPS Miramichi on June 8, 2009, at which time he held the rank of acting inspector. He said that the workforce comprised approximately 225 employees. CPS

Miramichi included a large call centre, which handled 1 million calls per year, a data processing unit, an exception handling unit, and an enhanced screening unit, where employees would call applicants and their references. Supt. Maillet said that the CSAs would answer general calls and work on applications. When he learned that they had not been trained in phone interviews, he brought in a polygraph expert in the fall of 2009 to lecture employees on conducting phone interviews.

[61] Supt. Maillet said that after having consulted the director general of the firearms program in Ottawa, he initiated a managerial request for classification, which he signed on August 19, 2009 (Exhibit E-1). He said that employees and managers were consulted about the proposed effective date of April 1, 2009. He had been informed that previous requests for classification had maintained the same level, and he wanted to ensure that the employees had the right tools for the job and were at the proper level. Supt. Maillet thought that the enhanced screening unit and the telephony unit should be combined. He requested that the classification be determined by persons who had not been involved in the previous classification decisions. He also requested a hands-on desk audit to be conducted before the classification was reviewed by the classification committee. The desk audit was carried out in the fall of 2010 by Ms. Fuller, an RCMP corporate classification advisor who was a member of the classification committee (Exhibit G-1, Tab 10).

[62] Supt. Maillet stated that on December 15, 2010, he and two operations managers, Christine Henderson and Colleen Connick, appeared before the classification committee in Ottawa. Ms. Henderson was a telephony manager, while Ms. Connick was in the enhanced screening unit. The classification decision, dated January 31, 2011, classified the CSA position PM-01. Supt. Maillet said that employees had to sign an agreement that they agreed with the effective date of April 1, 2009, for purposes of retroactive pay.

[63] When it was put to Supt. Maillet in cross-examination that these grievances dealt with back pay and not with a statement of duties or classification, he agreed but said that he found them intertwined.

[64] When asked why April 1, 2009, was selected as the effective date of the reclassification, Supt. Maillet said he was told that the two jobs had been combined on that date and that the employees had been met with and had agreed on that date. Having arrived in June 2009, he found that that date made sense. Asked whether the

two jobs had been merged in 2004, he said that they had not been to his knowledge and that when he arrived at CPS Miramichi, the transfer calls were part of the telephony unit.

## **2. Testimony of Ms. Henderson**

[65] Ms. Henderson has been acting director of CPS Miramichi since May 2013. She was first employed there in 1998 as an exception handling clerk, classified CR-04, and several months later, she became a firearms officer, classified PM-01, a position she held for four years and for which she had been trained as a certified firearms verifier. Beginning in 2001, she held acting team leader positions and became indeterminate in that role in 2004. Ms. Henderson was a team leader until 2008, when she was appointed as the operations manager, a position she held until her appointment as the acting director in 2013.

[66] Ms. Henderson testified that in the early years of the firearms program, firearms transfer clerks answered telephone calls from firearms buyers and sellers. Upon completion of a given call, a firearms transfer clerk would then walk to the firearms officers' work area and provide them with the relevant information. The firearms officers would verify the firearm on the FRT and submit it to the CPIC, which they could access from their computers. The CPIC returned a score, which determined whether the firearm purchase could proceed. If a FIP event was identified, further research was required. Ms. Henderson stated that the CSAs never performed that duty.

[67] Ms. Henderson said that the firearms officer unit was disbanded in 2002 and that the firearms officers were "red-circled" (employee is paid a holding rate of pay and is not entitled to economic increases) at the PM-01 group and level. The unit was eventually eliminated from the organizational structure. Improvements were made to the CFIS, with which she was very familiar, as she had to test the new versions. Among other things, the changes allowed the CFIS to speak to the CPIC. Thus, the firearms transfer clerks started to carry out the CPIC verifications that Ms. Henderson had done as a firearms officer as the clerks could run CPIC verifications automatically.

[68] Ms. Henderson said that firearms officers were the only group with access to the FRT and to a direct line to the firearms technicians in Ottawa. However, now anyone can access the FRT via the Internet.

[69] Concerning spousal calls, the firearms officers were the front line for them from 1998 to 2002. As applicants for firearms required their spouses' signatures, the firearms officers would record any concerns of an applicant's spouse, write a report and forward it to the appropriate jurisdiction. Today, the CSAs send those reports.

[70] Ms. Henderson said that firearms officers were delegated by chief firearms officers to approve firearms licences for them. This was done by a manual CPIC verification. Today, licence approval is done automatically.

[71] Insofar as building security is concerned, Ms. Henderson said that a firearms officer would activate the building alarm at night.

[72] Ms. Henderson then addressed the firearms officer work description. Concerning the Client-Service Results section, she said that the phrase "live transfers" meant that there was a live person on the telephone, as in CPIC verifications. Licensing processing was done through the system during the night. Ms. Henderson said that the processing of authorization to transport permits and carrying permits was done not by the firearms officers but only by chief firearms officers. Firearms officers did not process registration applications; a data processing clerk did. Issuing licence cards is a necessary result of the approval process. Firearms officers verified the FRT and responded to spousal calls.

[73] Concerning the key activities section of the firearms officer work description, Ms. Henderson stated that with respect to the first bullet, she performed CPIC/FIP queries and reviewed and approved transfers of validated firearms. Upon approval of a firearms transfer, the individual would be issued a transfer authorization number. After 2002, this process was automated. The firearms transfer clerk, who had become a CSA, entered the data into a computer and pressed "approve," and the registration certificate appeared on the screen. Firearms officers reviewed and approved license applications but not card replacement applications or temporary borrowing license authorizations, which was done by chief firearms officers.

[74] Concerning the second bullet of the key activities section, Ms. Henderson said that firearms officers supported the call centre on legislative matters, particularly relating to firearms legislation. Firearms officers did not deal with jurisdiction-specific inquiries. She said that the CSAs did not respond to inquiries from members of Parliament. Ms. Henderson performed the duties of the third bullet, adding that she

consulted daily with firearms technicians. She performed some of the complex queries mentioned in the fourth bullet but none of the duties of the sixth bullet.

[75] In cross-examination, Ms. Henderson said that when she was a firearms officer, she substantially performed some of the duties of that position and was classified PM-01.

[76] Asked to identify the duties that she had performed among those set out in the CSA work description having an effective date of April 1, 2009 (Exhibit G-1, Tab 8), Ms. Henderson said that in the first box, the first line, about providing services with respect to the requirements of the *Firearms Act*, was a function of the call centre agents. The second line, about providing Internet assistance, was not done by firearms officers.

[77] In the second box, in the first line, she performed only FRT searches. The duties related to “explains to clients” were done on a second-level basis and were not front-line duties. She did not deal with the protocol to input returned information.

[78] In the fourth box, she validated applications and forwarded them to the registrar. As concerns “completes, validates or refers licence and transfer applications . . . ,” Ms. Henderson said she could not affirm that she performed those functions, as the work description does not indicate the several steps that had to be done before completing the information by computer. As for obtaining and analyzing data, Ms. Henderson said that she did so from the CFIS and the RWRS.

[79] Ms. Henderson said that in 2002, the firearms officers were told that their positions would become obsolete and that their duties would be streamlined.

[80] Ms. Henderson reiterated that she had responded to spousal calls while working as a firearms officer. She said that the CSAs receive calls on a spousal consent line, which are forwarded to the appropriate jurisdiction.

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

#### **A. For the grievors**

[81] The grievors submitted that initially, they had filed three types of grievances: classification, statement-of-duties and pay administration grievances. The classification and statement-of-duties grievances were withdrawn. These grievances

deal with pay administration. For the grievors, the issue is that they were performing the duties of a higher classification at the time they filed their grievances. In referring to the pay administration provisions of the collective agreement, the grievors asserted that these grievances do not concern acting pay but that clause 64.07 of the collective agreement provides the intent behind performing work of a higher classification.

[82] The grievors referred to Ms. Tulle's testimony that she had performed only enhanced screening duties, classified CR-04, while part of the pilot project, and that the activities in the third and fifth boxes of the CSA work description reclassified from CR-04 to PM-01 were drawn from the enhanced screening agent work description. Ms. Tulle had testified that she was performing the activities described in the first, second and fourth boxes at the time of filing her grievance, which the grievors stated appeared to have been drawn from the firearms officer work description. The grievors asserted that Ms. Henderson confirmed that testimony.

[83] Concerning the fact that the firearms officer work description was in draft form, the grievors pointed to Ms. Henderson's testimony that as a firearms officer, she had performed most of the activities in the firearms officer work description.

[84] The grievors also referred to Ms. MacDonald's testimony in re-examination during which she compared the firearms officer work description to the duties set out in the first, second and third boxes of the CSA work description effective April 1, 2009. The grievors submitted that both union witnesses testified that they were substantially performing the firearms officer duties at the time of filing their grievances. The grievors further submitted that the testimonies of the union witnesses were uncontradicted and were confirmed by Ms. Henderson.

[85] The grievors referred to the "committee deliberation" section of the classification committee report (Exhibit G-1, Tab 10), where it is stated that ". . . the PM group was selected as the best-fit as these positions are the front-line delivery for the Firearms Program." The grievors submitted that "front-line delivery" did not begin only on April 1, 2009, as both union witnesses testified they were doing front-line delivery at the time of filing their grievances. In the same section of the classification committee report, the grievors referred to the portion beginning with the following sentence: "The other significant change relates to the expansion of the Firearms Reference Table and the requirement for Client Service Agents to perform verification

over the phone.” The grievors submitted that they were performing those duties at the time of filing their grievances.

[86] The grievors submitted that when the CSA and enhanced screening agent positions were first combined, they were classified CR-04. According to the grievors, the deciding factor for reclassification to PM-01 was not the merger itself but was due to the “best fit” because it was front-line delivery. The grievors stated that both union witnesses said they were performing those duties when they filed their grievances.

[87] The grievors referred to Ms. Henderson’s testimony that the firearms officer position was discontinued in 2002 and that after that, all duties were done automatically. According to the grievors, Ms. Henderson confirmed that some of the firearms officers’ duties were included in the first, second and fourth boxes of the CSA work description reclassified from CR-04 to PM-01. They also submitted that Ms. Henderson stated in cross-examination that the draft firearms officer work description, the duties of which she substantially performed, was classified PM-01.

[88] The grievors submitted that on a balance of probabilities, they were performing the duties of the PM-01 classification before it became effective on April 1, 2009, and that the employer did not contradict that submission. The grievors submitted that the testimonies of Ms. Tulle and Ms. MacDonald that they had performed the firearms officer duties at the time of filing their grievances was uncontradicted and was confirmed by Ms. Henderson. In the grievors’ view, the employer unilaterally determined the effective date of the CSA position reclassification to PM-01.

[89] In support of their arguments, the grievors cited the following decisions: *Manuel and Reid v. Treasury Board (Department of Transport)*, 2012 PSLRB 9; and *Dervin v. Treasury Board (Department of National Defence)*, 2009 PSLRB 50.

#### **B. For the employer**

[90] The employer referred to clause 64.07(a) of the collective agreement and pointed out that the position of the grievors is that their grievances do not concern acting pay. In the employer’s submission, if the grievors were comparing their duties to those of a firearms officer, classified PM-01, it would be a classification issue. The grievors either were performing the duties of firearms officers in an acting capacity or were comparing their duties to those of firearms officers. Thus, the issue is that the

grievors were in an acting capacity or were seeking a higher classification. The employer submitted that the grievances concern a classification issue. In the alternative, the grievors were not substantially performing the duties of a higher classification level.

[91] The employer submitted that the wording of the grievances does not indicate whether they concern acting pay or classification. The grievors alleged that they were performing the work of “a higher position,” without specifying the nature of that position. The grievors had filed statement-of-duties and classification grievances on the same day as the compensation grievances. In all cases, the grievances were filed after the classification decisions were issued. The employer argued that this indicated that the grievors were concerned with their classification. The employer further argued that the question of whether the grievors’ substantive duties mean they should be paid at a higher level is a classification issue, not a matter of compensation.

[92] The employer stated that while the grievors alleged at the hearing that they were performing the work of firearms officers, no reference was made to a comparison to the duties of firearms officers in their grievances or in the employer’s reply to the grievances. The employer referred to Ms. Henderson’s testimony that the firearms officer position did not exist after 2002 and the duties of the firearms officers were streamlined and integrated into the CFIS. Thus, in the employer’s view, it is difficult to accept the grievors’ claim that they were performing the duties of firearms officers, as that would mean that management at the CPS was requiring them to perform the duties of a position that no longer existed.

[93] The employer submitted that the evidence of the grievors in cross-examination was that they never performed the duties of firearms officers. While they referred to the firearms officer work description, the employer advanced that they made no real comparison between their duties and those of firearms officers. The employer drew attention to the fact that the firearms officer work description was only in draft form and that there was no classification decision in evidence that referred to that position.

[94] The employer stated that Ms. Henderson performed other duties in addition to those of a firearms officer. She testified as to the duties she did perform and those that the grievors did not perform. At the hearing, the grievors compared their duties to those they believed were classified PM-01 to demonstrate that their substantive duties were the same as those of a position that, while it existed, was classified at a higher



level. The employer referred to Ms. Henderson's testimony that, essentially, the only firearms officer duty performed by the grievors was searching the FRT, which was reflected in the CSA work descriptions drafted before 2009. The employer submitted that the grievors were attempting to do indirectly what they could not do directly, namely, to have their ongoing duties classified at a higher level. In January 2004, the grievors were asked to perform the duties of a firearms transfer clerk and a client service officer, which were integrated into their existing roles. The grievances did not specify any particular period. Thus, the grievors requested to be paid at a higher level when performing the duties of their jobs. In the employer's submission, that is a classification issue. The only alternative is that the grievances concern acting pay.

[95] The employer submitted that even if I find that the grievances concern compensation, there is no evidence that the grievors were performing the duties of a higher classification on an ongoing basis at the time of their grievances. The evidence showed that at the time of filing their grievances, the grievors' substantive positions were classified at the CR-04 group and level. Furthermore, the grievors agreed that on April 1, 2009, they began to perform the duties of the work description that merged the duties of the CSA and enhanced screening agent positions. The employer stated that the reorganization took place on April 1, 2009, as confirmed in the testimony of Supt. Maillet. The employer emphasized that the combination of the CSA and enhanced screening agent duties did not exist in 2004 or at the time the grievors filed their grievances. The employer submitted that there was no evidence that the date of April 1, 2009, was arbitrary or that the changes had occurred before that date.

[96] The employer stated that the grievors claimed they were performing front-line duties before April 1, 2009, and therefore should be compensated at the PM-01 level. According to the employer, the evidence shows that the combined CSA and enhanced screening agent duties that were reflected in the work description that was submitted to the classification committee and that resulted in a PM-01 classification were both classified CR-04 before they were merged. Moreover, both the client service officer and firearms transfer clerk positions were classified CR-04. The employer emphasized that the classification committee decided that the combined CSA and enhanced screening agent duties warranted the PM-01 group and level. That was not the case with the combination of the firearms transfer clerk and client service officer positions in 2004.

[97] The employer submitted that an adjudicator has no basis to change the effective date of the of the CPS reorganization, as the effective date of the work description reflects that reorganization. In the employer's submission, changing the effective date of the work description would be tantamount to backdating that effective date to the date of the grievances, which is beyond an adjudicator's jurisdiction.

[98] The employer argued that there is no basis for pay grievances for a higher classification level than CR-04 before April 1, 2009, as the grievors were not required to substantially perform the duties of a higher classification level before that date. The combined enhanced screening agent and CSA duties did not exist in 2004 or at the time the grievances were filed. There were no duties of a higher classification level whatsoever in 2004, as the firearms officer position had been abolished. Thus, in this matter, the tests for receiving acting pay were not met. The employer submitted that the grievors were comparing their own duties to those of a firearms officer, which is different from saying that they performed the duties of a firearms officer. According to the employer, the grievors admitted that they were not firearms officers and demonstrated that they were unfamiliar with the duties of that position.

[99] The employer further argued that the grievors compared their duties as CSAs before 2009 to the combined CSA and enhanced screening agent duties. In the employer's submission, there is no basis for stating that the CSA duties absent the enhanced screening agent duties were duties of a higher classification level, since they had been classified CR-04 before being combined. In the employer's view, this is a classification matter.

[100] In support of its arguments, the employer cited the following decisions: *Stagg v. Canada (Treasury Board)* (1993), 71 F.T.R. 307 (T.D.); *Jones v. Canada Customs and Revenue Agency*, 2001 PSSRB 69; *Beaudry et al. v. Treasury Board (Department of Human Resources and Skills Development)*, 2006 PSLRB 75; *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (C.A.) (QL); *Laplante et al. v. Canadian Food Inspection Agency*, 2007 PSLRB 9; *Babiuk et al. v. Treasury Board (Department of Citizenship and Immigration)*, 2007 PSLRB 51; *Lamy and Pichon v. Treasury Board (Department of Public Works and Government Services)*, 2008 PSLRB 23 (application for judicial review dismissed in 2009 FC 635); *Bungay et al. v. Treasury Board (Department of Public Works and Government Services)*, 2005 PSLRB 40; and *Lagueux et al. v. Treasury Board (Department of National Defence)*, 2012 PSLRB 80.

**C. Grievors' reply**

[101] As for the employer's argument that this matter is one of classification, the grievors countered that the grievances refer to article 64 of the collective agreement, dealing with pay administration, and that the classification and statement-of-duties grievances had been withdrawn.

[102] The grievors pointed to Ms. Tulle's evidence that she had performed the duties of a firearms officer in 2004, and such duties were not found for the first time in the CSA PM-01 work description. In the grievors' submission, the CSA work description is evidence that the employer required the grievors to perform those duties effective April 1, 2009. The grievors further submitted that the duties of a firearms officer did not cease when that position was discontinued.

**IV. Reasons**

[103] The employer objected to my jurisdiction on the basis that the subject matter of the grievances is in fact classification. Classification is not included in the matters that may be referred to adjudication under subsection 209(1) of the *Act*, and an adjudicator lacks jurisdiction over classification grievances; see section 7 of the *Act*.

[104] The employer also submitted that the grievors either were performing the duties of a firearms officer in an acting capacity or were comparing their duties to those of a firearms officer. If the latter, the issue is one of classification. The employer's alternative argument was that the grievors did not prove that they substantially performed the duties of a higher classification level.

[105] I shall deal first with the issue of jurisdiction.

[106] The grievors stated that their grievances do not concern acting pay, but rather pay administration or remuneration. The employer argued that the grievances concern either classification or acting pay. Although not identical, the grievances allege the following:

*I grieve that the employer is not paying me appropriately for the duties I am performing. I am asked to perform duties of a higher position. As a result, the employer is not following the provisions of Article 64 of the Collective Agreement.*

[107] In determining the issue of whether the subject matter of the grievances is classification or acting pay, it is helpful to consider the test articulated in *Bungay et al.* After referring to the distinction between acting pay and classification grievances made by the Federal Court in *Chadwick v. Canada (Attorney General)*, 2004 FC 503, the adjudicator in *Bungay et al.* set out the following test:

...

*[59] In summary, some of the indicators that a grievance is a classification grievance and not an acting pay grievance (and therefore where an adjudicator has no jurisdiction) are:*

- the claim for acting pay is an ongoing claim and not for a specified period;
- the grievor has sought a reclassification, either informally or through a classification grievance;
- the grievor continues to perform the duties he/she has always performed and only the classification levels in the workplace have changed; and
- the acting pay grievance is based, in part, on a comparison with similar positions in other work areas.

*[60] This is not an exhaustive list and, in my view, some of the factors considered alone cannot be determinative of jurisdiction.*

...

[108] Concerning the temporal element of the test, all the grievances were filed on January 15, 2008 or January 5, 2009. Although not identical, the grievances state the following: "... the employer is not paying me appropriately for the duties I am performing. I am asked to perform duties of a higher position." The corrective action requested by the grievors was that they "... be paid in accordance with the collective agreement for the performance of the duties mentioned retroactive to the date on which the performance of these duties began, January 13, 2004." That is the date on which the grievors were informed by email that the duties of a client service officer and of a firearms transfer clerk, each of which was classified at the CR-04 group and level, would be combined. This new position was titled "CSA" and was subsequently classified CR-04 (Exhibit G-1, Tab 4). The grievors were not notified of the reclassification of their positions from CR-04 to PM-01 before January 31, 2011.

Therefore, it appears that at the time of filing their grievances, the grievors were seeking higher pay for an indefinite period. Thus, the first element of the test is met.

[109] As for the second element of the test, the evidence is that the grievors had filed three grievances: classification, statement-of-duties and the present grievances. As an illustration of this, I note that some of the Board's records in these matters contain more than one grievance, similar in wording. The classification and statement-of-duties grievances were withdrawn. The dates of the withdrawal of these grievances were not provided. A number of employees were dissatisfied with the work description titled "CSA" issued following the combination of the client service officer and firearms transfer clerk positions, which had been classified CR-04. Ms. Tulle testified that she participated in a committee of employees and team leaders formed to generate what they believed to be a more appropriate work description, which was then sent for a classification review. The classification decision dated December 7, 2007 (Exhibit G-1, Tab 5), confirmed the CSA work description at the CR-04 group and level. As a result of this decision, Ms. Tulle and others filed their grievances.

[110] The CSA position was again reviewed, and in a decision dated December 2, 2008 (Exhibit G-1, Tab 6), it was confirmed at the CR-04 group and level. Ms. MacDonald and others grieved that decision.

[111] As the evidence is clear that the grievors had previously sought the reclassification of their positions, the second element of the test in *Bungay et al.* has been met.

[112] Concerning the third element of the test, the evidence showed that the grievors continued to perform the duties they had always performed and that those duties were consistent with the duties outlined in their work descriptions. While the duties of a client service officer and a firearms transfer clerk were combined in 2004, the grievors performed those duties set out in a CSA work description that a classification decision designated CR-04 effective May 24, 2006. Two subsequent classification decisions, dated December 7, 2007, and December 2, 2008, classified the same work description CR-04. The work description for the enhanced screening agent position, created as a pilot project, was classified CR-04. Ms. Tulle testified that during the pilot project, she performed only the duties of the enhanced screening agent. Ms. MacDonald stated that she did not participate in the project. There was no evidence as to which or how many grievors participated in this project. When the CSA and enhanced screening agent

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positions were combined into a single work description in 2009, it was initially classified CR-04.

[113] In all cases, the grievors performed the duties set out in their work descriptions. From January 2004 to December 2008, those duties did not change. The grievors who were in the enhanced screening agent position during the pilot project performed the duties set out in the applicable work description. Those who continued as CSAs performed the duties of that work description. In my view, this indicates that the essence of the grievances concerns classification.

[114] I turn now to the fourth element of the test, namely, whether the acting pay grievances are based on a comparison with similar positions in other work areas. In this case, as all elements of the firearms program were situated in the CPS, any comparison was restricted to that location. The grievors' evidence in support of their position was based on a comparison with the only position that had a higher classification level, the firearms officer position, which was classified PM-01. This indicates that the nature of the grievances is classification.

[115] I have found that the evidence in these matters has met the test in *Bungay et al.* In referring to this test, the adjudicator in *Doiron v. Treasury Board (Correctional Service of Canada)*, 2006 PSLRB 77, referred to in *Lagueux et al.*, added the following:

...

*[97] I add to this test a commonsense [sic] appreciation of what lies behind the two types of grievances: in an acting pay case, the grievor's substantive position is normally presumed to be properly classified. The grievor argues that the employer has assigned extra duties for a specified period over and above those of the employee's substantive position, as outlined in the job description. These extra duties are associated with a higher level role. The grievor asserts, as a result, an entitlement to acting pay. In a classification case, by contrast, the grievor claims that the duties the employer requires on a continuing basis are undervalued. The grievor argues that an assessment of these duties against the relevant classification standard justifies upgrading the level of his substantive position within an occupational group (and/or changing the occupational group).*

...

[116] In my view, the evidence in this case also meets this common sense characterization of a classification grievance. As stated earlier in this decision, the grievors performed the duties of their work descriptions. There was no evidence that the employer assigned the grievors duties above and beyond those contained in their work descriptions. Furthermore, in her email dated December 10, 2007 (Exhibit G-1, Tab 5), Ms. Tulle expressed her dissatisfaction with the decision classifying the CSA position CR-04 and her belief that it should have been classified CR-05 or in the PM group.

[117] As pointed out by the adjudicators in both *Bungay et al.* and *Doiron*, the criteria set out in *Bungay et al.* are not exhaustive, and not all of them need be present in order to arrive at a conclusion that the nature of a grievance is classification. In the circumstances of these grievances, in my view, the conclusion reached by the adjudicator in *Doiron* at paragraph 111 of his decision, as follows, applies in this case:

*[111] There is, however, no requirement that all of the indicators discussed in Bungay must be present to support a conclusion that classification comprises the real subject matter of a grievance. The individual indicators suggested in Bungay are neither necessary conditions nor, taken together, do they constitute an exhaustive or definitive list. They nevertheless do provide a helpful test. In the circumstances of this case, I am satisfied that the evidence, on balance, aligns well with the depiction of a classification grievance in Bungay.*

[118] Based on the evidence, I find that the subject matter of the grievances is that of classification and accordingly that I lack jurisdiction.

[119] In the event that I have erred in concluding that the subject matter of the grievances is classification, I shall address the additional arguments concerning the categorization of the grievances.

[120] I have difficulty with the grievors' argument that their grievances do not concern acting pay. Their grievances allege that the employer was not paying them appropriately, had asked them to perform the duties of "a higher position" and was not complying with article 64 of the collective agreement. Such language is typical of acting pay grievances. Furthermore, on cross-examination, Ms. Tulle stated that following the December 7, 2007, classification decision, she had filed a work

description grievance, which was withdrawn, a classification grievance, and the present acting pay grievance.

[121] In support of their argument, the grievors asserted that their grievances concern pay administration or remuneration and that clause 64.07 of the collective agreement provides the intent behind performing the work of a higher classification in article 64. Accordingly, it is appropriate to examine article 64 in order to determine those provisions that may apply to the grievances. It reads as follows:

**Article 64**  
**Pay Administration**

**64.01** *Except as provided in this Article, the terms and conditions governing the application of pay to employees are not affected by this Agreement.*

**64.02** *An employee is entitled to be paid for services rendered at:*

*(a) the pay specified in Appendix A-1 for the classification of the position to which the employee is appointed, if the classification coincides with that prescribed in the employee's certificate of appointment;*

*or*

*(b) the pay specified in Appendix A-1 for the classification prescribed in the employee's certificate of appointment, if that classification and the classification of the position to which the employee is appointed do not coincide.*

**64.03**

*(a) The rates of pay set forth in Appendix A-1 shall become effective on the dates specified.*

*(b) Where the rates of pay set forth in Appendix A-1 have an effective date before the date of signing of this Agreement, the following shall apply:*

*(i) "retroactive period" for the purpose of subparagraphs (ii) to (v) means the period from the effective date of the revision up to and including the day before the collective agreement is signed or when an arbitral award is rendered therefor;*

*(ii) a retroactive upward revision in rates of pay shall apply to employees, former employees or, in the case of*



death, the estates of former employees who were employees in the groups identified in Article 9 of this Agreement during the retroactive period;

(iii) for initial appointments made during the retroactive period, the rate of pay selected in the revised rates of pay is the rate which is shown immediately below the rate of pay being received prior to the revision;

(iv) for promotions, demotions, deployments, transfers or acting situations effective during the retroactive period, the rate of pay shall be recalculated, in accordance with the Public Service Terms and Conditions of Employment Regulations using the revised rates of pay. If the recalculated rate of pay is less than the rate of pay the employee was previously receiving, the revised rate of pay shall be the rate, which is nearest to, but not less than the rate of pay being received prior to the revision. However, where the recalculated rate is at a lower step in the range, the new rate shall be the rate of pay shown immediately below the rate of pay being received prior to the revision;

(v) no payment or notification shall be made pursuant to paragraph 64.03(b) for one dollar (\$1) or less.

**64.04** Where a pay increment and a pay revision are effected on the same date, the pay increment shall be applied first and the resulting rate shall be revised in accordance with the pay revision.

**64.05** This Article is subject to the Memorandum of Understanding dated February 9, 1982, signed by the Employer and the Alliance, in respect of red-circled employees.

**64.06** If, during the term of this Agreement, a new classification standard for a group is established and implemented by the Employer, the Employer shall, before applying rates of pay to new levels resulting from the application of the standard, negotiate with the Alliance the rates of pay and the rules affecting the pay of employees on their movement to the new levels.

**64.07**

(a) When an employee is required by the Employer to substantially perform the duties of a higher classification level in an acting capacity and performs those duties for at least three (3) consecutive working days or shifts, the employee shall be paid acting pay calculated from the date on which he or she commenced to act as if he or she had

*been appointed to that higher classification level for the period in which he or she acts.*

*(b) When a day designated as a paid holiday occurs during the qualifying period, the holiday shall be considered as a day worked for purposes of the qualifying period.*

**64.08** *When the regular payday for an employee falls on his or her day of rest, every effort shall be made to issue his or her cheque on his or her last working day, provided it is available at his or her regular place of work.*

[122] Clause 64.02 of the collective agreement stipulates that an employee must be paid in the pay scale that coincides with the classification of the position to which he or she has been appointed. The grievors were paid according to the classification of their position, namely, at the CR-04 group and level, until they were reclassified PM-01. Thus, the grievances do not relate to clause 64.02.

[123] Clause 64.03 of the collective agreement concerns the effective dates of pay rates. Particularly, clause 64.03(b) deals with effective dates of rates of pay during retroactive periods, as defined in that clause. As neither the grievances nor the evidence raised the issue of effective dates of pay rates within the meaning of this clause, clause 64.03 does not apply to the grievors' grievances.

[124] Clause 64.04 of the collective agreement refers to the administrative procedure for treating coincident pay increments and pay revision and has no application to these grievances.

[125] Clause 64.05 of the collective agreement deals with red-circled employees, which is not at issue.

[126] If the employer establishes a new classification standard, clause 64.06 of the collective agreement requires it to negotiate rates of pay and pay-related rules with the union before applying such rates. The grievances do not concern this clause.

[127] Clause 64.08 of the collective agreement deals with the prescribed procedure when an employee's regular payday falls on his or her day of rest and clearly has no application to these grievances.

[128] The remaining clause is 64.07 of the collective agreement, concerning acting pay. The grievances allege that "... the employer is not following the provisions of

Article 64 of the Collective Agreement.” As no other clause of article 64 applies to the grievances, the only plausible conclusion is that the grievances concern acting pay.

[129] In further examining the wording of the grievances, they do not specify the “higher position” the duties of which the grievors alleged the employer asked them to perform, and no such position is mentioned in the employer’s replies at the grievance process levels. However, the grievors’ evidence focused on the duties of a firearms officer, classified PM-01. They asserted that they had performed a number of the duties of that position, which would justify paying them at the PM-01 group and level.

[130] Considering the wording of the grievances, it appears to me that they indicate that the only apt characterization of them under article 64 of the collective agreement is that they concern acting pay. However, the grievors have specifically denied that their grievances concern acting pay, arguing that they deal with pay administration or remuneration. A grievance concerning pay administration or remuneration concerns one of two things: classification or acting pay. I have already dealt with the issue of classification.

[131] In *Cooper and Wamboldt v. Canada Revenue Agency*, 2009 PSLRB 160, referred to in *Laqueux et al.*, the adjudicator set out the following test for a grievance to be considered about acting pay:

...

*38 It seems to me that clause 64.07(a) of the collective agreement by its very nature requires the grievors to establish that four things have occurred. They are as follows:*

- *There must be a requirement by the employer that the employee perform certain duties.*
- *The employee must be required to substantially perform duties at a higher classification level.*
- *The employee must perform those duties in an acting capacity.*
- *The employee must perform those duties for at least three (3) consecutive working days or shifts.*

...

[132] The evidence has demonstrated that none of these conditions was fulfilled. There was no evidence that the employer asked the grievors to perform the duties of a

position of a level higher than theirs. The grievors were performing the duties set out in their work descriptions, not the duties of a higher classification level.

[133] The evidence and the grievors' argument that their grievances do not concern acting pay serve to reinforce my conclusion that the subject matter of the grievances is not that of acting pay.

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

*(The Order appears on the next page)*

**V. Order**

[135] The grievances are dismissed.

May 15, 2014.

**Steven B. Katkin,  
adjudicator**

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**APPENDIX**

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<b>PSLRB FILE #</b>	<b>GRIEVOR</b>	<b>DATE OF GRIEVANCE</b>
566-02-7514	Allain, Suzanne	January 5, 2009
566-02-7515	Baisley, Carmel	January 15, 2008
566-02-7516	Boisvert, Arlene	January 15, 2008
566-02-7517	Brideau, Sherri	January 5, 2009
566-02-7518	Corcoran, Donna	January 15, 2008
566-02-7519	Delano, Gail	January 5, 2009
566-02-7520	Dignam, Darlene	January 5, 2009
566-02-7521	Doran, Deborah	January 5, 2009
566-02-7522	Dunnett Sturgeon, Brenda	January 15, 2008
566-02-7523	Duthie, Sheila	January 5, 2009
566-02-7524	Fowlie, Andr�ea	January 15, 2008
566-02-7525	Gaudet, Joanie	January 5, 2009
566-02-7526	Girouard Savoie, Mary	January 15, 2008
566-02-7527	Gorman, Kelly	January 15, 2008
566-02-7528	Haining, Sandra	January 5, 2009
566-02-7529	Hallihan, Roxanne	January 5, 2009
566-02-7530	Hitchman, Donna	January 15, 2008
566-02-7531	Jessen, Candice	January 5, 2009
566-02-7532	Joe, Cynthia	January 5, 2009
566-02-7533	Kenneson Murphy, Judy	January 5, 2009
566-02-7534	Kingston, Tammy	January 5, 2009
566-02-7535	MacDonald, Roma	January 5, 2009
566-02-7536	Manuel, Nicole	January 15, 2008
566-02-7538	McKay, Kellie	January 15, 2008
566-02-7539	Mollins, Dorcas	January 5, 2009
566-02-7540	Murphy, Agnes	January 5, 2009
566-02-7541	Poirier, Louise	January 5, 2009
566-02-7542	Richard, Nicole	January 5, 2009
566-02-7543	Robertson, Candice	January 5, 2009
566-02-7544	Robichaud, Hilda	January 5, 2009
566-02-7545	Rousselle Mallais, Denise	January 15, 2008
566-02-7546	Savage, Brenda	January 5, 2009
566-02-7547	Sipple-Doucette, Ghislaine	January 5, 2009
566-02-7549	Sturgeon, Hollie	January 15, 2008
566-02-7550	Thibodeau, Louise	January 5, 2009
566-02-7551	Trevors, Linda	January 5, 2009
566-02-7552	Tulle, Krista	January 15, 2008
566-02-7553	Williston, Sheryl Ann	January 15, 2008