

**Date:** 20150309

**Files:** 566-02-8994, 8995, and 8997

**Citation:** 2015 PSLREB 24



*Public Service Labour Relations Act*

Before an adjudicator

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BETWEEN

**JASON STOKALUK**

Grievor

and

**DEPUTY HEAD  
(Canada Border Services Agency)**

Employer

Indexed as

*Stokaluk v. Deputy Head (Canada Border Services Agency)*

In the matter of individual grievances referred to adjudication

**Before:** Kate Rogers, adjudicator

**For the Grievor:** Ray Domeij, Public Service Alliance of Canada

**For the Employer:** Pierre-Marc Champagne, counsel

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Heard at Thunder Bay, Ontario,  
July 29 to August 1, 2014.

## REASONS FOR DECISION

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[1] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board ("the new Board") to replace the former Public Service Labour Relations Board (PSLRB) as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to section 396 of the *Economic Action Plan 2013 Act, No. 2*, an adjudicator seized of a grievance before November 1, 2014, continues to exercise the powers set out in the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s.2) as that *Act* read immediately before that day.

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

[2] Jason Stokaluk ("the grievor") was a Border Services Officer (BSO), classified FB-03, at the Pigeon River port of entry, Northern Ontario Region, Canada Border Services Agency (CBSA or "the employer"). He was covered by the collective agreement between the Treasury Board and the Public Service Alliance of Canada for Border Services group (expiry date: June 20, 2011) ("the collective agreement").

[3] On October 23, 2012, the grievor was suspended without pay, effective October 24, 2012, for an indefinite period pending the outcome of a disciplinary investigation into allegations of misconduct. On February 13, 2013, the employer terminated the grievor's employment for disciplinary reasons, effective October 24, 2012, on the grounds that his association with known criminals was a conflict of interest and a violation of the *Code of Conduct* and the *Values and Ethics Code for the Public Service*.

[4] The grievor grieved the indefinite suspension on November 2, 2012. He also filed a grievance on November 2, 2012, alleging discrimination on the grounds of union activity in contravention of article 19 of the collective agreement. On February 13, 2013, he filed a grievance against the termination of his employment. The grievances were dismissed at the final level of the grievance process on September 30, 2013, although they were referred to adjudication on September 18, 2013.

[5] The grievor withdrew PSLRB File No. 566-02-8994 (alleged violation of article 19 of the collective agreement) at the adjudication hearing.

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

[6] The employer called Constable Rob Kushnier, Thunder Bay Police Service (TBPS); Sergeant Kenneth Davis, TBPS (retired), Janice Paterson, Senior Investigator, Professional Standards Branch (“Professional Standards”), CBSA; Tuula Schuler, District Director, Northwestern Ontario, CBSA; Ariane Reza, Director General, Travellers’ Program Branch, CBSA; and Matthew Yaworski, Senior Labour Relations Advisor, CBSA, to testify and entered 18 documents into evidence. The grievor testified and called David Bakovic, BSO, CBSA and Rick Gauthier, Intelligence Officer, CBSA to testify and entered four documents into evidence.

[7] The grievor was hired by the employer as a summer student in 2002 and worked for two summers. In 2004, he was appointed to a full-time term BSO position. On June 27, 2007, he was appointed to an indeterminate position as a BSO. He received training at the CBSA training centre in Rigaud, Quebec. As a BSO, the grievor was a peace officer. He was responsible for processing travellers and goods into Canada, collecting applicable taxes and duties and enforcing legislation. He testified that he was not armed and had not received firearms training. However, he carried defensive weapons such as a baton and pepper spray.

[8] The grievor worked at the Pigeon River port of entry with a partner, Mr. Bakovic. The Pigeon River port of entry employed about 30 people who worked on two shifts. Four to five officers worked on the day shift and two or three worked on the night shift.

[9] In June 2011, the TBPS made a series of arrests on charges relating to drug trafficking and involvement in a criminal organization (Exhibit E-1). The arrests were the result of a 16-month investigation known as Project Dolphin, which was a joint effort involving the TBPS, the Ontario Provincial Police (OPP) and the Royal Canadian Mounted Police (RCMP), among others, that targeted criminal organizations operating in Thunder Bay, across the country and internationally. It utilized police agents, undercover police officers and investigators. Sergeant Davis was a lead investigator in the project. He testified that he supervised the investigators for phase one of Project Dolphin and also acted as a liaison officer in the investigation. Constable Kushnier

worked on the project as an investigator and also as a paper writer, to use his description, which meant that he prepared applications for search warrants.

[10] Frank Muzzi was one of the people arrested in June 2011. He was charged with a number of offences in 2011 and faced more charges in 2012, including drug trafficking, conspiracy to traffic drugs and with being a director of a criminal organization. He was held in custody and subsequently pleaded guilty to the offences. Constable Kushnier testified that Mr. Muzzi had been known to police since 2001 because of his connection to known drug traffickers in Thunder Bay. He was targeted in Project Dolphin because he was believed to be responsible for operating a drug distribution cell in Thunder Bay. Before Project Dolphin, Mr. Muzzi had been arrested but not convicted of any criminal offence.

[11] Constable Kushnier testified that Keith Ritchie and Travis Gordon were also investigated during Project Dolphin. The police believed that Mr. Gordon distributed drugs beneath Mr. Muzzi and also that he socialized with him. Mr. Ritchie was believed to be involved in importing and transporting drugs. He also socialized with Mr. Muzzi. Mr. Gordon was arrested a few months before the Project Dolphin arrests. He was convicted in 2011 for drug trafficking. Constable Kushnier testified that Mr. Ritchie was arrested in June 2011 and that his case was before the courts at the time of this hearing.

[12] Constable Kushnier testified that in the early stages of Project Dolphin investigators received information that the grievor, who socialized with Mr. Muzzi, was facilitating shipments of drugs across the border. He testified that the investigators were able to corroborate the relationship between the grievor and Mr. Muzzi. Photographs on the grievor's Facebook page showed him with Mr. Muzzi. Furthermore, surveillance photographs of Mr. Muzzi showed him standing outside a local bar with the grievor. In cross-examination, he acknowledged that although there was early information that the grievor was involved in facilitating the transport of controlled substances across the border, the grievor was not interviewed in connection with any crime and was never charged, nor were any search warrants executed in relation to him.

[13] Sergeant Davis testified that after investigators identified the grievor as a possible suspect, he contacted CBSA as a professional courtesy to advise them of the potential for a security breach. He spoke to both Dave MacDonald, the Chief of

Intelligence for CBSA and Ms. Paterson, from Professional Standards. He told them about the police investigation into organized crime and explained that they had identified the grievor as a possible target because of his association with Mr. Muzzi and other known drug dealers. He asked them not to alert the grievor to the investigation unless it became a security issue because the police did not want the investigation compromised. Sergeant Davis also testified in cross-examination that he had several discussions about the grievor with Mr. Gauthier, a CBSA intelligence officer in Thunder Bay.

[14] Both Constable Kushnier and Sergeant Davis testified that the data collected during the Project Dolphin investigation was extensive and that police continue to investigate and follow the leads obtained during the investigation. In cross-examination, Sergeant Davis stated that although the grievor was never interviewed by police during Project Dolphin, he was a person of interest based on information that the police received at the time, which he could not divulge.

[15] Ms. Paterson testified that she first spoke to Sergeant Davis sometime in October 2010. Because he asked CBSA not to act on the information, no formal investigation was launched. She stated that it was not unusual for the police to ask CBSA to delay an investigation to protect a criminal investigation. Although a formal investigation was not underway at that time, she began a preliminary investigation. She conducted a review of the grievor's electronic mailbox, made database inquiries and audited the grievor's usage of CBSA systems. She explained that those were things that she could do behind the scenes without alerting the grievor.

[16] In cross-examination, Ms. Paterson acknowledged that the grievor's friendship with persons of interest to the police had been brought to the employer's attention as early as 2008, when Mr. Gauthier reported concerns to his superior officers. Additionally, in September 2008, the Thunder Bay detachment of the RCMP gave the employer copies of Facebook photographs showing the grievor and Mr. Muzzi together, as well as dialled number reports (DNR) relating to the grievor's phone calls. At that time, the RCMP also asked the employer not to conduct an investigation in order to protect its preliminary investigation into organized crime. Because of the police request, CBSA did not launch a formal investigation into the grievor's associations either in 2008 or in October 2010.

[17] Ms. Schuler became the district director for the CBSA Northwestern Ontario district in September 2012. Soon after starting in the position, she did a tour of the region and as part of that tour, visited Thunder Bay in October 2012. During meetings with local management, she was told about the grievor's friendship with a person who was a member of organized crime. She was also told that the grievor had refused to conduct a search at the Pigeon River port of entry on a person who was the subject of a lookout because of his friendship with that person.

[18] Ms. Schuler believed that the allegations were serious enough to warrant investigation. She spoke to Ms. Reza and to Ken McCarthy, the Director of Professional Standards. They decided that Professional Standards would conduct the investigation and, therefore, the file was assigned to Ms. Paterson. Ms. Schuler explained that she had no role in the investigation and did not become involved in the file again until Ms. Paterson issued her report.

[19] Ms. Paterson testified that in October 2012 she began a formal investigation into allegations that the grievor associated with people suspected of being tied to organized crime, such as Mr. Muzzi, Mr. Gordon and Mr. Ritchie. She reviewed the historical data that had been provided to Professional Standards by the police in the past concerning the grievor's associations with those individuals. That information included Facebook photographs, CBSA intelligence reports, the DNR and the list of potential target subjects and vehicles provided by the TBPS.

[20] Ms. Paterson also reviewed media coverage of the arrests made as a result of Project Dolphin. She confirmed that Mr. Muzzi was arrested in June 2011 and held in jail. In April 2012, Mr. Gordon and Mr. Ritchie were arrested and charged and Mr. Muzzi faced further charges. She learned that the grievor's first cousin, Rebecca Stokaluk, was also arrested, although not charged. She reviewed the Integrated Customs Enforcement System (ICES) and confirmed that Mr. Muzzi had been the subject of a lookout posted in October 2008, that Mr. Ritchie and Mr. Gordon were the subjects of lookouts posted in August 2009 and Mr. Muzzi's sister, Rosella Muzzi, was the subject of a lookout posted in March 2010.

[21] Ms. Paterson compared the grievor's phone usage to his work schedule using the DNR. She confirmed with the grievor that the phone number logged in the DNR was his home phone. She testified that over the 11-month period in which the numbers were logged, there were over 90 phone calls between Mr. Muzzi and the grievor. In

cross-examination, she acknowledged that all the phone calls were made to and from the grievor's home phone and that when she compared the calls to his work schedule, it was apparent that he was not on duty.

[22] Ms. Paterson also conducted a review of the travel history of the list of criminal targets and vehicles provided by the TBPS and compared their travel history to the grievor's work schedule. She stated that she did not believe that the grievor ever processed those people through the border. However, she also stated that Mr. Muzzi's travel was largely by air, through Pearson International Airport and that she did not remember if she ever checked the travel history of his vehicle, which was also the subject of a lookout.

[23] Ms. Paterson testified that her initial research caused her to believe that the grievor had made inappropriate network accesses. According to the information in her possession, he created lookouts in ICES for Mr. Gordon and Mr. Ritchie on July 2, 2009. In her opinion, that was a conflict of interest. She believed that it was incumbent on any CBSA employee to recuse him or herself if there is a question of a conflict of interest. Because the grievor was personally associated with Mr. Gordon through a family connection and was acquainted with Mr. Ritchie, she thought that he should not have been involved in posting the lookouts. She testified that lookout information is crucial and that it is important that it not be compromised.

[24] Her information also showed that the grievor made a second network query on July 29, 2009 about the lookout on Mr. Ritchie. Ms. Paterson testified that the significance of that query was that Mr. Ritchie had been intercepted at Pearson International Airport and the query was made subsequent to Mr. Ritchie's arrival. The grievor had no professional reason to make the query on the lookout at that time because he was not working on the file. His action caused her to wonder if he inappropriately disclosed any information about the lookout.

[25] Ms. Paterson testified that after she conducted her review of the background information that was available, she interviewed the grievor. She reviewed his employment history with him and confirmed his understanding of the CBSA *Code of Conduct* and the policies concerning the use of the employer's networks. She testified that he told her that he never accessed network files without authorization.

[26] Ms. Paterson questioned the grievor about his friendship with the people identified by the police as being persons of interest. In response to her questions, the grievor acknowledged that he had known Mr. Gordon for a number of years. Mr. Gordon lived with his first cousin, Rebecca, and they socialized about once a month, visiting each other's homes. However, he said that he did not have a personal relationship with Mr. Ritchie and was only acquainted with him through others. He could not say whether Mr. Ritchie had ever come to his home on the weekends that he held an open house. He thought that they had occasionally been in the same place at the same time.

[27] In cross-examination, Ms. Paterson acknowledged that the only evidence that she had of a personal relationship between the grievor and Mr. Gordon was the information provided to her by the grievor. Concerning the grievor's association with Mr. Ritchie, she also acknowledged that she had only the grievor's statement that he knew Mr. Ritchie and no other evidence.

[28] During the interview with Ms. Paterson, the grievor also acknowledged his friendship with Mr. Muzzi. He told her that he had known Mr. Muzzi for about 10 years, since he was 17 years old. He acknowledged that he was present at Mr. Muzzi's birthday party in 2008, when Mr. Muzzi was tasered by police and arrested. He also told her that he was aware that Mr. Muzzi travelled frequently but that he had never considered how the travel was financed. During the interview, the grievor also informed Ms. Paterson that he visited Mr. Muzzi in jail on October 2012. She testified that he told her that he visited Mr. Muzzi twice since his incarceration and that Mr. Muzzi called him from jail to wish him a happy birthday.

[29] In cross-examination, Ms. Paterson acknowledged that the grievor told her that although he attended Mr. Muzzi's birthday party in 2008, he was not actually present when Mr. Muzzi was tasered and arrested. However, she stated that what was significant about that event to her was that the grievor knew that Mr. Muzzi had been arrested. She also agreed that the grievor told her that he was not sure how Mr. Muzzi afforded his lifestyle but assumed that it was because he lived with his mother and worked at two jobs. She also acknowledged that her only information pertaining to the grievor visiting Mr. Muzzi in jail came from the grievor himself, who told her that he might have taken Mr. Muzzi's mother or sister to visit him in jail.



[30] Ms. Paterson testified that she questioned the grievor about the lookouts he posted. Initially, he could not remember issuing the lookouts, which concerned narcotics, on Mr. Gordon and Mr. Ritchie. He stated that he was baffled because he usually avoided doing anything that related to people that he knew. He also told her that he had no knowledge of any feedback or intercepts arising from the lookouts.

[31] Ms. Paterson testified that the grievor remembered that Mr. Gauthier asked him to post the lookouts only after she told him that the audits showed that he had personally queried them. He told her that he did not want to imply any impropriety by Mr. Gauthier but it was not uncommon for him to ask the BSOs working at the Pigeon River port of entry to post such lookouts. The grievor also stated that he did not remember querying the lookout on Mr. Ritchie on July 29, 2009, but said that he would never disclose the information.

[32] Ms. Paterson asked the grievor about his knowledge of the arrests made in April 2012 as a result of Project Dolphin. He told her that he was aware that Ms. Stokaluk's house had been searched and that she had been arrested, although he believed that any charges against her had been dropped. He told Ms. Paterson that his knowledge of the arrests came from talk around town or from information given to him by Ms. Stokaluk's sister or friends. The grievor told Ms. Paterson that he learned about the earlier Project Dolphin arrests in June 2011 through the media. He stated that he looked up information about the arrests on open source media sites.

[33] Ms. Paterson testified that she questioned the grievor about two incidents that came to her attention through intelligence reports. In particular, she asked the grievor about an allegation that he was present in a bar when two men were arrested and that he identified himself and used his CBSA badge in an attempt to prevent the arrests. The grievor denied being in the bar during the time in question. Ms. Paterson acknowledged that she had no evidence that he was present in the bar at the time in question. She also asked him about an allegation that Rozella Muzzi used his name when she was being questioned by U.S. Customs. He told her that, although he had known Ms. Muzzi for about 10 years, he did not know why she would use his name when questioned by U.S. Customs and that he would not have advised anyone in those circumstances to use his name.

[34] During her interview with the grievor, Ms. Paterson also asked him about the photographs on his Facebook account that the TBPS had forwarded to the employer.

The grievor identified a number of photographs that showed him with other CBSA employees, with friends and with Mr. Muzzi. Some of the photographs were taken at a golf tournament and showed the grievor wearing a CBSA uniform cap, which clearly identified him as a CBSA employee.

[35] Ms. Paterson testified that she confirmed with the grievor that he attended an intelligence presentation given jointly by the TBPS and CBSA Intelligence on biker gangs. He recalled attending the event but did not recall that Mr. Muzzi was identified by name and photograph as an associate of the Hell's Angels biker gang.

[36] In cross-examination, Ms. Paterson stated that the grievor's training record was part of his personnel file, which she reviewed. She stated that she could not say whether there was more than one training session on biker gangs. Sergeant Davis told her that the grievor attended the intelligence session that he gave jointly with presenters from CBSA. She believed that Mr. Gauthier and someone from CBSA Headquarters were the presenters from CBSA. She was not given any information to suggest that the grievor's partner, Mr. Bakovic, was one of the presenters. She stated that she looked at the poster of Mr. Muzzi that Sergeant Davis said was presented at the session but she saw no other information from the session and did not see the sign-in sheet. She acknowledged that it was possible that there was more than one training session on biker gangs.

[37] Ms. Paterson also interviewed Mr. Gauthier in preparing her report. She testified that she wanted to confirm the grievor's statement that Mr. Gauthier had asked him to issue the lookouts on Mr. Gordon and Mr. Ritchie. She stated that Mr. Gauthier explained to her that he had received information from U.S. Customs concerning an intercept. Because of the importance of the information that he had received, he wanted lookouts created immediately but he was off-duty and did not have access to the network. Therefore, he called the Pigeon River port of entry and asked the officer who answered the phone, who happened to be the grievor, to post the lookouts.

[38] Mr. Gauthier told Ms. Paterson that he was aware of Project Dolphin and was aware of the concerns about the grievor expressed by the TBPS. He told her that he had had a social relationship with the grievor but ended it because he was concerned that his job could be compromised by the grievor's friendship with Mr. Muzzi. He told Ms. Paterson that he had spoken to the grievor about his relationship with Mr. Muzzi.

[39] In cross-examination, Ms. Paterson acknowledged that she had been sceptical that Mr. Gauthier would have asked the grievor to create the lookouts for Mr. Gordon and Mr. Ritchie. She acknowledged that she thought that it was wrong to ask the grievor to post the lookouts when Mr. Gauthier could have asked someone else to do it. She believed that the grievor should have recused himself from posting the lookouts because it was a conflict of interest.

[40] After Ms. Paterson conducted her interviews and reviewed her research, she wrote her report (Exhibit E-5). She testified that she concluded that the allegations that the grievor associated with people connected with organized crime were founded. She reviewed the confirmation signed by the grievor in 2002, that he had received and agreed to be bound by the employer's *Code of Ethics and Conduct* (Exhibit E-6). She reviewed the offer of term employment made to the grievor in May 2004, accepted and signed by him (Exhibit E-7), which listed the requirement that he observe the employer's *Conflict of Interest and Post-employment Code* as one of the terms and conditions of employment, and a similar signed acknowledgement when he accepted the offer of indeterminate employment in June 2007 (Exhibit E-8). Ms. Paterson testified that she believed these documents demonstrated that the grievor had been reminded of his obligations on a number of occasions. Despite that, he maintained his friendship with Mr. Muzzi and others over a long period of time and was not forthcoming, either with the employer or with her during her interview with him.

[41] In cross-examination, Ms. Paterson was questioned about her conclusion that the grievor had not disclosed information about his friendship with Mr. Muzzi to the employer. In particular, she was asked if she was aware that the grievor had disclosed his friendship with Mr. Muzzi to his superintendent, Robert Lefevre. She explained that she did not know anything about Mr. Lefevre, but she confirmed that the grievor did not make any formal disclosure of conflict of interest. In re-examination, Ms. Paterson explained that the grievor never mentioned to her that he made any disclosure to Mr. Lefevre.

[42] Ms. Paterson was also questioned in cross-examination about Mr. Gauthier's knowledge of the grievor's friendship with Mr. Muzzi and why she concluded that it did not constitute disclosure. She noted that Mr. Gauthier was not the grievor's superior, but was more in the nature of a colleague. She agreed that Mr. Gauthier told her that he was aware of the grievor's relationship with Mr. Muzzi and had known of it

for years. He told her that he reported it to his superiors in 2008, and the information was passed on to Professional Standards, but before an investigation could be started they were asked to stand down by the police. She explained that in his interview with her, Mr. Gauthier told her that he had warned the grievor that he should be concerned about his friendship with Mr. Muzzi because it could hurt his career.

[43] In re-examination, Ms. Paterson noted that Mr. Gauthier had provided an intelligence report in 2008 (Exhibit E-9) that was reported and moved up the chain to Professional Standards. She stated that there was no follow-up on the report with Mr. Gauthier because he did not want to be further involved.

[44] In cross-examination, Ms. Paterson was asked about whether Mr. Muzzi was a known criminal at the time of her investigation. She stated that while he had not been convicted of a crime at the time of her investigation, he had been charged. She stated that she could not specifically recall how the CBSA lookout described him but she thought that it said that he was an associate of the Hell's Angels and organized crime.

[45] Ms. Paterson was also questioned in cross-examination about her conclusion that the grievor was not forthcoming during her interview with him. She stated that she thought that he was evasive about the lookouts that he posted on behalf of Mr. Gauthier. She said that BSO's do not issue lookouts as a general rule so she found it hard to believe he did not remember issuing the lookouts in questions. Ms. Paterson stated that she also thought that the grievor was vague about his understanding of how Mr. Muzzi could afford his lifestyle, vague about his understanding of what constituted a conflict of interest and vague about his knowledge of Mr. Muzzi's arrest. She thought that he was reluctant to acknowledge his relationship with Mr. Muzzi and reluctant to acknowledge why Mr. Muzzi's arrest was significant.

[46] Ms. Paterson was questioned in cross-examination about an incident involving Maria Muzzi, a sister of Mr. Muzzi, who was stopped at the Pigeon River port of entry. At the time that she was stopped she was driving Mr. Muzzi's car and there was a lookout on it. The grievor and his partner, Mr. Bakovic, were on duty. They concluded that it was not necessary to conduct a secondary examination of the vehicle. Ms. Paterson stated that she did not know if either the grievor or Mr. Bakovic was disciplined over the incident and that she was not aware of the incident being investigated. She acknowledged that she did not speak to Mr. Gauthier about it. She stated that she believed that the grievor should have recused himself from any

involvement in the examination of Ms. Muzzi and the vehicle. She noted that it was basic training that BSO's withdraw if they encounter someone that they know at the border.

[47] Ms. Paterson was also questioned in cross-examination about the notes of her interview with the grievor (Exhibit G-3). She acknowledged that although she thought that she had taped the session with the grievor, the recorder did not work and that there was no tape. She was questioned in particular about her statement in the report that the grievor had a personal relationship with Mr. Gordon and visited his house every month. She was asked to explain how she could make such a statement when the grievor only acknowledged seeing his cousin every month or every couple of months, and that Mr. Gordon was with his cousin. Ms. Paterson stated that she interpreted the grievor's statement as indicating a personal relationship, since Mr. Gordon lived with the grievor's cousin.

[48] Ms. Paterson testified that after she wrote her report, it was submitted to the Director General of Professional Standards, who reviewed it and approved it. Ms. Paterson stated that she had no further role or involvement in the grievor's case.

[49] Ms. Schuler testified that the grievor was sent a copy of the report and given an opportunity to make comments. Any mitigating factors would be noted and the report then given to Ms. Reza for a decision. In this case, the grievor provided a detailed response to the report on January 23, 2013 (Exhibit E-2). He made further submissions following the fact-finding interview that she held with him on February 11, 2013. She explained that she did not make the decision to terminate the grievor's employment. That decision was made by Ms. Reza.

[50] Ms. Reza testified that she became the Director General of the Northern Ontario region in September 2012. Three weeks after she started on the job, she received a phone call from the CBSA Director General, Values and Ethics, who advised her that the Office of the Public Service Integrity Commissioner was about to initiate an investigation into concerns at the Pigeon River port of entry. She was told that it was an independent, arm's length investigation that would result in a report to Parliament. She was also advised that she would not be given access to the report but was being advised of it because the investigators might need access to systems and employees.

[51] Shortly after receiving that information, Ms. Schuler returned from her tour of the Northern Ontario region. She told Ms. Reza that there were concerns at the Pigeon River port of entry that a BSO, Mr. Stokaluk, had close ties with people who were associated with organized crime. She told Ms. Reza that she wanted to refer the matter to Professional Standards for an investigation. Ms. Reza testified that, as the delegated authority in the region, she approved the referral of the matter to Professional Standards. However, because the investigation was conducted at arm's length, she had marginal involvement in it.

[52] Ms. Reza testified that following her referral of the matter, Professional Standards told her about the preliminary investigation that had been started after the TBPS brought to their attention the grievor's relationship with Mr. Muzzi. She stated that given the information that had already been provided to CBSA by the TBPS and given the arrests that had taken place in 2011 and 2012, it was evident that there was a clearly established relationship between the grievor and members of organized crime. Given that information, she believed that it was necessary to take whatever steps were required to minimize the risks to the travelling public, other employees and the law enforcement partners at the port of entry. It was necessary to ensure a safe environment and she believed that the grievor's presence in the workplace added an unnecessary risk. For that reason, she decided to suspend the grievor pending the investigation, effective October 23, 2012 (Exhibit E-10). On November 14, 2012, she sent another letter to the grievor to clarify that the grievor would be compensated for work performed on October 23, 2012. The letter also clarified the grounds for the indefinite suspension and clarified that the grievor would be permitted access to CBSA facilities for the sole purpose of attending any interviews conducted during the investigation.

[53] Ms. Reza testified that she received the investigation report (Exhibit E-5) in mid-December 2012. She believed that the report established that the grievor had links with organized crime and that those links were not passing or transitional, but were longstanding associations. She noted that in his interview with the investigator, summarized at paragraph 14 of the report (Exhibit E-5), the grievor acknowledged his continuing relationship with Mr. Muzzi and that he visited Mr. Muzzi in jail twice and received a phone call. She testified that she believed that the grievor should not be involved in that kind of fraternization. He was a peace officer and it was, therefore, wrong to maintain an association of that nature.

[54] Ms. Reza testified that she also noted from the report that the grievor made no attempt to bring his relationship with Mr. Muzzi to management's attention. She stated that, as a regional Director General, she frequently signed conflict disclosures. It was common occurrence for BSO's to make such disclosures because they often live in small communities and know different kinds of people. Awareness of conflict of interest is a part of the CBSA culture and disclosure is a well-established practice. Officers are required to make common-sense evaluations and to be forthcoming.

[55] Ms. Reza explained that BSO's are governed by the *Values and Ethics Code for the Public Sector* (Exhibit E-14) and the *CBSA Code of Conduct*, which set out the guiding principles for on and off-duty behaviour. Those principles are also taught during the training BSOs receive at the training college in Rigaud, QC. Officers are taught as part of the basic training that they are not to use CBSA systems in relation to people that they know. They are taught to recuse themselves. The grievor was trained to be a peace officer.

[56] She stated that there are both formal and informal conflict of interest disclosure processes. Formal disclosure is first made to the manager and then it is submitted to a central area, sent to Ottawa, reviewed and recommendations made. She testified that, generally, when employees make conflict of interest disclosures, they are more likely to be forthcoming and to have situational awareness and more likely to recognize the checks and balances in the system. But she saw very little room for checks and balances in relation to the grievor because he gave the employer no opportunity for discussion with him about the potential conflict arising from his associations.

[57] Ms. Reza testified that after she read the investigation report (Exhibit E-5), she discussed it with Ms. Schuler and with advisors from Labour Relations. The grievor had been given an opportunity in January 2013 to review the report and to make further submissions, to provide counter-evidence or to acknowledge his error but he did not provide new evidence and did not acknowledge the risk his behaviour brought. She stated that when she reviewed the investigation report and the notes from the interview, she was left with the fact that the grievor was an armed BSO who maintained a relationship with a person charged with drug offences and that drugs come across the border. That risk and the risk to the CBSA's reputation with other law enforcement agencies led her to conclude that the grievor's presence in the workplace was not appropriate. Therefore, she decided that his employment should be terminated.

[58] Ms. Reza signed the letter of termination sent to the grievor (Exhibit E-4), which stated that the grievor was found to be in violation of the CBSA *Code of Conduct* and the *Values and Ethics Code for the Public Sector*. She stated that although her reference to the *Code of Conduct* in the letter of termination was to the *Code of Conduct* in effect at the time of the termination (Exhibit E-13) and to the *Values and Ethics Code* (Exhibit E-14), it applied equally to the previous CBSA *Code of Conduct* in effect in 2008 (Exhibit E-12), as it dealt with off-duty conduct. She noted that the current *Code of Conduct* (Exhibit E-13) contained language at page 12 concerning off-duty conduct. Similar language was contained in the previous *Code*, also at page 12.

[59] Ms. Reza testified that the grievor associated with criminal elements in his off-duty hours and that she could not reconcile that behaviour with his obligations as a BSO. She stated that the grievor's behaviour had been consistent since 2008 and that he had made no clear attempt to disassociate himself. Because of the grievor's friendships, the employer could not be certain how he would respond and therefore he could not be trusted. She testified that she believed that there was no option other than termination that was readily available. The grievor was a peace officer and his duties could not be changed to accommodate the risk that his friendships created.

[60] In cross-examination, Ms. Reza acknowledged that she did not review the investigator's notes and that she made no attempt to validate the investigation report or to read the background material. She did not see the detailed response to the report provided by the grievor. She stated she only knew what she was told by Professional Standards or read in the report. In her opinion, the background detail was contextual. She stated that she only questioned the report to learn more detail about the lookouts posted by the grievor.

[61] Questioned about why the grievor was removed from the workplace and suspended during the investigation, Ms. Reza explained that information about the grievor's conduct came to her from information provided by the Public Service Integrity Commissioner concerning an investigation at the Pigeon River port of entry and, at the same time, also from Ms. Schuler, who raised concerns on her return from her tour of the region. Given those facts, Ms. Reza stated that she decided to suspend the grievor because of the risk. She stated that she believed that the grievor's judgement was compromised. The border was the first port of entry for drugs and the grievor's friendship with Mr. Muzzi was therefore a risk. She acknowledged that she



received no complaints about him from co-workers other than from Superintendent Carey, and his concern may have been connected to other issues.

[62] Questioned in cross-examination about how the grievor's friendship with Mr. Muzzi violated the *Code of Conduct*, Ms. Reza explained that she believed that the fact that the police department reached out to the employer about the grievor suggested that the grievor brought the reputation of CBSA into disrepute. His behaviour reflected negatively on CBSA. The off-duty conduct of concern to the employer was the grievor's friendship with persons of interest to the police. In 2012, Mr. Muzzi, for example, was arrested and in detention. That fact reflected negatively on CBSA. Ms. Reza acknowledged, however, that there was no suggestion that Mr. Muzzi ever crossed the border while the grievor was at work, or that the grievor was involved in criminal activities. She agreed that, outside of her concerns about risk and reputation, there was no suggestion that the grievor could not perform the duties of his position.

[63] Ms. Reza confirmed that before making a decision concerning the grievor, she consulted internally. She spoke to the head of Professional Standards, and others. Attention focussed on the grievor's known associates and in particular, his friendship with Mr. Muzzi. She stated that because the matter was confidential, she did not consult with local management.

[64] Ms. Reza was questioned about the fact that the employer had known about the grievor's association with Mr. Muzzi for a number of years but did not act until 2013. She explained that the employer had a tradition of deferring its own investigations when faced with ongoing police investigations into the same matter. A criminal investigation always superseded an internal investigation. She explained that there were arrests as a result of Project Dolphin in April 2012, before she became regional Director General. When she started in the position, she looked at the matter and, after weighing all the information, they took action four months later.

[65] Mr. Yaworski testified that he received a scanned copy of the visitor's log for the Thunder Bay District Jail (Exhibit E-15). The document showed that the grievor visited the jail. In cross-examination, he stated that he did not ask the jail to identify all visits by the grievor but simply presented the production order granted to the employer by the PSLRB (Exhibit E-16).

[66] Mr. Bakovic testified that he met the grievor when he began working with him about nine years earlier. They became partners about seven years earlier and were close friends. He was the best man at the grievor's wedding.

[67] He stated that he knew Mr. Muzzi. They went to the same school, although Mr. Muzzi was a grade or two ahead of him. He did not know Mr. Muzzi well and only had contact with him after he started hanging around with the grievor. Mr. Muzzi was a friend of the grievor's and they would run into him at the bar. He stated that he spent a lot of time with the grievor. He recalled only one occasion when Mr. Muzzi came to the grievor's house. The grievor had a birthday party and there were a lot of people present, including other BSO's, when Mr. Muzzi arrived.

[68] Mr. Bakovic testified that he never saw Mr. Muzzi at the border and that, to his knowledge, Mr. Muzzi never crossed the border at the Pigeon River port of entry when the grievor was working. He did not know when Mr. Muzzi was placed on the lookout list. Mr. Muzzi's involvement in criminal activities was only confirmed when he was arrested. Before that, it was simply speculation. The lookout posted for Mr. Muzzi was a standard drug lookout, which required officers to search Mr. Muzzi's vehicle and to note his cellphone contacts. Mr. Bakovic thought that he might have been asked once in his career to post a lookout, but it was possible that Mr. Gauthier would ask a BSO to post a lookout for him. It was also possible that he was present when Mr. Gauthier asked the grievor to post lookouts on Mr. Gordon and Mr. Ritchie, but he did not know either of those individuals. He explained that officers posting lookouts would check ICES for information or instructions and would input the lookout on ICES. Officers used ICES on a daily basis.

[69] Mr. Bakovic remembered a conversation between the grievor and Mr. Lefevre. He stated that although he could not remember when the conversation took place, he recalled that the grievor asked Superintendent Lefevre the process for dealing with a friend who was on the lookout list. Mr. Lefevre told him that he should recuse himself. Mr. Bakovic recalled that Mr. Lefevre said: "Keep your nose clean, don't conduct secondary, stay out of it and everything will be fine." Mr. Bakovic testified that Mr. Lefevre did not request that the grievor fill out any kind of paperwork.

[70] In cross-examination, Mr. Bakovic acknowledged that the grievor did not provide Mr. Lefevre with details of his friendship with Mr. Muzzi. He stated that the grievor

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simply said that he knew Mr. Muzzi, who was on lookout. He confirmed that Mr. Lefevre died sometime after the grievor's termination of employment.

[71] Mr. Bakovic testified that he and the grievor were on duty on an occasion when Maria Muzzi crossed the border with a friend. The grievor was given Ms. Muzzi's passport and the vehicle plate number by the officer on primary inspection, who Mr. Bakovic could not identify. When the vehicle plate number was entered in the system, there was a lookout on it. He and the grievor called Mr. Gauthier for instructions. When the grievor told Mr. Gauthier that the subject of the lookout, Mr. Muzzi, was not in the car, Mr. Gauthier told him that if Mr. Muzzi was not in the car, they could let Ms. Muzzi go. Mr. Bakovic stated that neither he nor the grievor were questioned about the incident. The grievor wrote a lookout synopsis which stated that he contacted Mr. Gauthier, who told them that they could let Ms. Muzzi go and that Mr. Bakovic was a witness to that fact. Mr. Bakovic testified that he believed that the fact that they heard nothing further about the matter meant that their actions were fine.

[72] In 2009, Mr. Bakovic was a presenter at a training session on gangs given to CBSA staff and U.S. customs and border control staff. Sgt. Davis was a guest speaker. As part of the presentation, Sgt. Davis brought bulletins and photographs of the names of Hell's Angels associates. Mr. Muzzi was listed as an unconfirmed associate of the Hell's Angels. That bulletin was given to Mr. Gauthier and put on the security file at the Pigeon River port of entry. It was placed in a cabinet where their intelligence and security reports were kept. Anybody could have access to the file.

[73] Mr. Bakovic recalled receiving the employer's new *Code of Conduct* (Exhibit E-13) but he could not remember when he received it. He believed that it was sent by email with instructions for reviewing the document.

[74] Mr. Gauthier testified that he was told about the grievor's friendship with Mr. Muzzi by the TBPS or the OPP a number of years ago. Sometime in 2008, after the lookout on Mr. Muzzi was issued, he attended a poker game at the grievor's home. While he was there, Mr. Muzzi walked in, said hello and sat down at the table to play poker. The grievor told Mr. Muzzi that he should have let him know that he was coming and then the game continued, with Mr. Muzzi participating. Mr. Bakovic and another BSO were also present. Mr. Gauthier left and never ran into Mr. Muzzi again.

[75] In cross-examination, Mr. Gauthier explained that he left the poker game when Mr. Muzzi arrived because he was a drug dealer and a member of organized crime. Mr. Gauthier did not want to be in the same place. In his opinion, perception is reality. He believed that Mr. Muzzi's presence at the poker game put him in a compromising position and was a conflict of interest. He developed that belief based on his experience and the nature of his work. He works closely with the police and he was concerned that his integrity could be questioned. But his position was different from that of a BSO.

[76] Mr. Gauthier testified that he discussed the grievor's relationship with Mr. Muzzi with management at the Pigeon River port of entry. In particular, he spoke to Mr. Lefevre while travelling with him to a meeting sometime in 2009 or 2010, after the lookout on Mr. Muzzi was posted. He told Mr. Lefevre that, because people were aware of the grievor's friendship with Mr. Muzzi, he had spoken to the TBPS and the OPP. He was told that there was no evidence that the grievor was doing anything wrong or illegal for CBSA purposes. Mr. Gauthier prepared a statement about his conversation with Mr. Lefevre for the purposes of the adjudication hearing (Exhibit G-4).

[77] Mr. Gauthier testified that the grievor's work at the border had been questioned by others because of his friendship with Mr. Muzzi. That was why he checked with the police about the grievor. But he concluded that the grievor's association with Mr. Muzzi did not impact his work. He stated that, as an intelligence officer, he had no concerns about the grievor performing duties at the border and that none of the grievor's co-workers ever complained about it to him. Responding to a question from me, Mr. Gauthier stated that, even though the information from the police led him to conclude that the grievor was not a security risk at the border, he still had concerns about the perceptions created because of the friendship with Mr. Muzzi.

[78] In cross-examination, Mr. Gauthier stated that he had only the one conversation with Mr. Lefevre and that he did not give him a lot of details about the relationship between Mr. Muzzi and the grievor. He explained that he prepared the statement (Exhibit G-4) at the request of Mr. Bakovic for this hearing.

[79] Mr. Gauthier was questioned in cross-examination about the conversation he had with the grievor concerning his friendship with Mr. Muzzi. He told the grievor that he thought that "it didn't look good for a BSO to be seen in the company of someone like that." He did not tell the grievor that the relationship was not a problem for a BSO

but he did not know how the grievor perceived his comments. He explained that the grievor listened to him and said that he was not doing anything wrong. Mr. Muzzi was a friend and that was it.

[80] Mr. Gauthier said that after the incident of the poker game at the grievor's house, he chose to avoid socializing with the grievor. Although he had been friends with the grievor as part of a group of people who had common interests, he did not want to be caught in a similar situation.

[81] Mr. Gauthier prepared the statement entered as Exhibit E-9. I asked him if he could recall when he made the statement but he could not recall. He stated that he gave it to his supervisor, Mr. MacDonald, without the documents attached to Exhibit E-9. He stated that he was aware of the contents of the statement by Mr. Roberts attached to Exhibit E-9 because Mr. Roberts spoke to him about his concerns, but he did not recall the events described in the statement by Mr. Davey and thought that it was possible that the information was not accurate.

[82] The grievor testified that he was 17 years old when he met Mr. Muzzi, who was a couple of years younger than he was. At that time, they socialized regularly as part of a group of school friends. Over the years, they remained friends. When they got older, they went drinking in the bars together and socialized. He knew Mr. Muzzi's family and would have dinner at their home. He saw Mr. Muzzi regularly at the bars, at their homes and at the gym and they spoke to each other often. He posted pictures of Mr. Muzzi with him on his Facebook page (Exhibit E-18). He said that they remained friends until Mr. Muzzi was charged criminally. At that point, he tried to remove the Facebook pictures and he later visited Mr. Muzzi in jail to tell him that they could no longer be friends.

[83] The grievor thought that he first became aware of Mr. Muzzi's involvement in criminal activities either when the lookout on him was posted or when Mr. Gauthier told him that he should not be socializing with Mr. Muzzi. However, at another point in his testimony he stated that he only became aware that Mr. Muzzi was a person of interest to the police after he was arrested in April 2011. He testified that he did not believe that there was a real problem when Mr. Gauthier spoke to him about his friendship with Mr. Muzzi. He believed that there were lookouts posted on many people and that, if there had been a problem with his friendship, his employer would have spoken to him about it.

[84] The grievor recalled the poker game described by Mr. Gauthier in his testimony. He stated that he could not take issue with the description of events as given by Mr. Gauthier. He explained that it was just a poker game with friends. Mr. Muzzi arrived, introduced himself, sat down and had a drink. Mr. Gauthier left and later mentioned his concerns to the grievor. He told the grievor that he should have been warned that Mr. Muzzi might attend the poker game. The grievor testified that he understood that Mr. Gauthier's concerns arose because he was an intelligence officer but that Mr. Gauthier did not tell him at the time that Mr. Muzzi was involved in organized crime.

[85] The grievor could not recall when Mr. Muzzi's name appeared on the lookout list but he remembered the conversation about it with Mr. Lefevre. He testified that it was an open conversation in the front office at the Pigeon River port of entry. He stated that they were talking about lookouts. He thought that the conversation might have been sparked by the fact that he had become aware that Mr. Muzzi's name was on the lookout list. He asked Mr. Lefevre what the process was if there was someone in the lookout book that he knew personally. He testified that he told Mr. Lefevre that he knew several people whose names were included in the lookout binder, and named Mr. Muzzi specifically. He did not identify the others, but said that he had many circles of friends from school and hanging out.

[86] The grievor stated that Mr. Lefevre told him that if he recused himself, there would not be a problem. He was not asked to fill in a Conflict of Interest form or to do anything other than excuse himself and pass the examination over to another BSO.

[87] The grievor recalled attending the CBSA training session on gangs in 2009. He stated that Mr. Bakovic and Sgt. Davis were presenters, but he did not remember whether Mr. Muzzi's name came up. He also recalled hearing about the incident when Mr. Muzzi was tasered and arrested during his birthday party. The grievor stated that he was not present during those events and could not remember how or when he learned of them. He does not know if Mr. Muzzi was subsequently charged with an offence.

[88] The grievor was asked about his association with Mr. Gordon and Mr. Ritchie. He testified that he knew Mr. Gordon, who dated his cousin. They met at family gatherings. His cousin was also a friend of Mr. Muzzi's sister, Rosella, and Mr. Gordon was a good friend of Mr. Muzzi's. For that reason, the grievor would sometimes see

them at the Muzzi home or at barbeques. He would also go to his cousin's home maybe once every other month to visit and help with work around the house. His cousin and Mr. Gordon sometimes came to the open houses that he held on some Friday evenings, when between 10 and 30 might drop in. He does not remember how he learned of the arrests of his cousin and Mr. Gordon. The grievor stated that he did not know Mr. Ritchie well. He knew him by sight, but had no social connection with him.

[89] On October 23, 2012, Tracy Gagnon, the A/Chief, Operations, gave him a letter of suspension (Exhibit E-10). At the end of his shift, Ms. Gagnon and another manager took him to a boardroom. They told him that he did not need a union representative because the matter was not disciplinary. He was given no reason for the suspension at that time, but was told that someone would be in contact with him later. He was asked to surrender all his CBSA equipment and material and was escorted to his locker and asked to remove anything that did not belong to CBSA. He was told that he was not to speak to anyone about what was happening. Then he was escorted out of the building. He recalled that it happened very quickly.

[90] The grievor received Ms. Reza's letter of November 14, 2012 (Exhibit E-11), which set out the reasons for his indefinite suspension. At some point after he received that letter, he was contacted by Ms. Paterson and asked to attend an investigation interview. He was told that he was required to cooperate in all matters and that he was entitled to have a union representative present at the interview.

[91] The grievor testified that he was under a great deal of stress at the time and under medical care. He stated that he was a "complete mess" at the time of the interview, which his union representative explained to Ms. Paterson. Despite that fact, the grievor felt that the interview was, in fact, an interrogation. He felt that his answers were challenged. He tried to correct what he believed was misinformation on the part of Ms. Paterson but he did not believe that she heard him. He stated that she made him feel like he was lying. Furthermore, although she told him that the interview was recorded, she did not tell him that the recording was not working. He testified that he believed that he reviewed her notes and signed each page but he was under a lot of stress and was not certain.

[92] The grievor prepared a response to the investigation report (Exhibit E-2). He testified that he believed that the investigator relied on a *Code of Conduct* (Exhibit E-13) that was not in place when Mr. Muzzi was arrested. That *Code of Conduct*

came into effect in September 2012 and he never saw it. Nor did he ever see the new form for reporting conflict of interest because it was not in the workplace at the time of his suspension in October 2012. There was a different *Code of Conduct* (Exhibit E-12) in place during the period of time in question. Although he admitted that he was not familiar with either version of the *Code of Conduct*, he was confident that his off-duty conduct did not place him in a conflict of interest. He stated that he did not recall receiving any training on conflict of interest at Rigaud. Furthermore, no one told him that he was required to disclose information about his acquaintances until he attended the interview with Ms. Paterson. He was not trying to hide anything. If anyone had asked him he would have gone through the lookout book and identified everyone that he knew in it.

[93] The grievor testified that after he prepared his response to the investigation report, there was a teleconference with Ms. Schuler and Ms. Gagnon. Ms. Schuler wanted some clarification on the incident when he and Mr. Bakovic processed Mr. Muzzi's sister through customs. Shortly after that teleconference, he received the letter of termination (Exhibit E-4).

[94] The grievor stated that he had no contact with Mr. Muzzi since he was arrested other than one visit to the jail to visit him. The rest of Mr. Muzzi's family no longer lives in Thunder Bay. He still sees his cousin and Mr. Gordon.

[95] In cross-examination, the grievor was asked how he could not be aware that Mr. Muzzi was a person of interest to the police, given that there was a lookout posted about him and given that Mr. Muzzi had been tasered and arrested at his birthday party at a local restaurant. The grievor stated that he was not present when Mr. Muzzi was tasered and arrested and was unaware of what happened. Concerning the lookout, the grievor stated that there could be many reasons for posting the lookout and that it was, in his words, "open to interpretation" whether the lookout meant that Mr. Muzzi was a person of interest to the police.

[96] Asked about his understanding of conflict of interest in cross-examination, the grievor stated that he believed that it applied only to business matters. He never considered that some of the events involving Mr. Muzzi and others should be reported. He stated that he had never hidden his friendship with Mr. Muzzi and no-one expressed concern to him. Even when Mr. Muzzi, his cousin and her partner were



arrested for narcotics offences, it did not occur to him that he should report it. Even if his brother had been arrested he would not have reported it.

[97] The grievor acknowledged that in the offers of employment that he signed (Exhibits E-7 and E-8), there were references to his obligation to report real, perceived or potential conflicts of interest, but he did not believe that his relationships with the people in question were a conflict of interest. He was not dealing with those people in a work capacity. In any case, he believed that the employer was aware of his relationships. However, he acknowledged that he gave no details to Mr. Lefevre in 2009, other than telling him that he knew Mr. Muzzi and others named in the binder of lookouts. He also acknowledged that a number of events occurred after 2009 that he did not report. Asked if he did not believe that he had an obligation to report the subsequent events, he stated that he was not familiar with the conflict of interest process.

[98] Asked if he believed that his conduct would bear the closest public scrutiny, as required by the *Values and Ethics Code for the Public Sector* (Exhibit E-14), and if he thought that the public might be concerned about his friendship with someone arrested for narcotics offences, the grievor responded that he thought it was an open question as to whether it would be an issue. He believed that people were aware of the facts and that, for example, his cousin's arrest had nothing to do with him.

[99] Asked about going to the jail to visit Mr. Muzzi, the grievor stated that he did not believe that it was necessary to disclose it. He said that he had nothing to hide and that he would have filled in any necessary forms had it been brought to his attention. He was simply visiting a long-time friend. Thunder Bay is a small town and the friendship was not a secret. If the employer had been concerned, it could have moved him to a different location. He stated that he could not see how his visit to Mr. Muzzi in jail broke the employer's trust. He would never have identified himself as an employee of CBSA and would not have done anything to damage CBSA's reputation.

[100] The grievor agreed that even though Thunder Bay is a small town, Mr. Bakovic managed to avoid knowing Mr. Muzzi, despite the fact that they went to the same school. It was only when Mr. Bakovic began working and socializing with the grievor that he got to know Mr. Muzzi. The grievor also acknowledged that Mr. Gauthier avoided being in the presence of Mr. Muzzi. However, he would not speculate as to why

Mr. Gauthier avoided Mr. Muzzi, even though he was reminded of Mr. Gauthier's evidence about their conversation concerning Mr. Muzzi's reputation.

[101] In re-examination, the grievor stated that he was never placed in a position where he had to choose between the employer's interests and his friendship with Mr. Muzzi. When Mr. Muzzi's sister was stopped at the border because of the lookout on Mr. Muzzi's vehicle, which she was driving, he followed procedure. In his mind, there was no real, apparent, or perceived conflict of interest.

[102] The grievor acknowledged that he probably received the new *Code of Conduct* (Exhibit E-13), which was sent by email to all employees in the region in September 2012 (Exhibit E-19) but that although he might have received it, he did not remember any discussion about it and it was not raised at the staff meeting in the fall of 2012. Nor could he recall any training on the *Values and Ethics Code for the Public Sector* (Exhibit E-14). He also stated that he visited Mr. Muzzi in jail in September 2011, before the new *Code of Conduct* (Exhibit E-13) came into effect in 2012.

[103] In response to some questions that I asked the grievor about his understanding of conflict of interest, the grievor stated that he believed that it only concerned business interests and, in particular, situations where employees might engage in outside work or businesses that could affect CBSA. He acknowledged that a BSO is a peace officer and is required to uphold the Acts and regulations that govern them. He also acknowledged that there might be an issue of concern if a police officer, who is also a peace officer, socialized with persons engaged in criminal pursuits. He recognized that there might be a perception from the public or the employer that such behaviour created a risk. He said that he had not considered how his actions might look but that, based on his knowledge now, he might have made better decisions and that he is remorseful.

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

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

[104] The employer contended that the facts of this case are not complicated. The grievor was hired by the employer as a student in 2002 and became an indeterminate employee in 2007. During the period of his employment, he maintained friendships with people who were of interest to the police and to the employer that he failed to

disclose in accordance with the CBSA *Code of Conduct* and the *Values and Ethics Code for the Public Service*.

[105] The evidence established that the grievor maintained friendships with Mr. Muzzi, with his cousin, Ms. Stokaluk and her partner, Mr. Gordon and with Mr. Ritchie. The grievor minimized those friendships when it suited his purposes. At the hearing, he claimed that Mr. Muzzi was not someone he knew well, in spite of the fact that the relationship with Mr. Muzzi was close enough that he went regularly to Muzzi family dinners and took Mr. Muzzi's mother and sister to visit him in jail. He also acknowledged that he saw his cousin and her partner, Mr. Gordon, on a regular basis.

[106] In June 2011, Mr. Muzzi was arrested, incarcerated and charged with serious criminal offences, including narcotics offences, as a result of an ongoing joint federal, provincial and local police task force investigation into organized crime and narcotics trafficking known as Project Dolphin. In April 2012, another round of arrests arising from the joint investigation resulted in more charges against Mr. Muzzi and the arrests of Ms. Stokaluk and Mr. Gordon.

[107] Over the course of his employment, the grievor had many opportunities to advise the employer of his relationships with the people in question. He could have done it when Mr. Muzzi was tasered and arrested by the TBPS in 2008. He could have done it when the first lookouts on Mr. Muzzi were entered in the system in October 2008. He could have done it when he issued the lookouts on Mr. Ritchie and Mr. Gordon. Although he attempted to minimize the importance of the lookouts, they are not common occurrences and are one of the tools used by CBSA to identify persons of interest. Employees are not routinely asked to post lookouts. Therefore, to be asked to post a lookout for someone that he knew well is not likely something that the grievor would forget.

[108] The grievor also could have declared his friendship with Mr. Muzzi after the TBPS presentation that he attended in 2009, when Mr. Muzzi was identified as a person of interest to the police. He could have done it in March 2010, when he and Mr. Bakovic stopped Mr. Muzzi's sister at the border because of the lookout posted on the vehicle that she was driving, which belonged to her brother. He could have done it when Mr. Muzzi was arrested in June 2011 or when his cousin and Mr. Gordon were arrested in 2012. He could have done it before he visited Mr. Muzzi in jail in 2011.

[109] The grievor did not disclose his relationships with those individuals to the employer. Although he testified that he had done so, in fact the information that he provided was extremely limited and much less than what was needed for the employer to make an informed decision about the conflict of interest.

[110] The grievor alleged that he disclosed his friendship with Mr. Muzzi in 2009, during a discussion with Mr. Bakovic and the superintendent, Mr. Lefevre about how to handle a situation involving a lookout posted on a friend. However, from the employer's perspective, the discussion did not constitute disclosure. Mr. Bakovic confirmed in his testimony that the grievor provided no details about his relationship with Mr. Muzzi or others. At best, the conversation demonstrated recognition by the grievor of a potential problem. But that was the only time that the grievor ever raised the issue. Furthermore, the grievor's conversation with his supervisor took place in 2009 and therefore did not cover anything that happened after that time.

[111] During the whole period of his employment, the grievor had many opportunities to disclose his friendships but he did not do so. He chose instead to ignore each and every obvious warning sign and refused to see the conflict of interest that would have been obvious to any reasonable person. He did not acknowledge that there was a conflict of interest and did not see any potential conflict. At the adjudication hearing, he stated that even if his brother was arrested there would be no conflict of interest and that he would not disclose it to the employer. The employer noted that the grievor only seemed to understand the conflict of interest when questioned by me.

[112] Between 2008 and 2009, the RCMP notified the employer about the grievor's friendship with Mr. Muzzi but asked them not to act on the information because of an ongoing investigation. In 2010, TBPS also notified the employer about the grievor's questionable relationship with Mr. Muzzi and others who were targeted by the police in Project Dolphin. Again the employer was asked not to act on the information to protect the police investigation.

[113] The evidence established that there was a change in CBSA management in the Northwestern region and in September 2012, Ms. Schuler became the new Director and Ms. Reza was the new regional Director General. Shortly after being appointed Director, Ms. Schuler conducted a tour to meet the staff of the region. During that tour, questions were raised about the grievor's friendship with Mr. Muzzi and others. Because of the information that she received, Ms. Schuler asked Professional Standards

to investigate the grievor's questionable friendships. Although a preliminary investigation had been conducted when the police first raised the issue of the grievor's relationships, it had not been completed because the police had asked CBSA to keep the information confidential to protect their investigation. However, the new CBSA regional management decided that it was time to act. Given the serious allegations, for security reasons the grievor was suspended indefinitely pending the outcome of the investigation.

[114] The investigation report was signed in mid-December 2012. The grievor was given an opportunity to review it. He provided comments on the report on January 28 and February 11, 2013, which were considered. Based on all the material before it, the employer decided to terminate the grievor's employment.

[115] The employer argued that the decision to terminate the grievor's employment was reasonable and was made without unreasonable delay. Citing *Nicolas v. Deputy Head (Department of Fisheries and Oceans)*, 2014 PSLRB 40, it stated that it was reasonable to wait until the police had conducted their investigation. In the circumstances of this case, the employer respected the wishes of the police and only acted when it was reasonable to do so.

[116] The employer argued that the facts of this case extended over a long period of time and that it could have picked any time when it would have been reasonable to act, but no matter where the line was drawn, discharge was justified. The grievor disavowed knowledge of the conflict of interest codes, which is not an acceptable position. He received them and signed them to acknowledge receipt. Citing *Gravelle v. Deputy Head (Department of Justice)*, 2014 PSLRB 61, at para. 83, the employer argued that the grievor is deemed to have read the codes and is obliged to follow them.

[117] The employer noted that *Gravelle* also established that it is not necessary to prove all elements of the grounds of discipline if there is a single act of misconduct that would justify discharge and that the principles of progressive discipline do not apply in cases where serious misconduct sufficient to justify discharge has been proven.

[118] *Lapostolle v. Deputy Head (Correctional Service of Canada)*, 2011 PSLRB 138, dealt with issues similar to those in this case. The grievor in that case was a correctional officer whose employment was terminated because he arranged the

sponsorship of a poker tournament with a member of organized crime and because he met with a person associated with criminal bikers on two occasions. The adjudicator upheld the discharge, finding that the grievor's ties with criminal bikers were more than casual. She held that the bond of trust with the employer was broken and that the grievor would pose a security risk if reinstated. The decision was upheld on judicial review in *Lapostolle v. Attorney General of Canada*, 2013 FC 895.

[119] The employer contended that, as in *Lapostolle*, the bond of trust with the grievor in this case has been broken. Ms. Reza testified that she could not have an officer with such questionable judgement working at the border. It is a matter of common sense. No-one would consider it reasonable for the grievor to visit Mr. Muzzi in jail after he had been charged with offences related to narcotics. That act alone would justify discharge.

[120] On the matter of the indefinite suspension, the employer argued that it was an administrative suspension but that, in any case, it was also moot. The employer backdated the grievor's termination to the date that the suspension began. Citing *Gravelle*, the employer argued that it was permissible to backdate the termination to the first day of the suspension. However, even if the suspension was not moot, the disciplinary investigation took place within a reasonable time frame and the suspension itself was not disciplinary.

[121] The employer asked that both grievances be dismissed.

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

[122] The grievor stated that the police investigation, Project Dolphin, began in 2010. It was then that the employer was asked not to take any action about the grievor's friendship with Mr. Muzzi. But the employer had known about the grievor's friendship with Mr. Muzzi since 2007. If it had concerns it could have asked for an explanation at any time before 2010. In fact, it was incumbent on the employer to bring its concerns to the grievor's attention. The employer stated that the grievor's jail visit to Mr. Muzzi was sufficient to trigger its investigation, but that visit occurred within three months of Mr. Muzzi's arrest and months before the grievor's employment was terminated. If the employer genuinely considered the jail visit to be a problem, it should have terminated his employment then and not months later.

[123] Mr. Muzzi was arrested in 2011 and his first conviction was after that time. If the employer knew then that he was related to criminal gangs or drugs, there was no reason not to tell the grievor that his relationship with Mr. Muzzi was not appropriate. The employer could have brought the grievor in after Mr. Muzzi had been arrested and told him that there was a problem.

[124] Mr. Gauthier knew about the grievor's relationship with Mr. Muzzi and told his supervisor about it. Superintendent Lefevre also knew that Mr. Muzzi was the grievor's friend because the grievor raised the subject when Mr. Muzzi's name first appeared on the lookout list. The grievor followed the policy, which required him to speak to his manager or fill out a conflict of interest form.

[125] The employer alleged that the grievor was guilty of serious misconduct because of his suspected association with known criminals but although Ms. Stokaluk was arrested, she was never charged with a criminal offence. Although Mr. Gordon was charged with an offence, he was not convicted. Mr. Muzzi was in jail but he had not been convicted of any offences at the time of the grievor's termination and the grievor's only contact with him at that time was one visit to the jail. At the time that the grievor maintained any relationship with those people, they were not known criminals. Until Mr. Muzzi was actually charged with an offence, no-one, not even the grievor, knew that he was involved in criminal activity. There was absolutely no evidence that Mr. Muzzi conducted his business in the grievor's presence.

[126] There is no evidence that the grievor put friendship before the interests of the employer. The best evidence that the employer could find of a conflict of interest was that the grievor issued lookouts for Mr. Gordon and Mr. Ritchie, but he was asked to do that by Mr. Gauthier. The employer confirmed that Mr. Muzzi never crossed the border while the grievor was on duty. Mr. Bakovic worked with the grievor. He testified that he never saw the grievor in a conflict of interest situation or act in any way that threatened CBSA or the public or that made it difficult for the employer to manage its operations. Mr. Gauthier might have been concerned about the grievor's friendship with Mr. Muzzi, but as an intelligence officer, his interests were significantly different from the grievor's interests.

[127] The grievor was honest and forthcoming with the employer. He never denied his friendship with Mr. Muzzi. He told the employer about it when Mr. Muzzi's name showed up on a lookout. He gave the employer more information than it had learned

through its investigation. For example, he told the employer that he visited Mr. Muzzi in jail because it did not have that information.

[128] Citing Brown and Beatty, *Canadian Labour Arbitration*, 4th edition, at paragraph 4:1520 and *Re Lumber & Sawmill Workers' Union, Local 2537 and KVP Co. Ltd.* (1965), 16 L.A.C. 73, the grievor argued that the *Code of Conduct* fell under the employer's rule-making authority and must be consistent with the principles established in *KVP*. In particular, an employer rule must be consistent with the collective agreement, reasonable, clear and unequivocal, brought to employees' attention and consistently enforced. The grievor contended that in this case, the *Code of Conduct* was not consistently enforced because the evidence showed that there were other CBSA employees present on the occasions that the grievor met Mr. Muzzi at parties or in the bars but only the grievor was disciplined.

[129] The grievor stated that the question that must be answered is whether his alleged offence was serious enough to warrant discipline and did the employer consider mitigating factors in its assessment? The grievor submitted that, on the evidence, the penalty of discharge could not be sustained. At the time that the discharge was imposed, there was no danger to the employer or its operations. It had tolerated the situation for years. But in 2012, Mr. Muzzi was in jail and the grievor had ended his friendship with him, so there was no longer a problem. The employer waited too long to act. Furthermore, there was no evidence that the employer considered any mitigating factors. The grievor cited *Wm. Scott & Company Ltd. v. Canadian Food and Allied Workers Union, Local P-162*, BCLRB Decision No. 46/76 (QL) and *Re United Steel Workers of America, Local 3257 v. The Steel Equipment Co. Ltd* (1964), 14 L.A.C. 356.

[130] Citing Brown and Beatty at paragraph 7:3010 and *Millhaven Fibres Ltd. v. Oil, Chemical & Atomic Workers Int'l Union, Local 9-670*, [1967] O.L.A.A. No. 4, the grievor stated that there was no evidence that his behaviour rendered him unable to perform his duties, that he was guilty of a serious breach of the *Criminal Code*, that his co-workers refused to work with him, that the employer had any difficulty carrying out its functions, or that its reputation had been harmed by his actions. The grievor also cited *Re Niagara Falls (City) v. C.U.P.E., Local 133* (1991), 24 L.A.C. (4th) 124 and *Re Government of Province of Alberta and Alberta Union of Provincial Employees* (1988), 35 L.A.C. (3d) 353. He noted that in the *Niagara Falls* decision, the grievor was convicted of heroin possession and drug trafficking and that in the *Government of*



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*Alberta* case the grievor was living with a man who was a member of a biker gang and wanted by the police. In both those cases, the grievors were reinstated.

[131] The grievor cited *Pagé v. Deputy Head (Service Canada)*, 2009 PSLRB 26, *Pike v. Treasury Board (Canada Border Services Agency)*, 2011 PSLRB 1, and *MacArthur v. Deputy Head (Canada Border Services Agency)*, 2010 PSLRB 90. He noted that it is important to consider that in each of those cases, there was a real, as opposed to perceived, conflict of interest and that the penalty imposed in each case reflected culpability.

[132] The grievor argued that the facts in the cases cited by the employer differ from his circumstances. For example, in *Gravelle*, the grievor gained personally from his questionable friendships, which is not the case here. Furthermore, the grievor did not openly flaunt any relationship with known criminals. It is notable, however, that in the cases cited by the employer, the grievors were warned about their behaviour. The grievor noted that he was not warned despite the fact that the employer knew about his friendship with Mr. Muzzi and had known about it long before the TBPS began Project Dolphin.

[133] The grievor argued that nothing happened in October 2012 that justified his removal from the workplace on an indefinite suspension. The employer presented no evidence that he was a risk in the workplace. At that point in time, Mr. Muzzi had not even been convicted. The grievor contended that the employer did not satisfy the criteria set out in *Larson v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2002 PSSRB 9.

[134] The grievor asked that his grievances be granted in their entirety and that he be reinstated effective the first day of his suspension without pay and compensated with full wages and benefits. In the alternative, if there are grounds for some discipline, the grievor asked that he be reinstated with a reduced penalty.

### **C. Employer's rebuttal**

[135] In response to the grievor's suggestion that there was no reason for termination because there was no evidence that he had put the interests of his friendships above his work interests or that his behaviour rendered him unable to perform the duties of his position, the employer noted that the grievor's employment was not terminated

because of allegations relating to work performance. His employment was terminated because his behaviour broke the bond of trust.

[136] In response to the suggestion that the employer was inconsistent in its approach because other employees, such as Mr. Bakovic, also knew Mr. Muzzi but were not disciplined, the employer noted that Mr. Bakovic testified to a clear distinction between his relationship with Mr. Muzzi and the grievor's relationship with Mr. Muzzi.

[137] The employer stated that the grievor's argument was contradictory and showed that he did not understand the issues that led to his termination. On the one hand, he argued that the employer should have acted earlier because it knew about the grievor's relationship with Mr. Muzzi since 2008 and, on the other hand, he argued that he was forthcoming and open because during the investigation he disclosed a good deal of information to the employer that it did not previously have. He also argued that no-one warned him that his friendships were a problem at the same time that he argued that the people in question were not known criminals and not especially close friends. By arguing both sides, the grievor demonstrated his lack of understanding of the issues.

#### **IV. Reasons**

[138] On February 13, 2013, the grievor's employment was terminated. The termination was backdated to October 24, 2012, when he was suspended without pay pending the outcome of a disciplinary investigation into allegations that he associated with known criminals.

[139] The letter of termination (Exhibit E-4) referenced the disciplinary investigation and noted its conclusion that the grievor's actions contravened the CBSA *Code of Conduct* and the *Values and Ethics Code for the Public Sector*. The grounds for termination were set out as follows:

*Your actions are incompatible with the duties you perform and the Acts and Regulations you have to enforce as a Border Services Officer and has adversely affected the reputation of the CBSA and its employees. Your choice of associates is indefensible and can be neither condoned nor tolerated. As a Border Services Officer, you are held to a high standard when it comes to complying with the Code of Conduct and the Values and Ethics Code for the Public Service. These are the principles by which we carry out our roles and responsibilities and are part of the Terms and Conditions of your employment in the Public Service. You*

*have irreparably severed the bond of trust required to be an employee of the Canada Border Services Agency.*

[140] The relevant provisions of the CBSA *Code of Conduct* (Exhibit E-12) in place during the period of the grievor's employment up to September 2012, are as follows:

*Expected Standards of Conduct*

...

*m) Off-duty Conduct*

*Your off-duty conduct is usually a private matter. However, it could become a work-related matter if it:*

- *harms the Agency's reputation or program;*
- *renders you unable to perform a requirement of your duties;*
- *leads other employees to refuse, be reluctant or be unable to work with you;*
- *renders you guilty of a serious breach of the Criminal Code of Canada and thus renders your conduct injurious to the general reputation of the Agency and its employees. For example, the nature of the criminal charges may be incompatible with the functions of a peace officer;*
- *makes it difficult for the Agency to manage its operations efficiently and/or direct its workforce....*

*You must report to your manager as soon as possible if you are arrested, detained or charged with a violation in Canada or outside Canada of laws, regulations, a federal statute or the Criminal Code of Canada related to your official duties. You must report a traffic violation or highway code ticket received during the use of a government-owned or leased vehicle.*

[141] On September 5, 2012, the CBSA President sent an email to all employees that attached a copy of a new CBSA *Code of Conduct* (Exhibits E-13 and E-19). Ms. Reza sent a copy of the new CBSA *Code of Conduct* by email to all employees in her region, which included Thunder Bay, on September 10, 2012. The grievor acknowledged that he probably would have received it. The relevant provisions of section 4, Private, Off-duty Conduct and Outside Activities (at page 12) of the new *Code of Conduct* (Exhibit E-13), are as follows:

*Our CBSA values of Respect, Integrity and Professionalism guide us throughout our work day. They can also extend to our private time. This is especially true in terms of engaging in outside activities on social media fora, outside employment, and political activities.*

*We understand that our outside activities and off-duty conduct are usually private matters. They could become work-related matters, however, if they have negative consequences on the Agency. **We avoid such activities, which may include those that:***

*reflect negatively on the Agency, its employees (including its managers) or its programs;*

*render us unable to perform a requirement of our duties;*

*lead other employees to refuse, be reluctant or be unable to work with us;*

*renders us guilty of a breach of the Criminal Code; and*

*make it more difficult for the Agency to manage its operations efficiently and/or to direct its workforce.*

***We also avoid activities that place us or the Agency at risk by knowingly associating, outside of our official duties, with individuals or groups who are believed or suspected to be connected with criminal activities.***

[142] Both CBSA *Codes of Conduct* in place during the period of the grievor's employment contained provisions concerning conflict of interest. Furthermore, the *Values and Ethics Code for the Public Sector* (Exhibit E-14) referenced in the letter of termination contained the following behavioural requirement for public service employees under the heading of "Integrity":

### ***3. Integrity***

*Public servants shall serve the public interest by:*

*3.1 Acting at all times with integrity and in a manner that will bear the closest public scrutiny, an obligation that may not be satisfied by simply acting within the law.*

*3.2 Never using their official roles to inappropriately obtain an advantage for themselves or to advantage or disadvantage others.*

*3.3 Taking all possible steps to prevent and resolve any real, apparent or potential conflict of interest between their official responsibilities and their private affairs in favour of the public interest.*

*3.4 Acting in such a way as to maintain their employer's trust.*

[143] The employer alleged that the grievor maintained personal, off-duty relationships with Mr. Muzzi, Mr. Gordon and Mr. Ritchie. Mr. Muzzi was arrested and charged with drug trafficking offences and with being a director of a criminal organization in 2011 and 2012. He subsequently pleaded guilty to the charges. Mr. Gordon was arrested, charged and convicted of drug-related offences in 2011. Mr. Ritchie was arrested and charged with drug related offences in 2011, but had not been convicted at the time of the hearing. In addition, the grievor's cousin was arrested and charged with drug offences but the charges were dropped.

[144] The grievor did not deny having a relationship with Mr. Muzzi. He testified that they had known each other since they were teenagers. They socialized together at bars, at the gym and at their homes. He was invited to dinner at Mr. Muzzi's family home. He had pictures of Mr. Muzzi with him on his Facebook page. He stated that he remained friends with Mr. Muzzi until he visited him in jail in September 2011 to explain that they could no longer be friends.

[145] The grievor also acknowledged that Mr. Gordon was the common-law spouse of his cousin. He socialized with his cousin on a somewhat regular basis, meeting at family gatherings, visiting each other's houses on a monthly or bi-monthly basis and occasionally meeting at the Muzzi home, because his cousin was a friend of Mr. Muzzi's sister. Mr. Gordon was present on those occasions. He stated that he continues to have a relationship with his cousin and, therefore, Mr. Gordon.

[146] The grievor stated that he knew Mr. Ritchie as a passing acquaintance. He did not socialize with him and had no particular knowledge of him. As no evidence was presented to contradict that statement, I accept it as fact.

[147] Although the grievor was open in admitting his association with Mr. Muzzi and Mr. Gordon, he was less forthcoming when it came to acknowledging awareness of their criminality. At one point in his evidence, he testified that he first became aware of Mr. Muzzi's criminal activity when the lookout on him was posted but in later

testimony, he stated that he only became aware that Mr. Muzzi was a person of interest to the police when he was arrested in April 2011. He suggested that there were many reasons that a lookout might be posted and that it was, in his words, “open to interpretation” as to whether the lookout meant that Mr. Muzzi was a person of interest to the police. He also stated that he only became aware of Mr. Gordon’s criminal activities when he was arrested.

[148] I do not accept the grievor’s statement that he became aware of Mr. Muzzi’s and Mr. Gordon’s criminality only when they were arrested. I believe that he knew that Mr. Muzzi was a person of interest to the police at least by 2008, when the lookout was posted because it was, as Mr. Bakovic testified, a standard drug lookout. Furthermore, following the poker game, also in 2008, Mr. Gauthier told the grievor that he should not be socializing with Mr. Muzzi because of his criminal connections. Similarly, in 2009, the grievor posted the lookout on Mr. Gordon himself and was therefore aware that Mr. Gordon was a person of interest to the police and to the CBSA.

[149] The grievor also argued that, during the period that he maintained relationships with Mr. Muzzi and Mr. Gordon, they were not known criminals, as set out in the letter of discharge, because they had not been convicted of any criminal offences. However, according to the evidence before me, at the time of the grievor’s termination of employment Mr. Gordon had been convicted of at least one drug-related offence and Mr. Muzzi was being held in jail on a number of drug trafficking and related offences.

[150] Furthermore, I do not believe that use of the phrase “known criminal” in the letter of discharge requires actual conviction of a criminal offence. The letter should not be read as inflexibly as the grievor suggested. Its purpose was to advise the grievor of grounds for discharge and I do not believe that, after reading the letter, he could be in any doubt about the reasons for the employer’s concerns. In any case, as used in the letter, the phrase can encompass those suspected of criminal offences as well as those charged and convicted of them because the letter related the impugned conduct to the *Code of Conduct* (Exhibit E-12) in place at the time of the grievor’s discharge, which advised BSO’s to avoid “knowingly associating, outside of our official duties, with individuals or groups who are believed or suspected to be connected with criminal activities.”

[151] I find, based on the grievor’s admissions and on the evidence presented at the hearing, that the grievor maintained off-duty, social relationships with Mr. Muzzi and

Mr. Gordon, both of whom could be described as known criminals. The question that remains to be resolved is whether that behaviour justified the termination of the grievor's employment.

[152] I think that there is a widely-held belief that who people associate with on their own time is not their employer's business. Our criminal justice system is based on the principle that people are held responsible for what they do and not for who they know. I imagine that most people would expect that principle to carry over into other branches of life and the law. But guilt by association is not the issue in this case. The employer did not allege or even suggest that because the grievor associated with drug dealers in his off-duty hours, he must also be a drug dealer. That was not its concern. It acknowledged that it had no evidence of any criminal wrongdoing at work by the grievor or any evidence of work-performance problems.

[153] The employer's concerns arose because of the grievor's off-duty behaviour. As a general rule, employers have no jurisdiction over the off-duty behaviour of employees. But as is often the case with general rules, there are exceptions. *Millhaven Fibres Ltd.* set out an oft-quoted list of criteria that would justify an employer's incursion into an employee's private life at para. 20. It is as follows:

*In other words, if the discharge is to be sustained on the basis of a justifiable reason arising out of conduct away from the place of work, there is an onus on the Company to show that:*

- 1) the conduct of the grievor harms the Company's reputation or product*
- 2) the grievor's behavior renders the employee unable to perform his duties satisfactorily*
- 3) the grievor's behavior leads to refusal, reluctance or inability of the other employees to work with him*
- 4) the grievor has been guilty of a serious breach of the Criminal Code and thus rendering his conduct injurious to the general reputation of the Company and its employees*
- 5) places difficulty in the way of the Company properly carrying out its function of efficiently managing its Works and efficiently directing its working forces.*

[154] The *Millhaven Fibres Ltd.* criteria form the basis for the employer's provision on off-duty conduct set out in both versions of the CBSA *Code of Conduct*. The employer alleged that the grievor's off-duty associations with people suspected or convicted of criminal offences fell within its authority because those associations had the potential to harm its reputation and were incompatible with the duties of his position. As Ms. Reza testified, the border is the first port of entry for illegal drugs and therefore, the grievor's off-duty fraternization with drug dealers was seen by the employer to be a conflict of interest and a real risk to CBSA's reputation, particularly with other law enforcement agencies.

[155] I find that there is a clear nexus between the grievor's off-duty conduct and the employer's interests. In *Lapostolle*, which was upheld by the Federal Court at 2013 FC 895, the PSLRB adjudicator considered the grievance of a correctional officer discharged from his employment for an off-duty association with a person linked to organized crime. The adjudicator wrote as follows at para. 71:

*Holders of public office, with duties that include exercising the government's authority in the penitentiary system, require the personal characteristics of fairness and integrity. Those who accept the job of correctional officer also accept the personal constraints that come with it, that is, to favour the interests of the employer and to act at all times with integrity, even outside work hours. Such a constraint applies not only to correctional officers but also to any person holding a job that includes peace officer duties. Those principles are set out in Flewwelling and Dionne, with which I agree. Accordingly, I dismiss the grievor's objection that the employer does not have the right to monitor what he does in his private life.*

[156] Similarly, in *Nicolas*, the PLSRB adjudicator considered the discharge of a fisheries officer who, among other things, was found to have used illegal drugs and to have associated with drug dealers. She asked rhetorically, at para. 108: "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?" She found that the grievor's conduct damaged the employer's reputation, and held as follows at para. 110:

*. . . 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.*

[157] Other cases have also found a link between the employer's legitimate interests and an employee's off-duty associations. In *Wells v. Treasury Board (Solicitor- General Canada - Correctional Services)*, PSSRB File No. 166-2-27802 (19971125), the adjudicator found that a correctional officer who socialized over a number of years with a drug dealer had damaged his credibility to the point that he could no longer be effective in carrying out his duties as a correctional officer. In *Re Ville de Granby and Fraternité des Policiers de Granby Inc.*, (1981), 3 L.A.C. (3d) 443, a police officer who fraternized with a person who had a criminal record was found to be in a conflict of interest and to have engaged in conduct that would undermine his effectiveness as a police officer.

[158] In this case, the grievor maintained a long-term friendship with a person that he knew or should have known was suspected of being involved in drug trafficking. He also maintained a social relationship with his cousin and her partner, who was also a suspected drug trafficker. These relationships were incompatible with his job as a customs officer (BSO). As a customs officer, the grievor was also a peace officer, charged with enforcing Canadian law as it applies, among other things, to the importation of narcotics. By maintaining his associations with the persons in question, the grievor was in a conflict of interest and violated the provisions of both the *Codes of Conduct* in place during the tenure of his employment.

[159] The grievor testified that he was not familiar with the employer's process on conflict of interest and was not sure if he read the new CBSA *Code of Conduct* (Exhibit E-13) introduced in September 2012, although he thought that he probably received it. But in 2002 and 2004, when he accepted temporary employment with CBSA and in 2007, when he accepted a full-time indeterminate position, he signed offers of employment that included an acknowledgement that he had read and understood the *Codes* in place at the time (Exhibits E-6, E-7 and E-8). The statement in the letter of offer of indeterminate employment accepted and signed by in 2007 (Exhibit E-8) is as follows:

*I would like to bring to your attention that employees of the public service of Canada are required to observe the Values and Ethics Code for the Public Service. This Code is a key policy for the management of human resources and is part*

*of your conditions of employment. By accepting this offer you certify that you have read the Code. The Code may be viewed at the following website. . . .*

*If, after having read the Code, you feel you may be in a real, perceived or potential conflict of interest, you must complete the attached. . . Confidential Report within 60 days. A designated official will rule on the conflict situation and advise you accordingly. The report can be obtained from your Human Resources Advisor. . . .*

[160] The grievor was required by the terms and conditions of his employment to observe the provisions of the *Code of Conduct* in place at all times. His apparent ignorance of its provisions did not absolve him of that requirement. He testified that he believed that conflict of interest only applied to business interests and that he had not understood his off-duty relationships could be perceived as a conflict. However, in my opinion, common-sense alone should have told him that fraternizing with people suspected of drug trafficking was a conflict of interest for a peace officer charged with the responsibility of enforcing legislation against the importation of narcotics.

[161] Although the grievor professed ignorance of the requirements of the conflict of interest and off-duty behaviour provisions in the CBSA *Code*, he stated that he had, in any case, brought his friendship with Mr. Muzzi to the attention of the employer. He stated that in 2009, he told Mr. Lefevre, his supervisor, that he knew Mr. Muzzi, who was the subject of a lookout. However, I find that he did not make any meaningful attempt to disclose to his employer his associations with persons of interest to the police. Both he and Mr. Bakovic, who was present at the time, testified that the grievor provided no detail about the extent of his relationship with Mr. Muzzi and there is no evidence that he mentioned his connection with Mr. Gordon at all.

[162] I do not find that the conversation with Mr. Lefevre, which was by all accounts a casual conversation in the open office without detail, constitutes disclosure as contemplated by the *Code of Conduct*. Furthermore, that was the only time that the grievor made any attempt to discuss the matter. When asked why he did not report his relationships following the arrests on narcotics charges of Mr. Muzzi, Mr. Gordon and his cousin, he stated that he would not have told the employer even if his brother had been arrested. He testified that he never hid his relationships and since no-one raised the matter with him, he thought that there was no problem.

[163] The grievor also contended that the employer had known about his off-duty associations since 2008 and had never warned him or taken any action about them until it suspended him in October 2012. He suggested that the delay in taking action was an indication that his behaviour was tolerated and that, in any case, by the time that the employer acted, any risk caused by his associations had passed. On that basis alone, the grievor argued that the discharge was inappropriate.

[164] I do not accept the grievor's argument that the failure of the employer to warn him that his off-duty friendships with persons suspected of drug trafficking amounted to condonation of the offence. It is simply not reasonable for a customs officer to presume that friendship with people suspected of criminal activity that related directly to the duties of a BSO would be tolerated by the employer. Furthermore, the evidence is that the grievor ignored even the friendly warning given to him by Mr. Gauthier following the poker game attended by Mr. Muzzi. I agree with the adjudicator in *Lapostolle*, when she wrote at para. 91 as follows:

*. . . In my opinion it is not normal for a CSC employee to flaunt his association with individuals openly associated with criminal bikers and to visit locations that they knowingly frequent, even when not on duty. I deem such conduct incompatible with the duties of a peace officer who regularly deals with people from that environment as part of his job. The employer is not required to prohibit conduct that is clearly reprehensible to all. Theft is unacceptable conduct even if no applicable directive exists. The same principle applies to associations.*

[165] In this case, the grievor stated that his friendship with Mr. Muzzi was common knowledge. He posted pictures of himself with Mr. Muzzi on his Facebook page. There was no attempt to be discrete. But the friendship with Mr. Muzzi was clearly at odds with the very reason for his work. He should not have needed a warning from the employer that it was problematic.

[166] There is no doubt that there was some delay in the imposition of a disciplinary penalty in this case. The evidence is clear that the RCMP brought to the employer's attention in 2008 the grievor's associations with people being investigated for drug offences and that the TBPS also raised the issue with the employer in 2010. There is also uncontradicted evidence that the employer was asked not to take any action with respect to the information provided to it by both police forces in order to protect an ongoing and large-scale criminal investigation, which resulted in criminal charges

being laid against the grievor's associates in June 2011 and April 2012. Ms. Reza testified that there was a tradition in CBSA of allowing police investigations to take precedence over internal investigations.

[167] Delay in the imposition of discipline can in some circumstances affect the employer's right to impose the discipline. In *British Columbia v. British Columbia Government and Service Employees' Union (Lawrie Grievance)* (1995), 47 L.A.C. (4<sup>th</sup>) 238, the grievor was discharged more than a year after the alleged incident. The evidence before the arbitrator was that the employer deferred its own investigation into allegations of a criminal nature made against the grievor at the request of the police, who were also investigating. The employer only began its own investigation once the police investigation was completed. The decision to terminate the grievor's employment was made about four months after the employer began its own investigation. The grievor argued that the termination of employment should be set aside because of the unreasonable delay.

[168] The arbitrator in that case held that the employer's obligation to impose discipline within a reasonable period was a procedural obligation, rather than a substantive one, and that it was based on the impact that delayed discipline could have on the grievor. The impact could include "a conclusion that the potential misconduct has been condoned and/or prejudice in responding to the discipline once it is finally imposed." He found that in that case, some of the delay was not justified by the employer, but that there was no evidence that the delay resulted in any prejudice to the grievor, and that the grievor could not, given his role as a peace officer, been under the impression that his conduct was condoned or accepted by the employer. See also *AFG Industries Ltd. v. Aluminum, Brick and Glass Workers International Union, Local 295G* (1998), 54 C.L.A.S. 53, and *Metropolitan Toronto (Municipality) and Canadian Union of Public Employees, Local 79 (Dalton Grievance)* (1999), 78 L.A.C. (4<sup>th</sup>) 1.

[169] In the circumstances of this case, I find that it was reasonable of the employer to defer acting in respect of the grievor as long as the police were engaged in a large-scale, international investigation into drug trafficking and organized crime. The evidence before me was that that investigation culminated in arrests in June 2011 and April 2012. While there was some delay between the arrests in June 2012 and the employer's decision in October 2012 to suspend the grievor pending its disciplinary

investigation, I do not find the length of the delay to be inordinate. Furthermore, the grievor presented no evidence of prejudice as a result of the delay.

[170] Given the evidence before me, I find that there were grounds to discipline the grievor and that the delay in imposing discipline was not unreasonable in all of the circumstances. The employer argued that the bond of trust with the grievor was irrevocably broken and that, therefore, discharge was the appropriate penalty. I agree.

[171] Over the course of the grievor's employment at CBSA, there were a number of occasions when he should have realized that some of his relationships conflicted with the duties of his position as a peace officer. That he did not see a problem when the lookout was posted on Mr. Muzzi in 2008, or when he posted the lookout on Mr. Gordon in 2009, or when Mr. Gauthier told him in 2009 that there was a problem, or when Mr. Muzzi, his cousin and Mr. Gordon were arrested in 2011 and 2012, or when he visited Mr. Muzzi in jail in 2011, is a clear indication that he did not understand his role as a peace officer. He testified that he did not disclose his relationships following the arrests in 2011 and 2012 because he did not see the conflict. He was not dealing with those people at work and therefore it was not an issue. He stated that he would not have told the employer if his brother had been arrested. In his opinion, the responsibility lay with the employer to tell him if there was a problem.

[172] I believe that the grievor's lack of understanding of the issue makes his return to the workplace a genuine risk. The only time that he acknowledged that there might have been a conflict of interest was after some prodding by me. That was too little, too late. I find, therefore, that the employer has established that the grievor's conduct over a number of years impaired his ability to carry out his duties effectively and contravened the CBSA's *Code of Conduct*. I also find that the penalty of discharge was reasonable in all of the circumstances of this case.

[173] The grievor was suspended without pay effective October 24, 2012, pending the outcome of the disciplinary investigation. His discharge was backdated to be effective October 24, 2012. The employer argued that the grievance against the indefinite suspension should be dismissed on the grounds that it is moot or, in the alternative, on the basis that I have no jurisdiction to hear the grievance because the suspension was administrative rather than disciplinary and, therefore, it does not fall within the parameters of subsection 209 (1) of the *PSLRA*.

[174] I agree with the reasoning in *Gravelle* on this point. By backdating the discharge to the date of suspension, the employer created a single disciplinary measure. Had I found in favour of the grievor, it would have been open to me to reinstate the grievor to October 24, 2012. But, having found that discharge was warranted, that discharge was effective October 24, 2012. Therefore, I find that the grievance against the indefinite suspension is moot.

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

*(The Order appears on the next page)*

**V. Order**

[176] Grievance 566-02-8997 is dismissed.

[177] Grievance 566-02-8995 is dismissed.

[178] Grievance 566-02-8994 was withdrawn at the hearing and the file is to be closed.

March 9, 2015.

**Kate Rogers,  
adjudicator**