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*Public Service Labour Relations  
and Employment Board Act and  
Canada Labour Code*



Before a panel of the  
Public Service Labour Relations  
and Employment Board

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BETWEEN

**ROBERT GRUNDIE**

Complainant

and

**TREASURY BOARD**  
**(Department of Human Resources and Skills Development)**

Respondent

Indexed as

*Grundie v. Treasury Board (Department of Human Resources and Skills Development)*

In the matter of complaints made under section 133 of the *Canada Labour Code*

**Before:** Deborah M. Howes, a panel of the Public Service Labour Relations and  
Employment Board

**For the Complainant:** J. Robert W. Blair, counsel

**For the Respondent:** Bruce F. Hughson, counsel

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Heard at Calgary, Alberta,  
May 25 to 27, 2010,  
and at Edmonton, Alberta,  
March 21 to 23, April 26 and 27, October 17 and 18,  
and December 15 and 16, 2011, and January 17, 2012.

### **I. Complaints before the Board**

[1] This decision deals with Robert Grundie's two complaints (of May 26, 2009 and September 29, 2010) made under section 133 of the *Canada Labour Code* (R.S.C. 1985, c. L-2; *CLC*) that his employer, Human Resources and Skills Development Canada (HRSDC or "the respondent"), violated paragraph 147(c) of the *CLC*. The two complaints were consolidated and were heard at one hearing.

[2] I received thousands of pages of documents and heard the testimonies of two witnesses, Mr. Grundie ("the complainant") and Rita Whittle-Udle, Acting Deputy General Internal Integrity and Security, HRSDC, as well as extensive oral and written arguments.

[3] The sole question before me is, did the HRSDC violate section 147 of the *CLC* when it investigated Mr. Grundie's conduct and later disciplined him for it?

[4] The answer is, "Yes". As a result, I uphold the complaints, for the following reasons.

[5] 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 Board") to replace the former Public Service Labour Relations Board ("the former Board") 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 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2) before November 1, 2014, is to be taken up and continue under and in conformity with the *Public Service Labour Relations Act* as it is amended by sections 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*. Further, pursuant to section 395 of the *Economic Action Plan 2013 Act, No. 2*, a member of the former Board seized of this matter before November 1, 2014, exercises the same powers, and performs the same duties and functions, as a panel of the Board.

## **II. The parties' positions**

### **A. For the complainant**

[6] The essence of Mr. Grundie's case is that he was threatened with termination, that he was both threatened with a penalty and had one imposed on him, and that the respondent disciplined him. He asserted that the respondent took those actions in whole or in part because, approximately 9 years earlier, in his health and safety officer role, he investigated a complaint about park wardens' safety ("the sidearms case") under Part II of the *CLC*. The two complaints flow together seamlessly and describe the HRSDC's continuing pattern of conduct (in concert, Mr. Grundie alleged, with the Parks Canada Agency ("Parks")) that began at the latest in early 2008 and that ended with him being issued a letter of reprimand (incorporating by reference a document known as the final Parks Case Assessment Report) on September 14, 2010.

[7] The complainant argued that he had to establish and that he did establish that he acted in accordance with Part II of the *CLC*, that he suffered disciplinary reprisals, and that a direct link exists between him having acted in accordance with Part II and the actions taken against him (see, for example, *Babb v. Canada Revenue Agency*, 2008 PSLRB 38; and *Vallée v. Treasury Board (Royal Canadian Mounted Police)*, 2007 PSLRB 52).

[8] Mr. Grundie stated that the public interest and Part II of the *CLC* require that health and safety officers be free to undertake controversial investigations without fear of reprisal.

[9] In 2000 and 2001, Mr. Grundie was employed by the HRSDC as a health and safety officer, within the meaning of sections 140 and 141 of the *CLC* as it appeared at that time. Health and safety officers were authorized for the purposes of Part II of the *CLC* to conduct investigations and order directions (sub-section 141(1)). In his capacity as a health and safety officer, Mr. Grundie found an unsafe working condition at Parks and made an order. Parks challenged that order through a protracted legal process, which ultimately demonstrated that Mr. Grundie's conclusions were correct.

[10] However, in 2008, the Chief Executive Officer of Parks, a large and sophisticated public employer, approached the HRSDC at the deputy minister level with claims about the conduct of Mr. Grundie and the park wardens. The story of what followed was long and complicated. Staggering amounts of public resources were devoted to carrying out

what was, in whole or in part, an unlawful reprisal. Mr. Grundie argued that to have safe workplaces, employees like the park wardens and he need to be able to access and perform their roles in accordance with the laws established for that purpose.

[11] Mr. Grundie argued that one of the issues was the unfairness that permeated the investigation into his activities and those of the park wardens (including but not limited to the formal administrative investigation). There is no single correct way to conduct an investigation, but he provided authorities as useful insight into the investigative process and the fairness that should apply (*Workplace Investigations: A Management Perspective*, Kelly J. Harbridge, Canadian Bar Association, Labour and Employment Law Conference, November 25 and 26, 2011, Ottawa, Ontario; *Robitaille v. Deputy Head (Department of Transport)*, 2010 PSLRB 70; and *Pagé v. Deputy Head (Service Canada)*, 2009 PSLRB 26).

[12] Another issue in Mr. Grundie's argument was a health and safety officer's investigatory role and the duties attached to that officer when conducting an investigation, as he did from 2000 to 2001. Some authorities in respect of that issue are the following: *Downing v. Gradon*, [1978] O.J. No. 3539 (QL); and *Baird v. Almas*, [2002] OLRB Rep. March/April 99. The authorities also helped the Board consider whether the HRSDC's investigation of Mr. Grundie can be said to have satisfied the requirements of fairness and natural justice.

[13] Mr. Grundie requested a finding that the HRSDC was in violation of the *CLC* as well as an order that the letter of reprimand be removed, that the sick leave that he used during the investigation into his conduct be reinstated and that he receive certain financial compensation.

#### **B. For the respondent**

[14] The HRSDC argued the complainant bore the burden to prove that, on a balance of probabilities, it violated section 147 of the *CLC*, which he failed to do. It said that the investigation of the complainant's misconduct was not perfect but that he had failed to vitiate the substance of the concerns raised by his conduct.

[15] Mr. Grundie, as a designated health and safety officer under the *CLC* and a member of the federal public service employed by the HRSDC, owed an obligation of fairness, integrity, and loyalty to the Government of Canada, which he failed to meet.

At a minimum, he created an appearance of preferential treatment, of bias or lack of objectivity, and of a lack of impartiality and integrity in carrying out his health and safety officer duties.

[16] Investigations into government employees' conduct take place every day in every government department. They are not disciplinary and cannot constitute discipline, which is an employer's response to its conclusion that misconduct occurred.

[17] Upon receiving information about Mr. Grundie's conduct during his handling of the sidearms case, the HRSDC had a duty and an obligation to investigate. It did not matter that the subject of the investigation went back seven or eight years.

[18] The HRSDC conceded that the investigation into Mr. Grundie's conduct was not carried out expeditiously. But, it argued that it was carried out fairly and that Mr. Grundie was given an opportunity to respond. By receiving only a letter of reprimand for his conduct, Mr. Grundie has already obtained the full benefit of the investigation's imperfections.

[19] The reprimand Mr. Grundie received was not an unlawful reprisal by the respondent for him acting in accordance with the *CLC*; it was for him violating his health and safety officer duties.

[20] Parks was the respondent employer in the sidearms case. It then filed the complaint with the HRSDC about Mr. Grundie's conduct during his investigation of the sidearms case. It also partnered with the HRSDC for a joint investigation into Mr. Grundie's conduct and that of some of the park wardens. It had as much at stake as the HRSDC in ensuring that any employee misconduct be investigated. Parks employees carried on an improper relationship with Mr. Grundie. Upon receiving the final investigation report, Parks and the HRSDC effectively went their separate ways in terms of disciplining their own employees. Parks had absolutely no role in completing the Parks Case Assessment Report or in determining the appropriate discipline for Mr. Grundie.

[21] The HRSDC argued the complainant did not meet three of the four parts of the test in *Vallée*. First, his communications and actions were not an exercise of his rights under the *CLC*. They had nothing to do with a refusal to work, a complaint about unsafe work, or any other *CLC* right. Second, he did not suffer any reprisals. A reprisal

is defined as an “act of retaliation” or an “action taken in return for an injury or offense.”

[22] Implicit in this definition is that the action taken, the reprisal, must be linked to a prior exercising of rights. Mr. Grundie was not disciplined for exercising his rights — he was disciplined for misconduct. The respondent conceded that the complainant was disciplined. However, that discipline was for misconduct on Mr. Grundie's part and not for exercising his rights under Part II of the *CLC*. The respondent argued the fourth part of the test had not been met in that the complainant was unable to demonstrate a direct link between exercising his rights and the actions taken against him.

[23] The HRSDC also argued that federal public servants owe the Crown a duty of fidelity and loyalty, which can override their right to free speech. In *Fraser v. P.S.S.R.B.*, [1985] 2 S.C.R. 455, a public servant criticized the government for implementing the metric system and for its intention to implement the *Canadian Charter of Rights and Freedoms*. He worked for the former Revenue Canada, and therefore his criticisms were not of his own department. He was eventually dismissed, and his dismissal was upheld. The Supreme Court of Canada confirmed that public servants owe the Crown a duty of fidelity and loyalty.

[24] In this case, the respondent conceded that Mr. Grundie's criticisms were not widely publicized, as Mr. Fraser's were. However, Mr. Grundie's criticisms were of Parks, a party to a complaint before him, both before and after his directions were issued, and an organization that could be expected to be a party in future complaints. Furthermore, unlike Mr. Fraser, Mr. Grundie criticized his own department, in the strongest possible language. These actions demonstrate he did not meet his duty of loyalty.

[25] Next, the HRSDC asserted that public servants must also avoid putting themselves in a position of a conflict of interest, both actual and apparent. It submitted that the entirety of the evidence showed that an informed person, considering this matter, would think it more likely than not that Mr. Grundie did not maintain his obligation of impartiality.

[26] The HRSDC asked the Board to dismiss the complaints. In the alternative, it argued that if the Board concludes that the complainant has met his burden of proof, then any remedy should be tempered by his conduct. At a minimum, he should be

admonished for engaging in the communication he did with complainants in a case that he investigated. In the alternative, it argued that it would be appropriate for the Board to expect that the HRSDC would take the decision's findings seriously and guide its future actions accordingly. To that extent, a declaration in this case that the respondent violated section 147 of the *CLC* would be sufficient; see *LeClair v. Treasury Board (Correctional Service of Canada)*, 2010 PSLRB 49 at para. 155.

[27] As for other remedies under section 134 of the *CLC*, the respondent said that the complainant continued in his employment duties, which did not change as a result of the administrative investigation. Paragraph 134(b) has no applicability; nor does 134(c). The Board would have the authority to rescind the disciplinary action, that is, to rescind the letter of reprimand. As the HRSDC imposed no financial or other penalty on Mr. Grundie, which he conceded, and he was "not able to demonstrate financial loss", paragraph 134(d) does not authorize any form of payment. Finally, the respondent said that the Board has no authority to direct that Mr. Grundie be compensated "... for a sum that in the Board's opinion is equivalent to the penalty of enduring the protracted and unlawful administration [*sic*] investigation" or to direct that any sick leave entitlement that he used be restored.

### **III. Chronology**

#### **A. The 2000 - 2007 investigation**

[28] The chronology of events of the sidearms case health and safety investigation is important to understanding the context for the administrative investigation into Mr. Grundie's conduct and the subsequent discipline. A brief summary of the key events follows.

[29] In January 2000, Tom Lee, Parks' chief executive officer, informed park wardens that sidearms would not be issued to them for handling law enforcement. They were unhappy with the outcome and contacted the HRSDC for information about health and safety and danger in the workplace.

[30] On February 19, 2000, Mr. Grundie, who worked in Calgary, Alberta, received an invitation to speak at a park wardens meeting in Canmore, Alberta ("the Canmore meeting"). Park Warden Doug Martin had invited Health and Safety Officer Kim Beattie from Edmonton, Alberta, to give a presentation about the right to refuse unsafe work

under Part II of the *CLC*. The meeting's main topic was the park wardens' concern that they were not adequately protected when carrying out their law enforcement duties. Some park wardens believed that to be adequately protected, they should be issued sidearms. Ms. Beattie referred the invitation to Mr. Grundie.

[31] Mr. Grundie attended the meeting with his superiors' approval. Parks was aware of his attendance. One of Parks' senior managers, Gabriel Fortin, Director General, Western and Northern Canada, was at the meeting. In addition, on March 1, 2000, Mr. Grundie wrote to Dennis Guitor, national occupational health and safety coordinator for Parks, explaining what he had told the park wardens at the meeting.

[32] At the Canmore meeting, Mr. Grundie had explained to the park wardens why a work refusal would not likely be a useful or successful way for them to address their concerns. He explained to them that health and safety issues could be raised by way of a complaint under Part II of the *CLC*.

[33] On February 22, 2000, Mr. Grundie emailed a standard complaint form to Doug Martin at the latter's request. Mr. Grundie had met Doug Martin for the first time at the Canmore meeting.

[34] On June 5, 2000, Doug Martin filed a complaint under the *CLC*. Doug Martin sent it to Mr. Grundie by email to his office. Because it raised an issue that had obvious nationwide implications, Mr. Grundie brought it to his superiors' attention the next day. A lengthy email discussion among HRSDC Labour Program management ensued, and over the course of the following week, it was confirmed that Mr. Grundie would investigate the complaint.

[35] One of the first things Mr. Grundie did once he knew he would be responsible for investigating Doug Martin's complaint was to contact Marjie Mann, a Parks manager headquartered in Calgary. Ms. Mann emailed other Parks officials, including Mr. Fortin and Luc Martin, Parks' senior integrity officer. Neither Ms. Mann nor anyone at Parks took exception to Mr. Grundie conducting the investigation or to the procedure he described to Ms. Mann.

[36] Mr. Grundie's investigation and resulting report and order took the rest of the year to complete. He received a great deal of information by email as well as orally, and many park wardens from across Canada made representations to him by email,

sometimes with material that they thought was helpful. Ultimately, Mr. Grundie found information obtained from Parks to be the most helpful and in particular found its national law enforcement coordinator, David Jivcoff, a particularly valuable resource.

[37] Mr. Grundie's investigation was virtually complete by December 2000. On or about December 21, 2000, he met with Mr. Fortin.

[38] Mr. Grundie's managers, up to and including those at the respondent's National Headquarters, were fully apprised of the investigation. By January 9, 2001, Mr. Grundie had concluded that a dangerous situation existed for the park wardens and that a direction was required. He provided a copy of his draft report and proposed direction to his director, Gerry Thompson, who circulated it to others. Mr. Grundie was asked to revise his proposed direction's wording and to involve a Justice Canada lawyer, which he did. The HRSDC also enlisted communications staff to create media lines and "Q&A" documents. An internal communications strategy was devised as well.

[39] The review by HRSDC senior management and Justice Canada led to some delay in the decision and directions being released, which frustrated not only Mr. Grundie but also his department in general. Collectively, they were concerned about health and safety officer liability if an officer's direction was delayed at the behest of National Headquarters. Legal Services (Justice Canada) also had advised that the direction should be national in scope — something the director, Mr. Thompson, said that he and unidentified others opposed. However, the approach advocated by Legal Services prevailed; the draft directions were revised.

[40] On January 31, 2001, Mr. Grundie issued a final report that found that park wardens who handle law enforcement should be issued sidearms. On February 1, 2001, he issued two directions in which he directed Parks to take measures to "... correct the hazard or condition or alter the law enforcement activity of the wardens" or to "protect the wardens from the danger." Mr. Grundie eventually hand delivered his directions to a superintendent at Banff National Park as well as to the complainant, Doug Martin. It was also delivered to Mr. Lee, Parks CEO at that time, to whom it was directed.

[41] According to section 145.1 of the *CLC*, decisions and directions of health and safety officers could be appealed to persons designated as appeals officers by the Minister of Labour. Parks appealed Mr. Grundie's decision on the basis that he erred in

concluding that a dangerous situation existed. Doug Martin and the Public Service Alliance of Canada (PSAC), the bargaining agent for park wardens, also appealed, on remedy alone. Serge Cadieux, an appeals officer, allowed Parks' appeal and rescinded Mr. Grundie's order on May 23, 2002. At the hearing before Appeals Officer Cadieux, Mr. Grundie was questioned by Justice Canada counsel acting for Parks about many things, including his attendance at the Canmore meeting, his discussion with Mr. Fortin in December 2000, his methodology, and his conclusions. Appeal Officer Cadieux's decision commented on how highly critical Parks was of both Mr. Grundie's methodology and conclusions and in particular that Mr. Grundie had not spent sufficient time hearing from Parks management representatives.

[42] Mr. Cadieux's decision was judicially reviewed in the Federal Court, which dismissed the application on October 6, 2003. The Federal Court's decision was appealed to the Federal Court of Appeal, which held on May 6, 2005 that Mr. Cadieux had erred. It ordered a rehearing of the appeal case. The effect was to restore Mr. Grundie's directions in the interim. The HRSDC assigned Terry Baker, another health and safety officer, to determine if Parks had complied with Mr. Grundie's direction. In a decision dated September 27, 2005, Mr. Baker determined that it had.

[43] Following the Federal Court of Appeal's decision, Doug Malanka, a Labour Canada appeals officer, held a new appeal hearing of Mr. Grundie's order, from November 2005 to June 2006. Mr. Grundie testified in the second appeal hearing, and Justice Canada counsel cross-examined him on behalf of Parks about how he came to attend the Canmore meeting and how he came to be the officer assigned as well as about his methodology and conclusions. He was also cross-examined about email records from his investigation five years earlier, his union activities, his knowledge of the union activities of the park wardens who made the complaint, his comments at the Canmore meeting, whether there was an appearance of bias because of his PSAC activities, his view that Doug Martin's complaint had national dimensions, how he came to be the investigating officer, and much of the factual basis for his conclusion. Mr. Malanka's decision was released on May 8, 2007, and essentially confirmed Mr. Grundie's 2001 decision.

[44] By 2007, Mr. Grundie was performing fire inspections. He had no involvement in events involving Parks following Mr. Malanka's May 8, 2007, decision.

**B. Events after the May 8, 2007, decision that led to these complaints**

[45] The reasons for decision will include more detail, but this overview gives context to the respondent's actions that were cited in the complaints.

[46] Alan Latourelle, then Parks' CEO, emailed Sheik Munir, then Labour Canada deputy minister, on January 21, 2008. He requested a meeting as he had concerns of possible collusion between Parks employees and Labour Canada.

[47] On April 22, 2008, Luc Martin wrote to Peter Simeoni, Assistant Deputy Minister, Integrity Services Branch, HRSDC, enclosing information about potential wrongdoing or misconduct committed by a Parks employee and an HRSDC employee (i.e. Mr. Grundie).

[48] Henry T. Vanwyk, an advisor to the Assistant Deputy Minister, completed a documentation review at the request of Barry Crichley, Integrity Services Branch, HRSDC. A decision was made to launch a joint investigation retaining P&S Investigative Services ("P&S"). On August 11, 2008, P&S completed its "Fact Finding Review Final Report").

[49] The HRSDC and Parks next agreed to engage in a joint administrative investigation into the actions of Mr. Grundie and four park wardens. On January 26, 2009, they contracted with P&S, to conduct the investigation.

[50] Mr. Grundie heard nothing more about the matter until February 26, 2009, when a letter was sent to him advising that the Integrity Services Branch had received a complaint of alleged wrongdoing on his part during an investigation he had conducted into arming park wardens.

[51] On June 2, 2009, P&S submitted its preliminary Administrative Investigation Report.

[52] P&S's final Administrative Investigation Report was dated November 2, 2009. By then, P&S had been replaced on the investigation by the Special Investigation Unit (SIU), Integrity Service Branch, due to prevailing procurement limits on sole-sourced contracts. P & S' final Administrative Investigation Report was a compilation of its preliminary report altered by HRSDC staff in consultation with Parks staff. The final Administrative Investigation Report made findings with respect to Mr. Grundie.

[53] On November 24, 2009, Wendy Heon and Claude Campeau, from the SIU, interviewed Mr. Grundie.

[54] The SIU was asked to comment on P&S's Administrative Investigation Report. On February 12, 2010, Claire Bolduc, SIU senior investigator, reported that she and another investigator did not like the format, methodology, or content of the investigation report.

[55] Ms. Whittle-Udle then took the emails and interviews and wrote a draft narrative, called the "Parks Case Assessment Report", dated May 18, 2010. That draft report made findings against Mr. Grundie. . Ms. Whittle-Udle met with Sylvain Dubois, senior director general Integrity Services Branch and Suzanne Frost, senior counsel and group head, to discuss what a concise document would look like. They discussed what the format should be and then ensured that proper technical language was used. Legal Services also reviewed the report, but it was basically Ms. Whittle-Udle's document. It was the final report issued before the discipline was imposed, so in this decision, I will deal with the specific allegations and findings under its analysis portion.

[56] On March 9, 2010, Parks advised the HRSDC that it had resolved the matter with its employees and that as a consequence, it had terminated the investigation.

[57] Danica Shimbashi, director general, Regional Operations and Compliance Directorate, Labour Program, HRSDC, provided a copy of the draft Parks Case Assessment Report to Mr. Grundie for comment, and he responded, but the report was not changed.

[58] On July 30, 2010, the final Parks Case Assessment Report dated July 16, 2010 was issued, along with a cover letter from Ms. Frost.

[59] On September 14, 2010, Ms. Shimbashi issued a letter of reprimand to Mr. Grundie that reads in part as follows:

*I am writing to advise you of my decision regarding the findings of the administrative investigation into your conduct as an HRSDC Health and Safety Officer during the examination of the side-arms complaint by Parks Canada wardens.*

*In a letter dated July 30, 2010, HRSDC advised you that the Department is of the view that you breached the Values and*

*Ethics Code for the Public Service and contravened the provisions of subsection 144(5) of the Canada Labour Code.*

*Specifically, the administrative investigation found that you treated the complaint by Parks Canada wardens in a preferential way and that you shared your personal views on the case with the complainants resulting in a breach of the Values and Ethics Code. The evidence also indicated that you disclosed the content of an interview with a former Parks Canada official to a Union representative, and in doing so contravened subsection 144(5) of the Canada Labour Code.*

*At the time of this inappropriate behaviour, you had been a Health and Safety Officer for several years, and as such, you were fully aware of your role to maintain confidentiality, objectivity, impartiality and integrity as outlined under the Canada Labour Code, in your work description, and in accordance with the values outlined in the Values and Ethics Code for the Public Service.*

*As a result of your misconduct and taking into account all relevant factors, I am therefore informing you that this letter constitutes a formal written reprimand which will be placed on your personnel file for a period of two years provided no further disciplinary action is taken during that time.*

*Please be aware that any future incidents of breaches and misconduct may result in more severe discipline up to and including termination.*

*I wish to acknowledge the length of time take to finalize this investigation, however, we needed to ensure that all relevant information was accessed and considered in the final report.*

*In accordance with Section 208 of the Public Service Labour Relations Act, you may present a grievance against this decision within 25 days of receipt of this letter....*

*[Sic throughout]*

#### **IV. Reasons**

[60] The complainant's burden in this case is to prove that, on a balance of probabilities, the respondent violated section 147 of the *CLC*; see *Babb*. The parties agreed that Mr. Grundie carried that burden. Section 147 reads as follows:

*General prohibition re employer*

*147. No employer shall dismiss, suspend, lay off or demote an employee, impose a financial or other penalty on an employee, or refuse to pay an employee remuneration in*

*respect of any period that the employee would, but for the exercise of the employee's rights under this Part, have worked, or take any disciplinary action against or threaten to take any such action against an employee because the employee*

*(a) has testified or is about to testify in a proceeding taken or an inquiry held under this Part;*

*(b) has provided information to a person engaged in the performance of duties under this Part regarding the conditions of work affecting the health or safety of the employee or of any other employee of the employer; or*

*(c) has acted in accordance with this Part or has sought the enforcement of any of the provisions of this Part.*

[61] Complaints filed under section 133 of the CLC allege a violation of section 147. See *Chaves v. Treasury Board (Correctional Service Canada)*, 2005 PSLRB 45 at para. 67. The material portions of section 133, as it appeared when the complaints were filed in 2009 and 2010, read as follows:

**133.** *(1) An employee, or a person designated by the employee for the purpose, who alleges that an employer has taken action against the employee in contravention of section 147 may, subject to subsection (3), make a complaint in writing to the Board of the alleged contravention.*

...

*(3) A complaint in respect of the exercise of a right under section 128 or 129 may not be made under this section unless the employee has complied with subsection 128(6) or a health and safety officer has been notified under subsection 128(13), as the case may be, in relation to the matter that is the subject-matter of the complaint.*

...

*(6) A complaint made under this section in respect of the exercise of a right under section 128 or 129 is itself evidence that the contravention actually occurred and, if a party to the complaint proceedings alleges that the contravention did not occur, the burden of proof is on that party.*

[62] In *Vallée*, at para. 65, the adjudicator noted that the complainant did not exercise his right to refuse work under section 128 and therefore did not have the

benefit of the presumption in his favour provided under subsection 133(6). The decision noted that the "... burden of proof was entirely on [the complainant]."

[63] In *Vallée*, the former Board proposed the following four criteria for allowing a complaint:

- a) The complainant exercised his or her rights under Part II of the *CLC* (section 147). I note that paragraph 147(c) also speaks to acting in accordance with Part II.
- b) The complainant suffered reprisals (sections 133 and 147).
- c) The reprisals were disciplinary, as defined in section 147.
- d) A direct link exists between the complainant exercising his or her rights and the actions taken against him or her.

**A. Whether the complainant suffered a reprisal and whether it was discipline or a threat of discipline**

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[64] The parties agreed as to the second and third criteria in *Vallée*. Mr. Grundie did suffer a reprisal in the form of the letter of reprimand, which is a disciplinary action.

[65] They disagreed on whether the investigation was a reprisal, but the evidence was overwhelming that it was unusually long, arduous, and distressing. The first iteration of Parks' complaint was launched in January 2008, after which an initial fact-finding review, consisting of two separate documentation reviews, began. Then an administrative investigation was launched in January 2009. Mr. Grundie was first informed of it by letter dated February 26, 2009, which also informed him that disciplinary action, up to and including termination, could result.

[66] The administrative investigation continued until September 14, 2010. Mr. Grundie worked under a threat of disciplinary action for almost 19 months. For an additional 13 months, he was under investigation for the purpose of determining whether a case could be made out for discipline, although he did not know it.

[67] In all the circumstances of this unusual case, I also find that the investigation constitutes a reprisal that was a threat of disciplinary action within the meaning of section 147 of the *CLC*. The evidence showed that the investigation changed course a

number of times in what I can characterize only as an attempt to substantiate a case against Mr. Grundie for some cause. The threat of discipline was alive and real for 19 months.

**B. Whether the complainant exercised his rights or acted under Part II of the CLC**

[68] The parties disagreed as to whether Mr. Grundie was acting under or exercising his rights under Part II of the *CLC*. If not, the complaints cannot succeed.

[69] Mr. Grundie identified his actions or rights under Part II as those of a health and safety officer conducting an investigation of a complaint as he did with the park wardens' firearms complaint.

[70] But for the fact that he undertook the investigation, received representations from the park wardens, and made a finding adverse to Parks, he would not have been subject to a long, punishing, and failed administrative investigation and the discipline that followed it.

[71] The HRSDC stated that the rights under Part II refer to those of a complainant or an employee who refuses to work in an unsafe situation, not to a public servant's performance or conduct.

**1. Whether the actions for which Mr. Grundie was investigated were actions under Part II**

[72] To determine which of Mr. Grundie's actions the respondent was concerned with, I considered all the documentation about the initial concerns and Parks' complaint, the different fact-finding exercises and investigations, the notice to Mr. Grundie about the administrative investigation, and the letter of reprimand.

[73] I find Mr. Grundie was acting under or exercising his rights under Part II of the *CLC*. Those actions and rights were not those of an employee claiming an unsafe worksite. They were the actions, rights, duties, and powers of a health and safety officer explaining the *CLC* and conducting an investigation under Part II.

[74] The types of issues Parks raised about Mr. Grundie shows the extent to which Parks was troubled by how he carried out his duties and reached his decisions under Part II of the *CLC*. The original concerns that Parks officials identified to HRSDC

officials in 2008 were about collusion between Mr. Grundie and a park warden or PSAC officials.

[75] For the reasons elaborated below, I find that the core of the respondent's investigation concerned Mr. Grundie's actions preceding and during his examination of the park wardens' health and safety complaint. The ancillary portion of the respondent's investigation concerned Mr. Grundie's actions after February 2000 (the date of his report), which occurred during and were related to the ongoing appeals and court review of his original decision on the park wardens' complaint. He was investigated, but not disciplined, for his actions after February 2000. Some of the information about activities after February 2000 was used to bolster the different investigator's conclusions about Mr. Grundie's actions during his health and safety investigation.

[76] The respondent's long process began in 2008, when Mr. Vanwyk reviewed 6000 to 10,000 communications from between 1999 and 2008, to determine if there was enough evidence to pursue an administrative or other investigation. His review included documents from Mr. Grundie's health and safety investigation into the park wardens' complaint, transcripts of his testimony in the appeal hearings, emails, policy documents, reports, meeting minutes, and correspondence.

[77] I find his report identified and characterized the key allegations against Mr. Grundie and informed everything that followed. Mr. Vanwyk identified the following three allegations against Mr. Grundie that could be investigated: that he gave information to the PSAC; that he positioned his vital legal role into a conflict of interest to the point of possible collusion; and that he described management in unfavourable and insulting terms (in 2005). Two of the three allegations concerned Mr. Grundie's role while acting under Part II.

[78] He outlined 26 points about Mr. Grundie's activities and made notes about what an investigation should examine and the difficulties to overcome. Twelve items concerned Mr. Grundie's health and safety investigation.

[79] Fourteen points stated by Mr. Vanwyk related to communications in emails between or from PSAC officers and members after February 2001. There was an overwhelming focus on the PSAC and its motives, plans, and reactions to different points in the sidearms case. The treatment of these points demonstrates an attempt by

the investigator to use statements made five or more years later to prove that Mr. Grundie colluded with the park wardens or the PSAC in 2000 and 2001 or that he was in a conflict of interest in 2000 and 2001.

[80] P&S was next contracted to conduct a documentation review. The investigator summarized documents by year; most were dated 2000 and 2001. He found no activity in 2002, 2003, 2004, or 2006 concerning misconduct by Mr. Grundie. Five people were identified for possible misconduct under the former *Values and Ethics Code for the Public Service*, four park wardens and Mr. Grundie.

[81] Regarding Mr. Grundie, the allegation was about his interaction with PSAC officials and the numerous times he helped the PSAC more than he should have. For example, the investigator identified each park warden's role in PSAC. The investigator also said that there was evidence of possible perjury by Mr. Grundie at the appeals hearing on November 9, 2005. The investigator found that emails in 2005 showed Mr. Grundie's frustration, disappointment, expression of temper and immaturity, and his alignment on the "PSAC side".

[82] By August 11, 2008, P&S concluded the fact-finding review and made three findings. It found evidence that Mr. Grundie did not conduct a complete and impartial investigation of the park wardens' complaint in 2000 and 2001, and that Mr. Grundie and PSAC representatives (meaning the park wardens) had a very close and personal relationship. It found the perjury allegation would be very difficult to prove. It found that in 2005 Mr. Grundie expressed his frustration with Parks' executives and with his own management. The investigator recommended a further investigation but also raised a concern about the length of time that had passed and how that might impact a decision to take any disciplinary action. Again the real focus was on activities while Mr. Grundie was acting under Part II.

[83] While P&S, through its documentation review, significantly altered the allegations in Parks' original complaint, I find the bulk of Mr. Grundie's activities in question continued to be his activities carried out under Part II in 2000 and 2001. P&S focused on the PSAC's activity and attempted to link Mr. Grundie to the PSAC activity, to which subsequent investigations and reports kept returning. This was a critical turning point and change in focus for the subsequent process. I note that in February 2010, Parks criticized that change in focus and how it distracted the

investigators from the real allegations. Parks criticized the P&S investigation report for being focused on the union affiliations of the persons under investigation rather than their conduct, for focusing too heavily on Mr. Grundie, for not adequately completing the investigation into the park wardens, for not adequately investigating the original allegations, and for expanding the investigation beyond the original scope and allegations.

[84] On January 26, 2009, P&S was then contracted by the HRSDC and Parks to conduct the administrative investigation, and much of the content and language in its 2008 fact-finding review report carried forward into its final “Administrative Investigation Report” of November 2009. The scope of the allegations against Mr. Grundie, and P&S’s mandate, were as follows, which I find continue the connection to Mr. Grundie’s actions in 2000 and 2001:

*Allegations*

*Health and Safety Officer Robert Grundie may have violated the Values and Ethics Code for the Public Service by showing lack of integrity, impartiality and loyalty to his employer the Federal Government of Canada, Labour Canada and upper management of Parks Canada while dealing with Union Officials of Park [sic] Canada.*

*Further, that Mr. Robert Grundie may have violated the Canada Labour Code II by disclosing confidential information obtained from Gabriel Fortin.*

*Mandate*

*The mandate of P & S Investigations was to ascertain the validity of the allegations listed below that were identified during the Parks Canada and Labour file number 080509-1068 Fact Finding Review report dated August 11, 2008....*

*1. To investigate the behaviour of the subject(s) of this investigation that may be in violation of the Values and Ethics Code for the Public Service (e.g. real, apparent or potential conflict of interest that were [sic] identified) ....*

[85] P&S submitted a preliminary and a final Administrative Investigation Report. It reviewed emails from 1999 to 2007 between Doug Martin, Mr. Grundie, and others.

[86] The investigator said that there was evidence that Mr. Grundie did not remain “impartial to Labour Canada before 2003”, relying on seven emails from park wardens and others sent to Mr. Grundie. I note the investigator did not define the term impartial as it applies to an officer conducting an inquiry under Part II, where the duty

of impartiality lies between the complainant and respondent, not to one's own employer. Instead, the investigator used the undefined term 'impartial' from the former Values and Ethics Code for the Public Service, under the heading Democratic and Professional Values. That section dealt with the democratic mission of the public service to assist ministers to serve the public interest. He concluded that Mr. Grundie displayed a lack of impartiality towards the respondent in the early stages of his examination, up to his decision being rendered. Again, this shows that a significant part of the investigative efforts were on actions that occurred while Mr. Grundie was acting under Part II.

[87] The report discussed whether Mr. Grundie showed a lack of impartiality or loyalty in 2005. The investigator relied on statements from Mr. Grundie taken from 16 emails sent to three park wardens (Doug Martin, Ivan Phillips, and Alan Polster) using the federal government email service between January 6, 2005, and October 6, 2005.

[88] The investigator concluded that Mr. Grundie should not have made any comments after he issued his report in 2001. He concluded that Mr. Grundie was acting in his personal interest in 2005, which he found was being a member of the PSAC. He concluded that in 2005, Mr. Grundie, as a public servant and professional with significant authority in the public's eye, did not strike a balance; Mr. Grundie's actions went beyond the exercise of his freedom of expression. He did not act at all times in a manner that would bear the closest public scrutiny. He criticized the Government, HRSDC and Parks, which the investigator found was contrary to a public servant's obligation of loyalty and assistance to a minister.

[89] The investigator initially recommended that charges of the following breaches of conduct be brought against Mr. Grundie:

*Between June 1<sup>st</sup>, 2000 and March 1<sup>st</sup>, 2001, Robert Grundie did violate Treasury Board of Canada Secretariat "conflict of Interest and Post Employment" 1991, did not remain impartial in his official duty to the Federal Government of Canada.*

*Further between January 1<sup>st</sup>, 2005 and November 1<sup>st</sup>, 2005, Robert Grundie did violate the Values and Ethics Code for the Public Service by not remaining impartial to his employer, the Federal Government of Canada.*

*Further, between January 1<sup>st</sup>, 2005 and November 1<sup>st</sup>, 2005 Robert Grundie did violate the Values and Ethics Code for the Public Service by not arranging his private affairs affecting the integrity and objectivity of his employer, the Federal Government of Canada.*

*[Sic throughout]*

[90] The investigator found no proof of the allegations against three of the four park wardens, including no evidence of collusion with Mr. Grundie.

[91] By November 2009, P&S had changed its view of the potential charges. Its final Administrative Investigation Report, dated November 2, 2009, read in part as follows:

*Context of situation*

...

*(post March 2005) Mr. Ivan Phillips, a Park Warden who had submitted some information to Mr. Robert Grundie over the years, started having more frequent exchange of emails with Mr. Grundie. During 2005, Mr. Robert Grundie openly criticized his employer in the content of emails, bringing his loyalty, impartiality and integrity into question.*

...

*Breach of Confidentiality - Robert Grundie*

*As part of his investigation, on December 21, 2000, Robert Grundie spoke with Gabriel Fortin, Director General for Parks Canada.*

*... [quotation from s.144(5) CLC and s. 141(k) CLC] ...*

*On the 28<sup>th</sup> of December, 2000 at 8:38 pm, Robert Grundie sent a message ... to [doug.martin@pch.gc.ca](mailto:doug.martin@pch.gc.ca). ...*

*Gaby Fortin's statement indicates he spoke with Robert Grundie in the belief that it was to be held in confidence. Robert Grundie ... released confidential conversation in an email ... to the complainant Doug Martin. In reporting the conversation with Gaby Fortin, it appears he was only trying to discredit him and repeating it to someone else goes against section 144(5) of the Labour Canada Code Part 2.*

*Breach of Values and Ethics Code for the Public Service - Robert Grundie*

*The investigator, upon reading all of the emails sent by Mr. Robert Grundie, has found between January 6<sup>th</sup>, 2005 and*

*October 6, 2005, there is evidence of violations of lack of impartiality, integrity and loyalty.*

... [cites various documents numbered 05/xx] ...

*Those correspondences clearly show a lack of integrity, loyalty and impartiality on the part of Robert Grundie against the Federal Government of Canada, Parks Canada and Labour Canada.*

...

### *Findings*

*1 -The investigation has demonstrated that Robert Grundie, in the course of his investigation, did disclose information obtained during the course of his investigation, information obtained during an interview with Gabriel Fortin, contrary to section 144(5) of the Canada Labour Code.*

...

*2- The evidence demonstrates that Robert Grundie did breach the Values and Ethics Code for the Public Service, by openly criticizing his employer in a manner that would affect the public trust in the government.*

[Sic throughout]

[92] One of the two findings dealt with Mr. Grundie's conduct while he was acting under Part II.

[93] The P&S investigation reports (both preliminary and final) also went on to deal with three other allegations against Mr. Grundie that were not contained in the original allegations or its mandate: collusion with Doug Martin because of their respective PSAC roles; a possible conflict of interest arising from Mr. Grundie's role in 2009 as a Labour Program fire prevention officer with his private fire prevention business in Banff, which was part of his fire prevention officer territory; and whether he complied with Mr. Cadieux's order to turn over all emails and documents. The matters of collusion and not complying with the order were proven groundless. P&S recommended a separate investigation into the conflict of interest question. (I note that nothing further happened with respect to that question.)

[94] I find that as of November 2, 2009, the outcome of all the respondent's investigations resulted in two findings, one on the complainant releasing information during his health and safety investigation in 2000, and the second on his comments

made between January and October 2005. He was disciplined for the former but not the latter.

[95] But that was not the end of the matter. The HRSDC's SIU was assigned to review the P&S report and provide comments. On February 12, 2010, Ms. Bolduc reported that she and another investigator did not like its format, methodology, or content. Significantly, P&S did not interview Mr. Grundie or any of the park wardens, even though it relied on many of the emails they had written. The P&S report contained no summaries of the interviews it conducted. Notably, Ms. Bolduc also reported that she had confirmed through interviews that Mr. Grundie was not in a conflict of interest when the sidearms file was assigned to him; it was a common occurrence for a health and safety complaint to be assigned in the way it had. She also reported that Mr. Grundie had informed Parks' National Headquarters of the investigation's complexity and potential implications. Her findings were ignored.

[96] The case did not end with Ms. Bolduc. Ms. Whittle-Udle then took the emails, reports, and different documents and interviews and wrote what became known as the Parks Case Assessment Report, the report that was the foundation for the ultimate discipline. She was not familiar with a health and safety officer's duties and responsibilities. She did not consider or evaluate the potential conflict between the former *Values and Ethics Code for the Public Service* and a health and safety officer's statutory obligations under the *CLC*. Her report made findings against Mr. Grundie and again changed the nature of the allegations and findings against him. She returned to some of the original allegations cited in the first P&S fact-finding review. She included allegations that the SIU had already found had no merit. She ignored evidence that would have explained or provided context to the events at issue.

[97] The final Parks Case Assessment Report dated July 16, 2010 is the most significant document outlining what conduct of Mr. Grundie's was being investigated and ultimately used to discipline him. Its details reveal how much of the focus of both the investigation and the subsequent discipline was related to how Mr. Grundie carried out his work under Part II of the *CLC* during the sidearms investigation. In part, the Parks Case Assessment Report reads as follow:

*Context:*

*The purpose of this report is to present the findings of an administrative investigation triggered by a Parks Canada request, into the conduct of Mr. Robert Grundie, then HRDC Labour Program Health and Safety Officer ... With respect to the Values and Ethics Code of the Public Service during the investigation of the side-arms complaint by Parks Canada Wardens.*

...

#### *Appearance of Preferential Treatment*

...

#### *In Conclusion:*

*Mr. Grundie created the appearance of treating the Parks Wardens' complaint in a preferential way by:*

- providing labour relations advice in support of Park Wardens' concerns at the Canmore meeting;*
- changing the source of the complaint from an individual Park Warden to an union official on behalf of other wardens;*
- assigning the investigation to himself, despite his involvement in the matter;*
- attempting to limit similar complaints, at least initially, so that Labour Program headquarters would not assign the investigation to someone else; and*
- encouraging other complaints to be filed after he was confirmed as the responsible investigator, which gives the appearance of attempting to raise the significance and priority of the original complaint assigned to him.*

#### *Appearance of Bias/Lack of Objectivity:*

*(using two emails from Mr. Grundie dated December 28, 2000 and January 2, 2001)*

...

*From an investigative point of view, Mr. Grundie created an appearance of a lack of objectivity by expressing these views to the complainant during the investigation and while he was forming his opinion as an LPHSO.*

#### *Breach of Confidentiality*

...

*Gabriel Fortin's statement indicates he spoke with Robert Grundie in the belief that it was to be held in confidence. Robert Grundie released information that should have been kept confidential under the ... ( CCL Part II) in an email on December 28, 2000 to the complainant, Doug Martin.*

*Lack of impartiality and integrity in carrying out responsibilities as a Labour Program Health and Safety Officer*

*The emails sent by Robert Grundie between January and October 2005 show clear evidence of a lack of impartiality, and integrity in carrying out his responsibilities as a Labour Program Health and Safety Officer.*

[Sic throughout]

[98] From this report, I find Ms. Whittle-Udle set the timeline as 2000 – 2001 when, in the Context section, she specified “*during the investigation of the side-arms complaint*”. When justifying her conclusion of *Appearance of Preferential Treatment*, she cited five particulars that relate to the Canmore meeting and Doug Martin’s complaint. Her conclusion on *Appearance of Bias/Lack of Objectivity* relies on communications by Mr. Grundie during the course of his work on Doug Martin’s complaint. Her conclusion on *Breach of Confidentiality* is also based on Mr. Grundie’s actions during the course of his same work. Only the fourth finding relates to statements in 2005, although still linked to the sidearms complaint. Three of the four findings related to Mr. Grundie’s work under Part II.

## ***2. Whether the actions for which Mr. Grundie was disciplined were actions under Part II***

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[99] I turn now to whether the actions for which Mr. Grundie was disciplined were actions under Part II.

[100] HRSDC, through Ms. Shimbashi, provided a copy of the Parks Case Assessment Report to Mr. Grundie. Her cover letter informed him of its findings and repeated three of the same allegations set out in the report; the allegation about statements made in 2005 is not continued. She did not testify at the hearing, and therefore I am left to infer from her letter that she also relied on the report’s specifics. She wrote in part as follows:

...

*The administrative investigation found that you appear to have treated the complaint in a preferential way. The administrative investigation also reveals that you appear to have shared your personal views on the case with the complainant(s), resulting in an apparent breach of the Code.*

*Furthermore, the evidence indicates that you appear to have disclosed the content of an interview from [sic] Parks Canada official to a Union representative and, in doing so; have apparently contravened subsection 144(5) of the Canada Labour Code.*

...

[101] Then HRSDC had to determine what if any discipline to impose on Mr. Grundie. On September 14, 2010, Ms. Shimbashi issued a letter of reprimand to him, advising him that he was being formally reprimanded for his conduct "... as an HRSDC Health and Safety Officer during the examination of the side-arms [sic] complaint by Parks Canada wardens." The specific breaches were the same ones as in her earlier letter, notably the following:

*In a letter dated July 30, 2010, HRSDC advised you that the Department is of the view that you breached the Values and Ethics Code for the Public Service and contravened the provisions of subsection 144(5) of the Canada Labour Code.*

*Specifically, the administrative investigation found that you treated the complaint by Parks Canada wardens in a preferential way and that you shared your personal views on the case with the complainants resulting in a breach of the Values and Ethics Code. The evidence also indicated that you disclosed the content of an interview with a former Parks Canada official to a Union representative, and in doing so contravened subsection 144(5) of the Canada Labour Code.*

[102] To summarize on whether the letter of reprimand concerns actions of Mr. Grundie under Part II of the *CLC*, I find it does. He was disciplined for actions while explaining the *CLC* to park wardens and their management and later for his actions while he was investigating a complaint filed under Part II. He was, in both cases, acting under Part II.

**C. Whether a direct link exists between the complainant exercising his or her rights and the actions taken against him or her**

[103] I did not receive any direct evidence about the origin of the fact-finding and administrative investigation process or about the discipline. Ms. Whittle-Udle became

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*Public Service Labour Relations and Employment Board Act and Canada Labour Code*

involved mid-process and was not involved in the discipline. However, the documents speak for themselves.

[104] I find that Mr. Grundie was not disciplined for comments he made about his own employer or Parks in 2005. Although substantial proof existed in support of this allegation, and Mr. Grundie admitted to it, I find that the HRSDC chose not to discipline him for that conduct and that it could not then rely on that conduct to attempt to distract from the real focus of his conduct during 2000 to 2001. I find that the HRSDC used Mr. Grundie's comments in 2005 to attempt to retroactively characterize his actions in 2000 as preferential.

[105] I find the documents demonstrate a direct link between Mr. Grundie carrying out his duties under Part II of the *CLC* and the 2008 – 2010 investigation process and the resultant discipline. The Parks complaint focused on this aspect; so did the two documentation reviews, the administrative investigation, and the Parks Case Assessment Report. The letter of reprimand cites the same actions during the same period. The letter of discipline uses language connecting the discipline to Mr. Grundie's health and safety officer role under the *CLC*, and the specifics of his alleged breaches of the *CLC* demonstrate a clear link between Mr. Grundie's statutory role and the discipline.

[106] Ms. Shimbashi did not testify to explain or expand on her reasons for discipline or to explain any other matters she considered. I have no information about whether she considered Mr. Grundie's length of service, work record, or current role, or the length of the investigation, the imperfections in P&S's investigative methodology and reporting, the specific findings and evidence contrary to her conclusions, and the concept of imposing discipline 10 years after the events occurred.

[107] The general law on discipline is founded on principles of proximity; an employer uses discipline to correct conduct, so the discipline and conduct should have some meaningful connection in time. I have no information as to whether Ms. Shimbashi considered or evaluated the potential conflict between the former *Values and Ethics Code for the Public Service* and a health and safety officer's statutory obligations under the *CLC*. Since all that information would have assisted the HRSDC's case, I draw an adverse inference from the respondent's failure to call her to testify and elaborate on these matters.

[108] I pause here to illustrate some of the erroneous findings in the Parks Case Assessment Report. These errors cause me to infer that the respondent should have been aware or become aware during the investigations that Mr. Grundie was acting under Part II.

[109] Mr. Grundie was, in 2000 and 2001, a health and safety officer under Part II of the *CLC*, as it then read. Section 141 of the *CLC* set out the health and safety officers' extensive powers.

[110] Relying on the significant volume of documents and Mr. Grundie's uncontradicted testimony, I find that he attended the Canmore meeting in a health and safety officer's role under Part II of the *CLC*. HRSDC officials who were interviewed by P&S in the making of the reports, acknowledged that part of a health and safety officer's role is to meet with workers, unions, or employers to explain the *CLC*, the investigation process, and previous rulings. It was questions on precisely these types of topics that the park wardens and one of their managers posed to Mr. Grundie in February 2000.

[111] From the outset, the investigators suggested that the Canmore meeting was either a union meeting or a union-sponsored meeting. There is no credible evidence to support such a conclusion. A manager would not be present at a union meeting. The minutes were relied on heavily, but Mr. Grundie did not write them, and the author was not interviewed, either in the investigations or at the hearing. As a result, the minutes become an unreliable support for any conclusions about union activity.

[112] I disagree with the conclusion of some of the investigators and of Ms. Whittle-Udle in her Parks Case Assessment Report that Mr. Grundie provided labour relations advice during the Canmore meeting. The evidence simply does not support such a conclusion. His testimony was consistent with the meeting minutes. He provided information and advice one would expect of a health and safety officer, a role Ms. Whittle-Udle did not understand. He discouraged employees from taking unilateral refusal-to-work action, which would be disruptive to any employer. Instead, he explained the *CLC* processes that would enable a health and safety officer to carry out an investigation and make a decision.

[113] Park wardens were contemplating refusing to work due to a danger, which would have placed Parks in a difficult situation. Mr. Grundie, an experienced officer,

would have known this and was, I find, reasonably acting within his role when he informed the park wardens and their senior manager Mr. Fortin that there were other procedures or options under the *CLC*.

[114] Had he done anything improper, I expect that Parks would have initiated a complaint to the HRSDC in 2000 rather than waiting until 2008. Had the investigators or Ms. Whittle-Udle fully considered the meeting's context and the officer's role, rather than just the written meeting minutes, the outcome might have been different.

[115] There is significant evidence and more than one finding that Mr. Grundie attended the meeting with his superiors' permission. I find that there was no impropriety in how he came to attend the meeting; it was part of the normal course of a health and safety officer's duties, and the meeting was to occur within his geographic area of responsibility.

[116] From the outset and when the topic arose, Mr. Grundie was sensitive to the regional and national implications of a potential investigation or a refusal to work. Starting on February 20, 2000, he informed HRSDC team members and managers across Canada, and after a national consultation, HRSDC management decided that he should be the investigator. Mr. Grundie's regional manager informed P&S of this fact early in P&S's inquiry. The email exchanges among those individuals demonstrate a high sensitivity to the significance of the investigation into the sidearms case. When HRSDC management decided to assign the investigation to Mr. Grundie, more complaints had already been received, from wardens in other regions. The evidence simply did not support a conclusion that Mr. Grundie attempted to limit the number of complaints to ensure he would be assigned the investigation. The evidence also did not support a conclusion that Mr. Grundie then attempted to increase the number of complaints, to raise the significance and importance of the complaint assigned to him.

[117] Other Labour Canada officials also told P&S that it was common practice for a single complainant to file a complaint in a representative capacity on behalf of a group. Section 129 of the *CLC* contemplates such a situation. Mr. Grundie did not need to engineer such a result or attempt to change Doug Martin's complaint from a single to a representative complaint. I also note that under the *CLC*, Doug Martin had to file the complaint in his capacity as a Parks employee, not as a PSAC official. Part II of the *CLC* focuses on employees and employers.

[118] On the allegation that Mr. Grundie breached the confidentiality of his interview with Mr. Fortin, I note that Mr. Fortin was the manager involved from the time of the Canmore meeting. He asserted to the HRSDC that he had the protection of paragraph 141(1)(k) of the *CLC*, which authorizes an officer to "... meet with any person in private or, at the request of the person, in the presence of the person's legal counsel or union representative."

[119] To assert the protection under the *CLC*, the person asserting privacy would need to provide sufficient information to establish that either the officer or the person requested a private meeting.

[120] Mr. Fortin gave a one-paragraph statement to P&S that everyone involved then relied on. He said he expected his conversation with Mr. Grundie on December 21, 2000 had been confidential. His statement was taken as truth without considering any information from Mr. Grundie. From P&S's reports and documents, nothing indicates that P&S tested Mr. Fortin's expectation. Nothing indicates that P&S asked him to describe his meeting with Mr. Grundie sufficiently to determine whether his expectation of confidentiality was held during the conversation or only later, in 2008, in retrospect.

[121] Mr. Grundie disagreed with Mr. Fortin's privacy assertion. He said that there is no expectation of confidentiality in such an investigation. Comments in the documents from other officers confirm this view. As a result, if a commitment was made to confidentiality, it could have been tested by obtaining further details from Mr. Fortin. No one did.

[122] The HRSDC asserted that Mr. Grundie violated subsection 144(5) of the *CLC*, as it read at the time, as follows:

*144. (5) No person shall, except for the purposes of this Part or for the purposes of a prosecution under this Part , publish or disclose the results of an analysis, examination, testing, inquiry, investigation or sampling made or taken by or at the request of an appeals officer or a health and safety officer under section 141..*

[123] Mr. Grundie gathered information from the park wardens' employer as part of exercising his authority under Part II of the *CLC*. By December 21, 2000, he had almost completed his investigation. He informed the complainant (Doug Martin) that a report

would be out by mid-January of 2001. He needed information from Parks, and he needed to then be able to examine any other information that the meeting with Mr. Fortin prompted him to obtain.

[124] The investigators did not examine whether Mr. Grundie's disclosure of some of the information obtained from Mr. Fortin was accurate or was necessary to a health and safety officer's investigation. No one inquired into the usual method of conducting an investigation under Part II of the *CLC*.

[125] I find that Mr. Grundie's disclosure was for the purposes of completing his investigation under Part II of the *CLC*. If Mr. Fortin had an expectation of confidentiality, Mr. Grundie's disclosure still fell within the actions allowable under subsection 144(5), and the evidence did not support concluding that he violated it.

[126] In June 2000, Mr. Grundie disclosed his actions to Ms. Mann, a superior in his office. No one suggested that he was wrong to disclose the information he had learned from Mr. Fortin. From that I must conclude that the HRSDC was aware of this eight years before it began an investigation into the disclosure allegation.

[127] There is no doubt that part of the reaction to Mr. Grundie disclosing Mr. Fortin's information was the language he chose to express that disclosure. He was less than professional; however, he was not disciplined for using this language.

[128] These communications occurred at the end of his investigation. He was already estimating that his final decision and directions would be issued within weeks. It is likely he was already drafting his decision. While Mr. Grundie had an ongoing obligation to remain impartial from the parties, he was no longer going to be able to remain neutral on the issue; he was going to have to make a decision to uphold or deny the complaint, which would appear to support one side or the other. Although he could have been less open about his preliminary views at this time, it is not surprising that he had reached preliminary conclusions by this time. His investigation was six months old and almost complete. As an investigator he had moved beyond the 'open-minded inquiry' portion of his work to the 'conclusion with justification' portion of his work. Ms. Whittle-Udle did not know or understand the role so it is unlikely that she considered the evolutionary aspects of an investigation when she determined that he had not remained open-minded and impartial throughout.

[129] Finally, I turn to the third ground of discipline, which was that Mr. Grundie exhibited a lack of impartiality and integrity in carrying out his Labour Program health and safety officer responsibilities. The evidence that the HRSDC relied on was Mr. Grundie's emails sent between January and October 2005. In 2005, the Federal Court of Appeal considered the appeal from Mr. Grundie's decision in the park wardens' case.

[130] Mr. Grundie's uncontradicted evidence was that he was extremely frustrated with all the legal processes by then. His frustration was not confined to anyone; he distributed it equally among the HRSDC, Parks, and the PSAC.

[131] It is not uncommon for a decision maker to follow and take an interest in the outcome of the appeal or judicial review of one of its decisions. Mr. Grundie admitted that his comments and expressions were less than professional. Mr. Vanwyk and P&S characterized his emails as critical, venting, spitting bitterness, verbally abusive, and juvenile. Regardless, Mr. Grundie was not disciplined for it.

[132] Rather, the investigators and the HRSDC attempted to use the emails in 2005 to infer a lack of impartiality and integrity when he had carried out his role in 2000 during his investigation. That leap is simply too great and is not supported by the evidence.

[133] Mr. Vanwyk and P&S examined all the emails exchanged during Mr. Grundie's safety investigation in 2000 and 2001. Nothing in them or in the other correspondence gave rise to a concern of this nature except the allegations of union involvement or collusion, neither of which was substantiated. The 2005 emails add nothing to the original information. They only display Mr. Grundie's state of mind in 2005, not while he was conducting the original inquiry.

[134] The investigators failed to consider the evidence that showed the involvement of Mr. Grundie's superiors, technical advisors, and legal advisors during his inquiry and while preparing his report. I find it more probable that had Mr. Grundie not been impartial or demonstrated less integrity at the time, his superiors would have identified it.

[135] For those reasons, I do not concur with the HRSDC that it disciplined Mr. Grundie for his general conduct as a health and safety officer. The discipline is

directly tied to the investigation he conducted under Part II of the *CLC* into a complaint filed under the *CLC*. For example, had he not interviewed Mr. Fortin, his investigation would have been less than fulsome. However, as a result of doing so, he was disciplined for his actions that arose from that interview.

[136] Some unique aspects of that statutory role must be balanced against an employee's general obligations. First, a health and safety officer has a statutory role and authority. The *CLC* is not prescriptive about how an officer conducts an investigation under it; the officer has wide powers and broad discretion. The role may significantly impact workplaces, employees, and employers. When carrying out the role, the statutory obligations had to supersede the Values and Ethics Code for the Public Service applicable at the time. The HRSDC cannot hold a health and safety officer to a standard of conduct that would make it impossible for the officer to complete his or her statutory role. As a result, when evaluating an officer's conduct during an investigation under Part II of the *CLC*, the officer's employer must balance the statutory obligations and role with its expected standards of its broad group of employees. Understanding the officer's role is critical to obtaining that balance.

[137] For the reasons I have already expressed, I find that there is a direct link between Mr. Grundie acting in accordance with Part II of the *CLC* or exercising his rights as a health and safety officer under Part II and the resultant reprisals, being the investigation and disciplinary action. The fact-finding review and the administrative investigation, the Parks Case Assessment Report, the first letter from Ms. Shimbashi, and the letter of reprimand all focus almost exclusively on his conduct during his investigation of the park wardens' complaint.

[138] I also rely on the evidence about the involvement of Parks. Parks was the respondent in the park wardens' case. The evidence demonstrated beyond a doubt the antagonism that Parks showed towards Mr. Grundie. Any other employer would not likely have been able to initiate and compel the extent of the investigations that occurred into Mr. Grundie's conduct. However, Parks' status as a federal agency enabled it to access the HRSDC's highest officials and pursue its concerns.

[139] It is also highly improbable that any other employer (other than a federal department or agency) would have been able to have full access to all the HRSDC investigators, reports, and supporting materials. Parks was the complainant against

one of the HRSDC's employees, yet the HRSDC was convinced to partner with Parks in a joint investigation. No other employer would conduct such an investigation with a complainant. Such a practice offends all the principles guiding a human resources investigation into an employee's conduct.

[140] Parks exercised its access to the P&S investigators to the extent of expanding the scope of the investigation against Mr. Grundie. P&S added additional allegations to its initial report, two of which it eventually dismissed, and it deferred one to another investigation. Ms. Whittle-Udle said that there was a "Chinese wall" between the organizations during the investigation. However, the contracts show that both organizations jointly participated and regularly discussed matters. The documentary records show that Parks was intimately involved in the minutiae of the investigation right into 2010.

[141] The respondent expended an untold amount of resources in multiple proceedings in its efforts to prove some or any misconduct on Mr. Grundie's part. I infer that it did so in part because of Parks' involvement, which wanted retribution against Mr. Grundie for finding that park wardens were in an unsafe situation and for forcing Parks to address that safety concern.

[142] Both SIU investigators and Parks criticized P&S's methodology and conclusions in its investigation. It is apparent that the investigation had no clear terms of reference or control. Mr. Vanwyk took the investigation beyond Parks' initial complaint. His suggestions for what to investigate were apparent in P&S's investigation. He first brought in and carried into P&S's investigation the allegation that Mr. Grundie was supporting the union, which was ultimately determined to be unfounded. P&S was unable to separate the HSRDC, as Mr. Grundie's employer, from Parks, which held a dual role as the complainant in the case against Mr. Grundie and the respondent in the park wardens' case. When the evidence demonstrated or an investigator found no proof of misconduct on several allegations, those allegations were not dropped; some allegations were reborn in later reports. Mr. Vanwyk raised the difficulty of imposing delayed discipline, but no one in the HRSDC picked up on his concern and re-evaluated the investigation's purposes or timeliness. The Federal Court's findings and Mr. Malanka's report, which confirmed Mr. Grundie's findings, should have injected a reality check into this process, but other motives appear to have prevailed.

**D. Conclusion**

[143] For the reasons expressed earlier in this decision, I find that Mr. Grundie has met his burden of proving that the HRSDC violated paragraph 147(c) of the *CLC*. Accordingly, I uphold the complaints. I will now turn to the matter of remedies.

**V. Remedies**

[144] Section 134 of the *CLC* outlines the Board's powers in the event a complaint is substantiated. It reads as follows:

*134. If, under subsection 133(5), the Board determines that an employer has contravened section 147, the Board may, by order, require the employer to cease contravening that section and may, if applicable, by order, require the employer to*

*(a) permit any employee who has been affected by the contravention to return to the duties of their employment;*

*(b) reinstate any former employee affected by the contravention;*

*(c) pay to any employee or former employee affected by the contravention compensation not exceeding the sum that, in the Board's opinion, is equivalent to the remuneration that would, but for the contravention, have been paid by the employer to the employee or former employee; and*

*(d) rescind any disciplinary action taken in respect of, and pay compensation to any employee affected by, the contravention, not exceeding the sum that, in the Board's opinion, is equivalent to any financial or other penalty imposed on the employee by the employer.*

[145] Mr. Grundie requested a declaration that s. 147(c) of the *CLC* had been violated and I find that it is appropriate in this case.

[146] He requested that the Board rescind the disciplinary action as well. I find that that is also an appropriate remedy in this case.

[147] Finally, Mr. Grundie sought the reinstatement of his sick leave and other financial compensation, although he did not provide details of the sick leave or how it

connected to these proceedings and provided no other proof of financial loss. There is no basis on which to grant either remedy, and so, I decline to.

[148] For all of the above reasons, the Board makes the following order:

*(The Order appears on the next page)*

**VI. Order**

[149] The Board declares that the HRSDC violated paragraph 147(c) of the *CLC* when it threatened to discipline and then disciplined Mr. Grundie for acting in accordance with Part II.

[150] The Board directs the HRSDC to remove the letter of reprimand dated September 14, 2010, from Mr. Grundie's file and to remove all references to that disciplinary action in any of its records.

December 18, 2015.

**Deborah M. Howes,  
a panel of the Public Service Labour  
Relations and Employment Board**