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Citation: 2017 PSLREB 45



Public Service Labour Relations Act

Before an adjudicator

BETWEEN

**LAWRENCE FONG, RICHARD GREEN, KEN INSCH,
PETER LEUNG, AND DANA ZIESEL**

Grievors

and

CANADA REVENUE AGENCY

Employer

Indexed as

Fong v. Canada Revenue Agency

In the matter of individual grievances referred to adjudication

Before: Beth Bilson, adjudicator

For the Grievors: Sean Kemball, Professional Institute of the Public Service of
Canada

For the Employer: Karen Clifford, counsel

Heard at Calgary, Alberta,
January 20 to 22 and May 25 to 29, 2015.

REASONS FOR DECISION

I. Individual grievances referred to adjudication

[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 (“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) (PSLRA) before November 1, 2014, is to be taken up and continue under and in conformity with the PSLRA as it is amended by sections 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[2] In the period addressed by the grievances, the grievors, Lawrence Fong, Richard Green, Ken Insch, Peter Leung, and Dana Ziesel, were all employed by the Canada Revenue Agency (“the employer”) as large-file appeals officers in the Tax Services Office (TSO) in Calgary, Alberta (“Calgary” is used throughout to refer to this office). The grievors’ substantive positions were classified at the AU-04 group and level. On July 6, 2011, they filed grievances (Exhibits U-9, U-28, U-39, U-44, and U-65), alleging that the employer had violated clause 45.07 of the collective agreement between it and the Professional Institute of the Public Service of Canada (“the bargaining agent”) covering the period from June 25, 2009, to June 21, 2011 (“the collective agreement”). The clause reads as follows:

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

When a day designated as a paid holiday occurs during the qualifying period, the holiday shall be considered a day worked for the purpose of the qualifying period.

[3] The grievors alleged that for a lengthy period, they had been performing the duties associated with the positions classified at the AU-05 and AU-06 group and levels; the bargaining agent argued that this period could go back as far as 2002. However, I note that the grievors were appointed to AU-04 positions between 2005 and

2010 and some acted in AU-05 positions during this period; therefore, their claim could not go beyond 2005. In their grievances, the grievors sought acting pay under clause 45.07 for the period during which they had been performing the duties of the higher classification. They conceded that on August 15, 2011, a restructuring of the Calgary Appeals Division brought that period to an end.

[4] The employer raised a preliminary objection to my jurisdiction to determine the grievances. It argued that they are essentially about whether the classification of the grievors' positions was appropriate, which falls outside the authority of an adjudicator deciding whether a violation of the collective agreement occurred. The employer argued that at all times, the grievors were being assigned duties that fell within their job description and that, if frustration existed over the value placed on their classification, it could not be resolved through a grievance claiming acting pay.

[5] The employer further indicated that, in the event the jurisdictional objection is dismissed, she would rely on the Federal Court of Appeal's decision in *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (F.C.A.) (QL), in which the Court considered the significance of the collective agreement provision at issue in that case specifying that a grievance must be filed no later than 20 days after the date on which a grievor is informed or learned of an action or circumstances giving rise to his grievance. Clause 34.12 of the collective agreement in this case is similar to the clause in *Coallier*: a grievance may be presented when the grievor "... is notified or on which the grievor first becomes aware of the action or circumstances giving rise to the grievance." Clause 34.12 specifies a time limit of 25 days. The employer argued that applying *Coallier* would mean that no remedy could be awarded that would have effect longer than 25 days before the grievances were filed.

[6] I reserved my decision on the preliminary objection to jurisdiction and proceeded to hear evidence on the merits of the grievances. I committed to rule on the objection in this decision.

II. Summary of the evidence

A. For the grievors

[7] The bargaining agent called all the grievors to give evidence. In addition, it called Vanda Yantsis, an employee working at the relevant time in the Toronto North TSO

(“Toronto North”) in Toronto, Ontario.

1. Mr. Insch

[8] The first witness called on behalf of the grievors was Mr. Insch, whom the employer first employed on April 6, 1992, as a Goods and Services Tax (GST) Auditor, classified at the PM-02 group and level. He moved to Calgary and worked as a tax avoidance auditor in the Tax Avoidance Division until 2002.

a. Audit Division

[9] Mr. Insch was promoted to a position classified at the AU-03 group and level and began working in the Audit Division on small-and medium-enterprise (SME) audits. The job description associated with this position (Exhibit E-5) referred to “complex” rather than highly complex files. It also referred to a rating system for files, but it did not refer to a rating system for the AU-04 large-file appeals officer job description.

[10] In the Audit Division, AU-04 is the highest classification for auditor positions, although there are also case managers whose positions are classified AU-06. When a highly complex audit is done, the AU-06 case manager would have overall responsibility for it, but a number of specialized auditors, classified AU-03 or AU-04, might be involved.

b. Appeals Division

[11] In April 2005, Mr. Insch was promoted to a large-file appeals officer position, classified at the AU-04 group and level, in the Appeals Division. Obtaining the large-file appeals officer position was a promotion. The process followed in appeals was distinct from the process followed in the Audit Division.

[12] When he began working in the Appeals Division, eight AU-04 large-file appeals officers reported to one team leader, classified at the MG-05 group and level, as shown in the organizational chart (Exhibit U-2). Rob Veltri, who occupied the position of technical specialist, classified at the AU-06 group and level, did not perform any supervisory role but was available for informal consultations. The team leader and Mr. Veltri both reported to the chief of appeals.

[13] In 2005, the team leader was Franz Heynen until 2009. Ms. Delly Tse was the team leader from 2009 until 2011. Ms. Rose Lok was the team leader from August 2011, and was still in this position at the time of the hearing.

[14] According to Mr. Insch, the large-file appeals officers interacted relatively little with Mr. Heynen. He approved their time sheets. They would periodically provide him with updates on the files they were working on, but he would never suggest any changes. They might have met with him once or twice per year.

[15] Mr. Insch indicated that Mr. Heynen was also responsible for the initial screening of files and for assigning them to the large-file appeals officers. Typically, the large-file appeals officers and Mr. Heynen interacted very little after files were assigned, as all the necessary information was in the files.

[16] The team leader, and then the chief of appeals, would have to sign off on completed files and on a determination that a file was “unworkable”, but the large-file appeals officer essentially made that determination. No team leader had ever asked him to make a change to a file, and Mr. Insch did not think the team leader or the chief of appeals would read all the documentation connected with a file when signing off on it. The team leader and the chief of appeals had to approve any settlement of an objection.

[17] Mr. Insch commented on the role of the AU-06 technical specialist, Mr. Veltri, as he had experienced it. From 2005 to 2011, only one person in his group was classified AU-06, Mr. Veltri. Mr. Insch did not claim that he had performed Mr. Veltri’s job at any time. The organization charts from before (Exhibit U-2) and after (Exhibit E-2) the restructuring showed that he did not report directly to the chief of appeals.

[18] On one occasion, he sought the technical specialist’s assistance in the early days of dealing with an objection but he proceeded through the subsequent stages, which consumed about five years and involved complex legal questions, without direction from the technical specialist and with little interaction with the team leader. The files assigned to him remained in his possession nearly all the time, and someone else could have dealt with them only if they were signed over to that person, which in his recollection happened only once, when the Auditor General requested a file.

c. Description of work done by AU-04 large-file appeals officer

[19] As the label “large file” suggests, the files assigned to the large-file appeals officers were usually quite complicated, mostly involving large corporations in the oil and gas sector. Mr. Inch testified on s. 225.1(8) of the *Income Tax Act* (R.S.C., 1985, c. 1 (5th Supp.)), which defines “large corporation”, and he agreed that it does not contemplate any larger entity.

[20] Each large-file appeals officer would have to decide what approach to take to the notices of objection filed by taxpayers. Mr. Inch’s practice was to make a spreadsheet of the issues raised in a notice of objection. He would then decide whether he required more facts, which he would seek from the taxpayer company by phone or in writing, or whether he needed to research the law in the extensive legal databases available to him. There could be as many as 30 issues in any one objection, and Mr. Inch would work through them without any input from his supervisor.

[21] The files Mr. Inch dealt with involved very large corporations, which would commonly file objections on a regular basis. The objections would proceed through the Audit Division, and it was then open to the taxpayer to appeal the outcome of the audit process on any of the issues in the notice. In many cases, the consideration of the issues would involve looking at previous tax years, as there might be unresolved issues still outstanding, or determining whether a previous notice of objection might affect current objections. Many of the files Mr. Inch dealt with had multi-jurisdictional aspects that increased their level of complexity.

[22] Mr. Inch agreed that the job description for the AU-04 large-file appeals officers referred to “highly complex” issues and that he was not aware of any description that referred to anything more complex than “highly complex”. Mr. Inch did not know the source of the terms “medium-rated corporation” or “high-rated corporation” used in the large-file appeals officer job description (Exhibit U-1).

[23] There was a range in the complexity of the files Mr. Inch dealt with, from what he referred to as “AU-06 files”, which might occupy thousands of hours, to more restricted “AU-04 files”, which might take 75 hours. Mr. Inch understood the hours budgeted for auditing an objection were “over 1000”, while the hours budgeted for an appeal were 75.

[24] A Calgary presentation to a national meeting of chiefs of appeal in January 2011 (Exhibit U-18) contains a slide about the ageing of a number of files at Calgary. It appears to use colour coding to refer to some files as AU-05 or AU-06 in terms of complexity, although there were no large-file appeals officers in those classifications at Calgary.

[25] The monetary implications of determining an appeal could be significant; Mr. Insch referred to one of his files, in which over \$1 billion was at stake.

[26] Mr. Insch emphasized that he did almost all the work on appeal-level files with very little input from the team leader. He worked closely with the other large-file appeals officers and their workloads were comparable to his.

[27] Mr. Insch explained that under the system in place before August 15, 2011, appeal files would be assigned in an appeal officer's name, and the large-file appeal officer would be responsible for that inventory.

[28] A 2009 document (Exhibit U-4), in which the team leader at the time, Delly Tse, was asking for updated information, showed that, according to Mr. Insch, the large-file appeals officers were responsible for assessing the risk associated with their files and for reporting on the statuses of disputed amounts.

[29] In the process Mr. Insch described, the large-file appeals officers were working towards resolving disputes with taxpayers, reducing the number of contested issues, and diverting issues that might otherwise end up being resolved through litigation. Negotiations with a corporation would usually involve someone at the vice-president level with responsibility for tax issues, tax managers, and sometimes, legal counsel. The taxpayer would sometimes ask to have the team leader present; Mr. Insch did not recall that the chief of appeals was ever invited before August 2011. In any case, he was responsible for preparing for such negotiations and that he did most of the talking.

[30] Mr. Insch referred to a page from the "Globus" manual (Exhibit U-5), which he understood indicated the appropriate coding system for files at Calgary. "A table in the manual" indicated that "AU-04 files" were coded at "Level 7". All the files he dealt with were given Level 7 coding. Levels 8 and 9, indicated "in the table" as "AU-05 and AU-06" files, were never used at Calgary and were reserved for files in the Lethbridge and

Red Deer, Alberta, TSOs. A screening sheet used to record the objections when they came in and to provide an estimate of tax owing (Exhibit U-6) indicates that the codes that may be used in large-case screening are “206” (Level 6) and “207” (Level 7). When Mr. Insch received a file, the team leader would have already completed the sheet, and the coding would already have been assigned.

[31] It is relatively rare in Mr. Insch’s experience for files to be transferred from one office to another, although it might arise if one office has advanced expertise in a particular sector or issue. On occasion, some aspects of a notice of objection, such as the scientific research credit, might be referred to national headquarters. The closest comparator TSO to Calgary in terms of size and file complexity is Toronto North. A 2011 email from Ms. Tse, the team leader, showed a number of files that were being considered for referral to Toronto North (Exhibit U-7). One of Mr. Insch’s files was referred and someone at Toronto North raised the question of whether it had been properly coded, as it seemed to be more complex than a usual “AU-04 file”, which led him to check more closely with Toronto North.

[32] In the course of the grievance process, he gained access to part of the employer’s national appeals manual (Exhibit U-10) that appeared to show that the codes “208” and “209” should be used for AU-05 and AU-06 files, based on their degree of complexity. He did not think that management provided any satisfactory explanation as to why the Calgary system prevented using the 208 and 209 codes while they were used regularly at Toronto North.

[33] As further support for the assertion that large files at Calgary were not properly coded, Mr. Insch pointed to a document produced by the Audit Information Management System (AIMS; Exhibit U-11) that had examples of files, later handled by a large-file appeals officer — in this case, Mr. Insch - which were assigned in the Audit Division to someone in a position classified AU-06. In response to a request the bargaining agent made under the *Access to Information Act* (R.S.C., 1985, c. A-1) (commonly referred to as an “ATIP” request), Mr. Insch came into possession of a memo dated April 8, 2005 (Exhibit U-12), from the employer’s national office to the chief of appeals and to regional program advisors about large-file appeals contained the following statement: “The AU-06 Large Business Appeals Specialists may use an AU-04, large file Appeals Officer for the resolution of a portion of these files to the same degree that an AU-06, Large-File Case Manager may use an AU-04 auditor to

conduct large-file audits.” According to Mr. Insch, that statement did not describe the process he was familiar with, as large-file appeals officers did not just deal with a “portion” of the file but took responsibility for the whole file.

[34] A further document gathered from the ATIP request shows that in 2002 a national committee discussed the appropriate classification for large-file appeals officers (Exhibit U-13). The provenance and context for this document is somewhat unclear and it might in fact have been associated with another change, i.e. the decision to reclassify large-file appeals officers’ positions from AU-03 to AU-04 that occurred before the events that gave rise to these grievances. Another document from November 2003 (Exhibit U-14) included estimates of the levels of the files that would be handled in regional appeals offices over the coming year; it refers to AU-05 and AU-06 files at Calgary.

[35] Mr. Insch produced several performance evaluations, from 2008 to 2011 (Exhibit U-23), and pointed out that in one of them he was described as “managing an inventory” of files. The performance documents refer to the complexity of the issues raised in those files. In another document (Exhibit U-24), his analytical thinking skills are assessed at level 4, the highest level on the scale. The performance evaluations indicated that he was meeting expectations and that they did not refer to him working beyond his job description.

[36] Mr. Insch commented on the list of training activities he had undertaken (Exhibit E-8) which did not reflect any managerial experience. He conceded that the chart of his competencies (Exhibit E-9) did not indicate that he would be eligible to move to an AU-06 position since he did not have managerial experience, but he agreed that there was nothing to stop him from applying for an MG-05 position in the Audit Division, to gain such experience.

d. Creation of the AU-05 senior large-file appeals officer

[37] Mr. Insch referred to a memo from national headquarters dated July 28, 2008 (Exhibit U-15), which addressed the desirability of creating a position at the AU-05 level at Calgary; this document had been obtained by the bargaining agent in response to the ATIP request. At that time, there were no positions at that level, although Mr. Insch believed that some were at that level at Toronto North. The rationale for creating such a position at Calgary was alluded to in a PowerPoint presentation made to the

Classification Committee on October 1, 2008 (Exhibit U-16).

[38] The national office did create an AU-05 position at Calgary (Exhibit U-26), and Mr. Insch was included in the pool screened-in for the position, but it was never staffed. Creating that position suggested to him that there was work at the AU-05 level, which the AU-04 large-file appeals officers must have been doing.

e. Restructuring in 2011

[39] Mr. Insch produced a set of slides from a presentation made on May 10, 2011, to the Tax Executives Institute outlining the proposed restructuring that took place in August of that year (Exhibit U-19). The slides indicate that each of the team leaders has a smaller number of appeals officers as direct reports than the team leaders had prior to August 2011.

[40] Under the system put in place in August 2011, the team leaders provide more supervision. Mr. Insch's team leader, Rose Lok, had put the files previously assigned to him in her name, but he still possessed them. She also required him to provide monthly reports on the files. Mr. Insch noted that, although Ms. Lok's position was classified AU-06, the files were still coded AU-04, although he had heard that some files were given a 209 code in 2013.

f. Acting Pay

[41] Mr. Insch felt he had been underpaid for a long time, which he characterized as a "fraud". When he found out that his counterparts at Toronto North were paid acting pay to recognize the complexity of their work, he thought it added to the stress at Calgary.

[42] Mr. Insch was not present at a meeting held in the summer of 2011 at which the coding issue was raised with the chief of appeals. The suggestion was made that acting pay should be paid, but he understood the response was that acting pay was not appropriate. By then, he understood that large-file appeals officers were paid acting pay at Toronto North to compensate for the complexity of the files they were dealing with, which led him to file his grievance in July 2011.

[43] Part of the rationale for claiming acting pay was based on the fact that the files assigned to the AU-04 large-file appeals officers had been assigned to an AU-06 case

manager in the Audit Division and thus should have been characterized as “AU-06 files”. Mr. Insch did not know the extent to which the AU-06 case managers performed managerial duties in addition to their technical role with files. The AIMS report (Exhibit U-11) indicated that a number of auditors played roles in the audit process for any one file and that he could not tell from it how much of the work was done by auditors at the AU-04 level. The national appeals manual (Exhibit U-10) indicated that the coding was related to a case’s complexity, and he did not think the coding system was simply a method of maintaining statistics.

[44] Mr. Insch was interested in the email sent by Ms. Yantsis (Exhibit U-8) which raised questions about the coding of those files indicating that his Toronto North counterparts were being paid acting pay for dealing with files that were restricted to an AU-04 code at Calgary. He understood that the issue was referred to the Calgary chief of appeals, whose response was that the Calgary large-file appeals officers’ work did not fall outside their job description; therefore, they were not eligible for acting pay. Mr. Insch did not know Ms. Yantsis’ classification, who provided the information contained in the email, and he was not familiar with the hours budgeted for appeals or the files’ level of complexity at Toronto North. His grievance was triggered by the fact that the coding of a file assigned to Mr. Green was changed to a higher level when it went to Toronto North, which suggested to the grievors that they were not being dealt with fairly.

2. Ms. Ziesel

[45] Ms. Ziesel, whose grievance was entered as Exhibit U-28, was the bargaining agent’s second witness.

a. Audit Division

[46] Ms. Ziesel began working for the federal government in July 1998 in the position of PM-02 auditor in the SME division. She moved through the AU-01, AU-02, and AU-03 positions while spending four years doing large-file audits in the Audit Division.

[47] In the Audit Division, she worked as part of a team reporting to an AU-06 large-file case manager. Each auditor tracked his or her time, and the AIMS reports would show the number of hours each team member contributed. The AIMS report would show the AU-06 large-file case manager — the team leader — as being in charge of the

file. Ms. Ziesel did not really know what proportion of the work on an audit file would be done by the case manager and how much would be done by the other auditors.

[48] In reviewing the AU-03 auditor job description (Exhibit E-16), Ms. Ziesel agreed that it refers to “complex” but not to highly complex issues.

[49] There was a rating system in the Audit Division, which was used annually to designate the complexity level of an audit file; if a file was given a higher level three years in a row, its level of complexity would be upgraded.

[50] In relation to a document (Exhibit E-19) giving examples of how large files were rated in the Audit Division, Ms. Ziesel agreed that the auditor involved had received acting pay for when she performed work of greater complexity that was outside her job description.

b. Appeals Division

[51] She moved into the Appeals Division in July 2007 and occupied an AU-04 large-file appeals officer position, which was a promotion, until August 28, 2011, when she accepted to act in a MG-05 position in the employer’s International Division (Exhibit E-13), which became permanent in 2013. In this position, she had between five and seven direct reports.

[52] Ms. Ziesel performed the duties of the AU-04 position described in Exhibit U-1. She agreed that there are more auditors in the Audit Division than large-file appeals officers in the Appeals Division and that far more hours are budgeted for audits than for appeals. A large-file appeals officer does not attempt to redo an audit, although he or she may have time to find information the auditor was unable to uncover.

[53] In her experience, the team leader would not make or suggest making any changes to the reports she compiled, although she did provide her team leader with regular updates on her files. She would usually get an approved report back from the team leader within a week, but she could not say what happened with the file during that week.

[54] Ms. Ziesel filled in for the team leader a few times when the team leader was on vacation or otherwise unavailable, and she received acting pay on those occasions (Exhibits E-17 and E-18). When she was acting for the team leader, she would continue

to look after her own files as well. As acting team leader, she did administrative work, including some file screening, approving sick leave and vacation leave, and so on. She did not recall attending any meetings while in that role. Ms. Ziesel was aware that some employees had received acting pay for working on higher-complexity files; she stated this is the practice on her team in the International Division.

c. Description of work done by AU-04 large-file appeals officer

[55] Ms. Ziesel reviewed her inventory of appeal files (Exhibit U-30) and noted that several files had an AU-06 level of complexity, although they had not been coded to reflect that. In the case of one large file she inherited, it had been necessary to reorganize it considerably before the issues could be resolved, which was pressing because some complicated issues were being raised in new objections. The objections in the file had high monetary amounts attached to them, up to \$100 million. She started dealing with files at what she thinks was an AU-06 level of complexity within two weeks of starting as a large-file appeals officer.

[56] Ms. Ziesel thought the definition of “large corporation” in the *Income Tax Act* was largely related to the rules for corporations to provide information, but she agreed that an audit of a large corporation would not likely be done by the same auditors doing SME audits.

[57] She noted that the AIMS sheet coded some of the files she dealt with as AU-06, although the Globus system coded them at a lower level.

[58] Ms. Ziesel thought she performed duties associated with the AU-06 position, as that was how many files were classified when they were received from the Audit Division.

d. Creation of the AU-05 senior large-file appeals officer

[59] Ms. Ziesel believed that she performed many of the duties in the AU-05 job description (Exhibit U-26). She also applied for the AU-05 position when it was created for the Calgary appeals office and she was placed in the qualified pool, but the position was never staffed. She did not know why the position was never filled, and she could not comment on the proposition that the chief of appeals was waiting for national headquarters to provide insight as to how such a position might differ from the AU-04 position for large-file appeals officers.

e. Restructuring in 2011

[60] After her grievance was filed, she felt it unlikely that she would be considered for one of the new AU-06 coordinator positions created by the restructuring in August 2011. She had ambitions to move into an AU-06 position, and so she left the Appeals Division; she was in a pool for an AU-06 position. She thought the atmosphere in the Appeals Division became quite negative after the grievances were filed.

f. Acting Pay

[61] When Ms. Ziesel found out that employees at Toronto North were receiving acting pay for dealing with “AU-06 files”, she felt it was unfair to the large-file appeals officers at Calgary. Mr. Veltri, whose position was classified AU-06, did work on many of the same files as the large-file appeals officers. They should be recognized for doing such work.

3. Mr. Green

[62] The bargaining agent’s third witness was Mr. Green, who began his career in the banking industry and eventually went to work for the employer in 1997. He testified that he found his background in hedging and derivatives very useful when he moved to work for the employer. He worked initially in revenue collection in the insolvency group.

a. Audit Division

[63] Mr. Green then moved into the SME group, initially as an AU-01 auditor. He became an AU-02 auditor in that group, and then an AU-02 technical specialist. He moved to international audit as an AU-03 auditor.

b. Appeals Division

[64] Mr. Green moved into the AU-04 large-file appeals officer position in June 2007, which he left on September 8, 2011, shortly after the new structure was put in place.

[65] Mr. Green’s understanding was that the MG-05 team leader mostly worked on administrative issues, like budgets and time sheets. Mr. Green had little daily interaction with the team leader. He provided reports on his files and would have brief interactions with the team leader about them, but other than those discussions and the

annual performance evaluations, he had little contact with the team leader. Given the complexity of many of the files in large-file appeals and their interrelationships, it would be difficult for anyone but the large-file appeals officer in charge of the file to understand it fully. He could not remember having anything sent back to him for revision or correction once he had made his final report on a file. Once a file was signed out to him, it would be under his control, and no one else would have access to it without his knowledge.

[66] In June of 2011, Mr. Green had briefly acted for the team leader, Ms. Tse. During that period, he continued to work on his files as shown by his time sheets (Exhibit E-22).

c. Description of work done by AU-04 large-file appeals officer

[67] Mr. Green described his normal workday. He would usually spend the morning analyzing issues and the afternoon on research. He also had discussions with taxpayer representatives, who might have been lawyers or members of management. Mr. Green usually conducted meetings or negotiations with taxpayer representatives, although if the taxpayer requested, the team leader or the chief of appeals might attend a particular meeting. Negotiations with taxpayers are sensitive and are intended to produce settlements that do not unduly compromise the interests of either taxpayers or the federal government.

[68] Mr. Green provided a letter (Exhibit U-37), which demonstrated that he had the authority to enter into a settlement with a taxpayer. A referral had been made to national headquarters on issues relating to the corporation mentioned in the letter. He did not receive direction from the national office about how to settle the issues, but he had conversations with it about the issues and the direction he was taking. A face-to-face meeting with the taxpayer was held in that case, at which his team leader and the chief of appeals were present. It was possible that the technical specialist, Mr. Veltri, was also present. The chief of appeals had made a settlement proposal in a subsequent meeting by telephone, but Mr. Green stated that in any insurance file, the managers would have to accept his recommendation as he was the only one who possessed the relevant expertise. It was necessary for a manager to sign off on any settlement.

[69] Since his business background is somewhat unusual, Mr. Green was able to provide the other large-file appeals officers in his group with guidance. He had also been in the international audit group, where he had developed an understanding of transfer pricing and other issues, and he could advise his co-workers on those matters.

[70] In Mr. Green's view, if a file was graded as an "AU-06 file" in the Audit Division, then it should be treated as an AU-06 file in the Appeals Division. He reviewed his inventory of files (Exhibit U-35) and pointed out a number of files he thought were "AU-06 files". Many involved energy corporations, but he also had worked on some insurance company files in his time as a large-file appeals officer. Insurance files were unusual at Calgary, which specializes in oil and gas corporations; he had volunteered to deal with the insurance files at Calgary, and nobody else at the Calgary large-file appeals office was equipped to deal with them.

[71] Mr. Green commented on the slides from the 2011 meeting of appeal chiefs (Exhibit U-18), one of which illustrated the ageing of a number of files. The colouring on the chart demonstrated some of the files as being "AU-05" or "AU-06", which showed that the employer considered those files as having a rating higher than AU-04. His own files sometimes involved derivatives, which was an example of an issue that would justify a rating higher than AU-04. Given his background, he did not require any supervision or technical advice about how to deal with those files.

[72] His performance evaluations during his time as a large-file appeals officer indicated that he met expectations. Employees are expected to attain certain competencies and at that time, Mr. Green had not attained the competencies necessary to be eligible for an AU-06 position.

d. Acting Pay

[73] In 2011, the decision was made to transfer Mr. Green's insurance company files to Toronto North. An email from Ms. Yantsis (Exhibit U-8) raised questions about the coding of those files, which led to a telephone conversation in which he became aware that Toronto North employees were receiving acting pay to recognize the higher complexity of some files. Mr. Green confirmed that Ms. Yantsis was not a member of management at Toronto North and that she had no direct knowledge of how work was assigned. He did not speak to any management representative there and he was not aware of how it budgeted time on appeal files.

[74] Mr. Green emailed the chief of appeals at Calgary, Alnoor Kassam, requesting acting pay on the same basis as his Toronto North counterparts (Exhibit U-38). This was followed up with a meeting between them, which Mr. Green said was “not satisfactory”. As a result of Mr. Kassam’s denial of his claim, Mr. Green decided to file a grievance (Exhibit U-39).

e. Restructuring in 2011

[75] After the August 15, 2011, reorganization, Mr. Green continued to perform his work in the same way. The only difference was that the files were listed under the team leader’s name rather than his. He could not identify any further advancement prospects within the employer, so he decided to leave his position.

4. Ms. Yantsis

[76] The fourth witness called by the bargaining agent was Ms. Yantsis, a large-file appeals officer at Toronto North.

a. Appeals Division

[77] In 2005, when she was an AU-03 auditor, she was approached about doing large-file objections. She was aware that there was no acting pay associated with the change, but she was interested in doing it for the experience. She was on leave in 2008, returning in October or November, at which time she was given an acting opportunity in a position classified as AU-04.

[78] In about 2006 or 2007, the teams were led by acting AU-06s; this practice was instituted when a number of employees were transferred over from the Ontario government. In 2010, the team leaders were AU-05s. She was not completely familiar with the AU-06 team leaders’ duties, although she knew that they assigned work and signed time sheets. The team leader would sign off on all appeals files. She was not familiar with the organizational structure at Calgary, even though she was fairly familiar with the operations at Toronto North and at the Toronto East and Toronto West offices.

[79] In 2010, two appointment processes were run, one for an AU-04 position, and one for an AU-05 position. She was screened out of the AU-05 appointment process, which led her to look more closely at how positions were classified and at the work that

employees were doing. She talked to other employees and consulted the national appeals manual (Exhibit U-10), which indicated that complexity was related to a file's complexity and not to the classification of the officer handling the file. She looked at the employer's website, which showed how files were coded in the Audit Division. Based on this, she asked Laura Durzo, whose position she understood to be classified as an AU-06 (although she was not sure what her position was), why she had been screened out of the AU-05 process when the files she was dealing with were coded AU-04 or higher when they were in the Audit Division.

[80] At her meeting with Ms. Durzo, Ms. Yantsis presented information similar to that included in the email she had sent to Mr. Green (Exhibit U-8). She understood the codes in her email were the codes assigned in the Audit Division; she was not aware of any appeal-specific coding system.

[81] An organizational chart (Exhibit U-40) indicated that in November 2010, Ms. Yantsis was an acting AU-04 large-file appeals officer on a team led by an AU-05 senior large-file appeals officer. The chart showed that in June 2011, she was in her regular position as an AU-03 large-file appeals officer. She subsequently became a permanent AU-04 large-file appeals officer.

[82] She acknowledged that the files transferred from Calgary were directed to large-file audit and not to the Appeals Division. She also agreed that the Audit Division used a team system for handling files and that the files were broken down into segments that AU-03 and AU-04 auditors would work on, although the file would be listed under the name of the AU-06 team leader.

[83] When she was denied the opportunity to write the AU-05 examination, she raised the issue with the managers, who told her the issues she was dealing with were not at the AU-04 level, and she did not have the experience to qualify. Her team leader asked her to handle some files that had been coded AU-06 in the Audit Division. She requested acting pay, and he said none was available.

[84] Ms. Yantsis did file a grievance about this issue. Tension had arisen between her and the managers in the Toronto North appeals office. Morale in the office was low and she was aware that other grievances were filed during the time the acting pay issue was raised. An email from her husband, dated June 30, 2011 (Exhibit E-23), raised the morale issue along with other labour relations concerns about the team approach

being used at Toronto North.

b. Description of work done by AU-04 large-file appeals officer

[85] In the spring of 2011, Ms. Yantsis was at a meeting of appeals staff called by management. The managers spoke of the team approach being followed at Calgary and it seemed to be working there. Following the meeting, she asked her husband, also an employee of the employer, whom she might contact at Calgary to find out more, and he suggested contacting Mr. Green. Ms. Yantsis spoke to Mr. Green, who seemed shocked when he heard that she was handling files coded higher than AU-04. He also advised her that there was no team system at Calgary; all the positions of large-file appeals officers handling large files were classified AU-04. Ms. Yantsis sent an email to Mr. Green (Exhibit U-8) outlining how she understood files were coded; the coding system she referred to in AIMS would code some files as AU-05 and some as AU-06. The information in the email came partly from her own research at the time she was screened out of the AU-05 process and partly from other sources.

[86] Ms. Yantsis agreed that the job description (Exhibit U-1) for the AU-04 classification refers to “highly complex” issues, while the job description for the AU-03 classification (Exhibit E-5) refers to “complex” issues. She also agreed that apparently, the *Income Tax Act* does not contemplate anything larger than a “large corporation”.

c. Acting Pay

[87] In April 2011, Ms. Yantsis had files at home that she had been working on, and she received a request from the chief of appeals, Ronald Young, to return some of them. In an email dated April 7, 2011 (Exhibit U-41), Ms. Yantsis asked which files needed to be picked up and raised the question of why she had not been receiving acting pay if the files he wanted were rated AU-04. In a return email, Mr. Young indicated that the files he wished to have returned were “... those rated as AU-04 or higher.” He added the following: “My understanding is that generally the rating is based on the level of the auditor who processed the file.”

[88] Ms. Yantsis referred to a meeting she attended on October 20, 2011 (Exhibit U-42). A discussion occurred on the ongoing issue of ensuring that employees received appropriate credit for their work on higher-rated files. Managers indicated that the contributions of employees would be analyzed and that they would be appropriately

compensated. She testified that employees had been paid acting pay for dealing with files that were rated at a level of complexity higher than their own classification.

5. Mr. Fong

[89] The bargaining agent's fifth witness was Mr. Fong, one of the grievors.

a. Audit Division

[90] He joined the employer in 1984 as an AU-01 auditor working on SME files. After two years, he was promoted to an AU-03 position, and a year later, he began working on large files in the Audit Division.

b. Appeals Division

[91] Mr. Fong moved to the Appeals Division as an AU-03 large-file appeals officer in 1988. In 2005, he was promoted to an AU-04 position, along with the other large-file appeals officers, and he retired in 2014.

[92] Mr. Fong described the changes in the Appeals Division from 2002, when a new MG-05 team leader, Franz Heynen, was appointed. At that time, six large-file appeals officers reported to Mr. Heynen. In 2004, a new chief of appeals was appointed. In 2008, Ms. Tse became the MG-05 team leader. In 2011, the restructuring took place, which saw three groups created, each reporting to an AU-06 team leader.

[93] The team leader (Mr. Heynen or Ms. Tse) performed administrative duties but did little work on his files. He recalled a couple of occasions when Ms. Tse had given him advice on a file, but generally, the team leaders would not suggest changes to his work or require any alterations before they signed off on his files. Mr. Fong produced a letter of settlement (Exhibit U-52) showing how multiple issues related to a file had been settled or withdrawn. Its contents represented his work, although the chief of appeals' signature was on it.

[94] Mr. Fong provided the team leader with periodic reports on his files, which they reviewed. It was largely an informal process, as the team leader's office was close to where he worked.

c. Description of work done by AU-04 large-file appeals officer

[95] Mr. Fong dealt with appeal files that were very complex. They involved large oil and gas corporations (Exhibits U-45 and U-46), and many of them involved joint ventures, which required him to assess what proportion of the joint venture should be attributed to each corporation (Exhibit U-47). Objections about joint ventures might take a long time to process. He gave an example of one objection filed in 1990 that was eventually settled in 2005; in the course of dealing with this file, it was referred to national headquarters 10 times. Joint-venture questions may occur in less-complex files that are not screened as large files.

[96] As an example of the highly complex issues Mr. Fong dealt with, he stated that there are distinctive considerations for equipment in the oil and gas sector that might be eligible for an investment tax credit rather than a capital cost allowance. Such claims are sensitive because they affect the tax liability of the company involved, and the calculations are difficult because the *Income Tax Act* provides limited guidance.

[97] As a senior member of the large-file appeals group, Mr. Fong spent about 10% of his time advising and mentoring his co-workers about some of the issues raised in the appeal files.

[98] When he was shown the ageing of files slide in the 2011 presentation (Exhibit U-18), with coloured stripes to indicate levels of coding, he said some of the files shown as “AU-05” or “AU-06” were his; in some cases, he had been dealing with the same corporations since he started in appeals.

[99] Mr. Fong received an email from Ms. Tse in 2009 (Exhibit U-57) about national headquarters’ findings and recommendations following an assessment of some aspects of the large-file appeals system at Calgary. The email contained Calgary’s response to the findings and recommendations. One of the points it made was that using the 208 and 209 levels of the coding system to represent Lethbridge and Red Deer files of different levels of complexity might distort the picture with respect to large files. Calgary’s response focused largely on whether there were sufficient resources to deal with the caseload, and national headquarters indicated that staffing issues were beyond the scope of the review it had conducted.

[100] Each appeal file he worked on before August 2011 would be signed out in his name (Exhibit U-50), and he would have control over it unless it was referred to national headquarters or unless it was turned over to someone else to work on for some reason. He produced a time sheet (Exhibit U-51) showing how he recorded the time spent on each file.

[101] During Mr. Fong's career, some changes had occurred to the technical systems used to record work and to credit employees for their participation. In the Audit Division, AU-04 auditors did much of the work on files, although the files were registered against the name of the AU-06 case manager. Small as well as large corporations might claim resource allowances and AU-02 or AU-03 auditors might calculate resource allowances for smaller files. Some of the older files he was dealing with went back to the time when no AU-06 case managers were in the Audit Division. He still thought it was appropriate that the files were classified AU-06 because of their degree of complexity.

[102] Typically, a taxpayer objection would arise after a file audit, but in some cases, taxpayers would file an objection to their tax return, as filed. Mr. Fong was dealing with some corporations that were trying to delay the determination of issues rather than resolve them and that were trying to establish agendas of their own. The resolution of issues from one objection might affect other objections and other tax years, so the files were very complicated. The settlement outlined in his letter (Exhibit U-52) entailed, by Mr. Fong's estimation, about 10 years' work. He might occasionally call on a specialist like a scientist to examine particular issues, but he mostly worked alone. He had consulted Mr. Veltri only once during his time in the Appeals Division, as he did not need technical advice for most purposes. On one occasion, a file was reassigned to Mr. Fong that Mr. Veltri had been working on; Mr. Fong did not know why that was done.

[103] Mr. Fong described the interactions between the Appeals Division and the taxpayer corporations. Ordinarily, progress meetings were held, at which company senior management and tax managers would be present, as well as Mr. Fong, his team leader, and the chief of appeals. Mr. Fong would typically present the progress report on the file, and discussion would ensue on the course of action going forward. The chief of appeals usually led the meeting and the team leader would say very little.

[104] Mr. Fong was asked to contribute to a presentation to John Crowley, the director general of the Appeals Directorate, by contributing some of the slides (Exhibit U-56). He provided some of the content about difficulties arising in specific files. The content of the slides for this presentation and those used in the 2011 presentation (Exhibit U-18) overlapped somewhat. He did not know why some of the files were shown as “AU-05” or “AU-06” files when that code was not available.

[105] Mr. Fong agreed that the job description for his position (Exhibit U-1) listed the functions he performed, but he stated that he did not think it captured the complexity of the work he did.

[106] Mr. Fong’s performance evaluations (Exhibit U-53) speak of his experience with large files and complex issues and allude to him dealing with difficult taxpayers. They also mention that he provided assistance to the Department of Justice on a set of issues that were proceeding to litigation and that he adopted a “team approach” to them, collaborating for about a year with two other large-file appeals officers preparing the material for the Department of Justice lawyers. Mr. Fong described his role in this context as akin to being the team leader of a “mini-team”. His familiarity with the file made it natural for the lawyer to ask him for comments on the documents being drafted for court. This case was important from the national office’s point of view, which was watching it closely.

[107] Mr. Fong pointed to the item in his performance evaluation for the year 2008-2009 indicating that he had helped national headquarters assess the contingent liability for Calgary files. He explained that it is necessary for the employer at the national level to maintain reliable estimates for the amount of money at stake in the determinations being made on appeals, and his lengthy experience gave him insight into how to make these estimates.

[108] Mr. Fong had some training and experience screening files from early in his career with the employer and that he had on occasion assisted Ms. Tse when she was screening files. Nearly all files were coded AU-04 in this process; the codes for AU-05 and AU-06 were not available at Calgary.

d. Restructuring in 2011

[109] After the 2011 restructuring, which saw the AU-04 large-file appeals officers reporting to AU-06 team leaders, the coding was changed as well, and some files were recorded at the 209 level (Exhibit U-58). Mr. Fong agreed that this change did not have any effect on the work he did.

e. Acting Pay

[110] Mr. Fong filed a grievance in July 2011 (Exhibit U-44), alleging that the denial of acting pay violated the collective agreement. The codes used in the Appeals Division had not changed during the 25 years he had been there; they were changed only after the August 2011 restructuring. It did not occur to him to raise the acting pay issue earlier; he assumed that management was “looking out for” them and that the large-file appeals officers would get everything they were entitled to.

6. Mr. Leung

[111] The final witness for the bargaining agent was Mr. Leung, also one of the grievors. Mr. Leung began working as a PM-02 inquiry officer in the Interpretation and Services Section, which allowed him to gather information about the employer’s operations.

a. Audit Division

[112] Mr. Leung was then promoted to work in the SME audit group as an AU-01 auditor. As part of that job, he travelled to cities around Alberta to explain federal government tax programs to business audiences.

[113] After two years, he obtained an AU-01 large-file appeals officer position and learned about how to handle notices of objection. He understood that it was his role to be impartial, to be between the taxpayer and the federal government, and that settlement was often a desirable solution. He learned that the research he conducted had to be “court ready” and that consistency was important, to treat taxpayers fairly. At one point — he recalled it as being in 2000 — because of his success at dealing with smaller objections, he was invited to assist the chief of appeals in reaching a settlement with a group of 300 taxpayers.

[114] In 2001, he obtained an AU-02 position in the Audit Division, but he did not take it up immediately because he was working on the large settlement. Shortly after,

he was successful in a competition for an AU-03 auditor position in the Tax Avoidance Section. He found this work very exciting and became involved in a national committee on tax avoidance schemes.

b. Appeals Division

[115] Mr. Leung was successful in a competition for an AU-04 large-file appeals officer position at the beginning of 2006, but he was completing his work in the Tax Avoidance Section and did not move to the Appeals Division until late 2006 or early 2007. He remained in large-file appeals until July 2014; although his home base continued to be in the Appeals Division, he was seconded to large-file audit to do audit work.

c. Description of work done by AU-04 large-file appeals officer

[116] Mr. Leung described his work, as the other grievors did, as processing and settling notices of objections on large files. Each file would be screened initially, and the relevant information entered in the electronic inventory tracking system, which would provide only the outline of the objections. When the file was assigned, the large-file appeals officer would also review the tax return and the auditors' reports that came with the file. The large-file appeals officer would work through the objection, making a list of all the issues involved. In the case of oil and gas files, the tax issues were likely to be interwoven. For example, questions involving investment tax credits, capital cost allowances, and resource allowances might all have implications for each other and might relate to different tax years.

[117] The files Mr. Leung was responsible for were very complicated. They involved corporations with revenues in the billions of dollars, some of them among the largest oil and gas corporations in the world. They also often involved joint ventures and included international tax-avoidance schemes. The subsidiaries of those corporations might have had smaller revenues, but they were still part of complex corporate structures. Nearly all the files he dealt with were classified AU-06 in the audit process. Although 75 hours were budgeted for each file in the Appeals Division, his estimate was that some of the files he dealt with required 1000 to 2000 hours and that some of Mr. Fong's files required even more time.

[118] Although a file listed under the name of an AU-06 auditor was entered under an AU-06 case manager's name, auditors classified AU-03 or AU-04 did the majority of the work on it. The document showing the hours worked on it (Exhibit E-28) showed that the AU-06 case manager had done less than 10% of the work. The system for handling files in the Audit Division was quite different from that in the Appeals Division and the large-file appeals officers were not simply redoing the work done in the Audit Division but were providing an independent review of the issues raised in the notice of objection.

[119] It was Mr. Leung's practice to check in with the team leader each day, but other than that, they had limited contact. He would make a progress report on his files perhaps twice a year, and they might have coffee now and again, but his experience was that he was solely responsible for handling the files assigned to him. He put the files in a locked filing cabinet and held on to the key, and as far as he knew, no one else removed the files or worked on them. He did not consult Mr. Veltri as he did not require any technical advice.

[120] The AU-04 job description (Exhibit U-1) refers to preparing briefings and documents for court proceedings but there may be differences in the level of complexity of the information required.

[121] Mr. Leung testified that like Mr. Fong, he had contributed to the presentation to Mr. Crowley (Exhibit U-56) by providing information about the files that were his responsibility. Mr. Leung helped put together the material for the presentation as he was quite familiar with PowerPoint, although he was not the presenter at the meeting.

[122] Mr. Leung's performance evaluations (Exhibit U-64) indicate that he was dealing with "highly sensitive" and "complex files" in a manner that met expectations and that he had been called on to help plan the semi-annual "town hall meeting" organized for large-file appeals officers. The reviews also indicated that Mr. Leung worked towards achieving competency levels that would have permitted him to advance in the future. The evaluations referred to the reports he provided as "well-written" and complete.

[123] Mr. Leung understood that the large-file appeals officers had been reclassified from AU-03 to AU-04 in 2005 and that when he applied to become a large-file appeals officer, it would have represented a promotion.

d. Creation of the AU-05 senior large-file appeals officer

[124] When the AU-05 senior large-file appeals officer position was created in June 2009, Mr. Leung was one of four or five large-file appeals officers who applied; he was successful and was included in the pool of candidates (Exhibit U-69). The AU-05 job description (Exhibit U-68) used similar terminology to that of the job description for the AU-04 large-file appeals officer to capture the kinds of issues the AU-05 senior large-file appeals officer would be dealing with; the files were described as “highly complex” and “sensitive”. The position was never staffed, and the process ended in January 2012. When the new AU-06 team leader positions were posted in March 2011 (Exhibit U-70), Mr. Leung recognized that he did not have the experience to qualify, so he did not apply.

e. Restructuring in 2011

[125] After the 2011 restructuring, the files were assigned in the name of the AU-06 team leader, in his case Ms. Lok, and broken down for the AU-04 large-file appeals officers to work on. Before that, he did not think there had really been a team approach — the large-file appeals officers worked through their assigned files from start to finish with little interaction with others. In the Audit Division, there was a true team approach, in which different auditors would deal with parts of files, which was not as possible in the Appeals Division because the files would typically involve a number of tax years and more entangled issues.

f. Acting Pay

[126] In his grievance (Exhibit U-65), Mr. Leung claimed acting pay for the entire period from January 2007 until the restructuring in August 2011 as he felt he had been doing the work of a higher classification during that time. He had received acting pay for the five-day period when he had acted for Ms. Tse during her absence. During that period, he had responded to some of her phone calls and emails but had mostly spent the time working on his own files.

[127] The grievance was the first claim he had made for acting pay, but on reflection, he thought that the work done by the large-file appeals officers at Calgary should really be recognized at the AU-06 level. He had never challenged the level of his position through the recourse procedures available to employees. The grievance was

prompted by the exchange with his counterparts at Toronto North and, with the exception of the occasion on which he provided relief to Ms. Tse when she was absent, no manager had ever approached him to assign acting duties. The nature of large-file appeals officers' work did not change during the time he worked in the Appeal Division and, after the restructuring, although the reporting requirements were a bit different, large-file appeals officers continued to work in much the same way as they had before.

B. For the employer

[128] The employer called two witnesses, Susan Clozza and Mr. Kassam, both of whom had acted as chief of appeals at Calgary, respectively from May 2007 until January 2010 and, from April 2010 to the time of the hearing.

[129] At the time of the hearing, Ms. Clozza had been with the employer for over 30 years and was assistant director of the Audit Division for Vancouver Island TSO.

1. Ms. Clozza

[130] Ms. Clozza testified that the large-file appeals program was one of the programs she had overseen at Calgary as chief of appeals. During her career, she had also become familiar with the audit side of the operation.

a. Appeals Division

[131] Before April 2005, the large-file appeals officers' positions were classified AU-03. They were reclassified AU-04 to recognize the complexity of their jobs, and her recollection was that everyone was very satisfied with that. The AU-04 large-file appeals officer job description was formulated to indicate that employees in that classification would be expected to deal with very large corporations and highly complex issues and that large amounts of money would be riding on their determinations.

[132] Team leaders were responsible for dealing with the large-file appeals officers with respect to their files and reviewing their work. They would also on occasion attend meetings with taxpayer representatives. Large-file appeals officers would make use of schedules outlining the issues raised in taxpayer objections, but they would not use a rating system for those issues. Although she was not involved in screening files,

her understanding was that all files assigned to AU-04 large-file appeals officers represented an appropriate level of work for their classification. Joint-venture issues were no doubt highly complex, but their complexity did not put them outside the scope of the AU-04 classification.

[133] Ms. Clozza testified on the duties of Mr. Veltri, the AU-06 technical specialist. He had a unique job and he received his work from a variety of sources. For example, he was heavily involved in discussions with Department of Justice lawyers in preparations for court cases. He also advised large-file appeals officers from a range of programs, not just large-file appeals, and national headquarters asked him for input. Mr. Veltri also represented the employer in interactions with the Canadian Tax Foundation, which was an important connection for the employer. If he had time, he sometimes worked on large-file appeals. If he did work on a file, the team leader would usually review it, although sometimes, she became involved. If she was asked to attend a meeting with a taxpayer about a controversial issue, she would usually ask Mr. Veltri for an opinion because of his extensive experience.

b. Description of work done by AU-04 large-file appeals officer

[134] After a large-file appeals officer had completed the determination of the issues in an objection, the officer would send a report to the team leader for signoff. If the dollar amounts were particularly high, the chief of appeals might be asked to sign off on the result as well. The team leader's role was to ensure that the product of the work was consistent and that legislation and policies had been followed. In some cases, the team leader or the chief of appeals might take a second look at the file. It was important to ensure consistency and high quality in the appeal decisions because she was accountable to national headquarters.

[135] A large-file appeals officer's job is to take an impartial look at an audit's result based on the taxpayer's notice of objection. In some cases, this might mean overturning the work of an auditor classified higher than AU-04, which is a characteristic of the appeals process. It is part of a large-file appeals officer's job to make an independent judgment, no matter whose decision is under review. In her experience, the highest level of working auditor would be AU-04, although a file might be listed in the name of an AU-05 or AU-06 case manager in the Audit Division.

[136] Ms. Clozza was familiar with requests such as the request sent by Ms. Tse to the large-file appeals officers on May 20, 2009 (Exhibit U-4), asking them to provide information about the files they were working on. Ms. Tse reported to her, and it was necessary for Ms. Clozza to be familiar with what was going on in Ms. Tse's group. It was common for large-file appeals officers to be asked to estimate the monetary amount connected with their files; it was necessary to have a regular assessment of what risk of loss to the Crown would hinge on the appeals' outcomes. In this case, the large-file appeals officers were being asked to provide information about monetary amounts exceeding \$10 million. The team leader would have a general familiarity with all the files in the large-file appeals group but would still need detailed monetary value calculations.

[137] At Calgary, the office of the chief of appeals was located close to the office of the team leader and to the area where the large-file appeals officers worked. The team leader regularly interacted with the large-file appeals officers and the group always seemed to be exchanging information within itself. The large-file appeals officers were "storehouses of information". Ms. Clozza did not recall that any of the grievors ever complained about their team leader or tried to go over a team leader's head and deal with the chief of appeals directly.

[138] All the work assigned to the large-file appeals officers was within the scope of the job description, which allowed them to work on files having the highest level of complexity; such assignments were not dependent on who might be managing the file in the Audit Division. In her time at Calgary, no one suggested a correlation between assigning a file to an AU-06 case manager in the Audit Division and the large-file appeals officers' classification.

[139] She saw the AU-04 large-file appeals officer job description as contemplating the work assigned to the large-file appeals officers. It was not anomalous that Mr. Veltri worked on occasion on files with an AU-04 coding, even though he was in an AU-06 position; the duties of his position included other functions but did not preclude him dealing with AU-04 files.

[140] There were a number of similarities between the job descriptions for the AU-04 large-file appeals officer (Exhibit U-1) and the AU-05 senior large-file appeals officer (Exhibit U-26). Those descriptions also had some similarities with the AU-06 job description. Incumbents of all three classifications handle high-complexity files and

deal with difficult issues.

[141] Ms. Clozza stated that the Globus coding system (Exhibit U-5) used to assign codes to large files. The system had no impact on the nature of the work performed by the large-file appeals officers; it was merely a statistical tool to permit management to track different file categories. Under the system, as it was used at Calgary, files of the highest degree of complexity were given a code of 207 and were assigned to AU-04 large-file appeals officers, which was consistent with their job description. She understood that the AU-04 job description permitted assigning files of the highest level of complexity to large-file appeals officers. Calgary used the 208 and 209 codes to track appeal files from Lethbridge and Red Deer. The majority of them were not large but were SME files of a lesser degree of complexity, and those codes had little significance in the large-file appeals area. If the AU-06 technical specialist, Mr. Veltri, had been working on a file, it would also have been coded 207, as the coding did not really relate directly to the file's complexity.

[142] The national appeals manual (Exhibit U-10) constituted a general description of procedures across the country, but there were local variations in procedure, and she did not think the manual prevented Calgary from adapting the coding system to suit its purposes.

[143] Ms. Clozza commented on the document (Exhibit U-57) outlining Calgary's response to the "Prairie Large File Appeals Monitoring Report" issued in 2009, without prejudice to the employer's position that it was not relevant to the current proceeding, that the findings made by national headquarters in these reports are not binding but provide a basis for discussions with national headquarters about different aspects of operations in local TSOs. The report had no impact on assigning work to large-file appeals officers. Although this document indicates that there was some possible confusion created by the coding system in place in the Calgary TSO, it is clear that this issue was related to whether the coding system was communicating an inaccurate statistical picture of the volume of work, and in this sense, I agree with the employer's position that the document is irrelevant to the question before me of whether the grievors are doing work of a higher level than their classification.

[144] Ms. Clozza was aware of a concern that using the 208 and 209 codes for the Lethbridge and Red Deer TSOs, where the workload mostly consisted of basic rather than large files, was skewing the statistics for the large-file program, which made it

difficult to determine what resources were appropriate for the large-file program. Calgary's response was to ensure that the statistical calculations based on the coding did not include basic files. There were no implications for how large files were assigned to the large-file appeals officers, and she was never directed to make any changes. She did note the following finding in the report: "Per review of the files, the complexity of a file appears to be based on the Auditor level and/or review of the status of the Corporation (i.e. large file or not); (if the Large-File Case Manager is AU-06, then appeals complexity is AU-06)."

[145] According to Ms. Clozza, that was not an accurate statement, but since no recommendation was associated with it, she did not think it was necessary to respond formally to it. She was confident that national headquarters understood the way Calgary operated, so she did not think it was necessary to correct the misstatement. Ms. Clozza was sure that national headquarters had a clear understanding of the complexity of the large files assigned to large-file appeals officers, in part because many of those files were referred to national headquarters for assistance with particular technical questions or for further review.

[146] Ms. Clozza agreed that the collective agreement was binding on the employer in TSOs across the country. Although she was not a human resources expert, she had carried out an assignment in human resources a number of years ago and was confident that she understood the significance of the collective agreement.

[147] Ms. Clozza was "not happy" about the bargaining agent's allegation that management had fraudulently concealed the nature of the coding system as she had never hidden it and had prided herself on being open with employees about its operation.

c. Creation of the AU-05 senior large-file appeals officer

[148] Ms. Clozza discussed the increasing volume of objections with national headquarters, which led to creating one AU-05 position in the large-file appeals area. This discussion occurred around the end of 2008. She continued to question how this position would relate to the operational requirements of her division, but she believed in being proactive, so she began making preparations to staff the position by establishing a pool of candidates based on competencies.

[149] When she received the AU-05 position job description, she continued to have concerns about the wisdom of creating a single position in this classification. She could not identify the aspects of it that would differentiate it sufficiently from the AU-04 positions such that it would serve a clear operational purpose.

[150] In a teleconference of chiefs of appeals (alluded to in Exhibit U-67), Ms. Clozza referred to a request she had made to national headquarters to follow up on her question, but none occurred. She recalled the teleconference; the discussion was mostly about how creating AU-05 senior large-file appeals positions would suit the needs of TSOs in Ontario that were taking on employees from the Ontario government. She was still having difficulty understanding how it would fit in with Calgary's structure. She did anticipate filling the position eventually, but it would have been necessary to resolve her concerns before she would have proceeded.

[151] Whether or not the AU-05 senior large-file appeals officer job description arose from a particular set of circumstances in Ontario, it was a national position. She did not have the authority to change the job description but she did have the authority to decide whether staffing the position would suit Calgary's requirements.

[152] Ms. Clozza thought it appropriate to leave any staffing decision to the new chief of appeals. In an email exchange of May 2009 (Exhibit U-72), she requested a variance from the base profile for the position by adding a requirement that competency in conflict resolution at level 3 be added. She viewed conflict resolution competency as an essential skill for both AU-04 large-file appeal officer and AU-05 senior large-file appeals officer, as they were dealing with sensitive issues involving large corporations.

d. Acting Pay

[153] Ms. Clozza was "taken aback" when she heard about the grievances. At Calgary, as at other TSOs, the volume of objections was growing, and some concerns had been raised about whether the employer had sufficient staff resources to handle the workload. She had never heard any concern expressed about the compensation associated with the AU-04 classification. In her time there, she had never assigned any management responsibility or other work outside their job description to the grievors, aside from very brief periods when they might have relieved the team leader.

[154] Ms. Clozza was in regular contact with the other chiefs of appeals in the employer's Prairie Region, who were in Winnipeg and Edmonton; she had less contact with her counterpart at Toronto North. She had not heard much discussion of a "team approach" at Toronto North, although she discussed the team idea with her Prairie Region colleagues. She was aware from Ms. Yantsis' testimony that acting pay had been paid to employees at Toronto North, but she could not speak to the rationale as she had not been involved. As a general rule, it is necessary for management to obtain approval for funding extraordinary payments but she was not familiar enough with the circumstances to know what had happened at Toronto North. Under the system she was familiar with at Calgary, a team approach was used, in the sense that a group of employees reported to an MG-05 team leader.

[155] As a manager, she was responsible for formulating and maintaining budgetary targets. No specific amount was budgeted for acting pay; it was paid if warranted. The ability to develop realistic budgets and adhere to them was a factor when assessing managers' performance but said it was only one of many factors. She had never considered that if she refrained from paying acting pay to employees, it would have a positive effect on her own prospects for a performance bonus. She could not state specifically how many times acting pay had been awarded during her time at Calgary. Over all the programs she was responsible for, she recalled authorizing acting pay on a number of occasions, for example, when an employee filled in for a team leader.

2. Mr. Kassam

[156] The employer's second witness was Mr. Kassam, who became the chief of appeals in April 2010. He had been with the employer for around 28 years.

a. Audit Division

[157] In the Audit Division, Mr. Kassam was familiar with large-case audit (tax avoidance and international tax). The auditors were classified AU-04 or lower and reported to an MG-05, MG-06, or AU-06 position.

[158] In this Division, a wide range of issues could be assigned to auditors of different classification levels. In the Appeals Division, the issues were narrower, and it was not as easy to break down a file and assign parts of it to different employees.

b. Appeals Division

[159] The chief of appeals' job is to oversee the objection process once it reaches the appeal level. This involves overseeing the work of 65 to 70 staff in a number of different programs, including large files, SME, and GST. The chief of appeals is not involved much in day-to-day issues. On occasion, Mr. Kassam was asked to attend meetings with taxpayers if issues were particularly significant or contentious; the decision to include him would generally be made by the AU-04 large-file appeals officer, in consultation with the MG-05 team leader.

[160] Mr. Kassam testified on the duties of Mr. Veltri, the AU-06, technical specialist, which included working with Department of Justice lawyers and maintaining important external links. For example, Mr. Veltri travelled to Bolivia to conduct training under the auspices of the former Canadian International Development Agency. Although the grievors were also involved in work with Department of Justice lawyers, there was no comparison between their level of proficiency on technical issues and that of Mr. Veltri, who played a highly specialized role. Although he had a good understanding of many of the issues, he was primarily a manager and did not have Mr. Veltri's high level of technical knowledge.

c. Description of work done by the AU-04 large-file appeals officer

[161] The job descriptions for the AU-01, AU-02, and AU-03 classifications have similarities. His major focus was assigning work to the AU-04 large-file appeals officers that was within the scope of their job description, which he was satisfied had happened.

[162] In large-case audit, 1500 hours might be budgeted, while in appeals, 75 were budgeted on average. The large-file appeals group would not be able to accomplish its tasks if files really took 1000 hours of work. His calculation (Exhibit E-40) was that the actual average hours worked on files from 2008 to 2014 was 63, based on information in the automated system. That average included files ruled "invalid", which would not affect the average significantly over a large number of files. Even if the budgeted average of 75 hours were accepted as the actual average, it would be a far cry from the 1000 hours posited by Mr. Leung. Using averages means that more than 75 hours will be expended for some files.

[163] All large-file appeals officers were expected to manage their own file inventories in the sense that they decided what they should be working on at any given time, which in his view did not make them equivalent to managers. The large-file appeals officers were extremely competent and professional and their job description provided for them to be assigned files that were extremely complex and sensitive. He did not consider the joint-venture issues alluded to in Mr. Fong's testimony as unique in their level of complexity; a joint venture was just another way of doing business and the issues arising from one would not be different in kind from the other complex issues the large-file appeals officers faced. The large-file appeals officers often had to deal with competent and aggressive counsel for taxpayer corporations, but this fell within the level of complexity contemplated by the AU-04 job description, as did the fact that large-file appeals officers might have to work on issues arising from different tax years. Many of the issues raised in notices of objection would be interrelated or contingent on one another, but this was also a form of complexity that the job description anticipated.

[164] Mr. Kassam went to a meeting of chiefs of appeal at which they discussed whether it might be possible to send some files from Calgary to Toronto North, as the capacity of the employees who had moved over from the Ontario government was not yet fully allocated. It was agreed that oil and gas files would have to stay at Calgary as the expertise lay there, but some other files, including some insurance company files, were identified as suitable.

[165] Mr. Kassam rejected the idea that the Toronto North's Appeals Division is a twin of the Calgary's Appeals Division. Because the two Divisions deal with different kinds of industries, the types of files are very different, and the budget for the Toronto North office is much higher. In any case, neither Appeals Division has any control over how data is recorded or entered in their respective Audit Divisions.

[166] Mr. Kassam appreciated the work of the large-file appeals officers. He thought they were very good at what they did. However, he disagreed that they had been assigned anything outside their job descriptions.

[167] Like Ms. Clozza, Mr. Kassam testified that the Globus coding system had no impact on assigning work in large-file appeals. It was used for tracking the hours allocated to files and the ultimate results.

[168] The work done by the large-file appeals officers was generally at a highly complex level, as contemplated in the job description. There was no connection between assigning work in large-file appeals and the classification level of the case manager when the file was in the Audit Division.

[169] The idea of “AU-05 files” or “AU-06 files” really had no meaning under Calgary’s coding system, which was used purely for statistical purposes and had never been challenged, either locally or nationally. Since the reorganization, the 208 and 209 code numbers are being used for some files, but he could not speak to what those files are.

[170] Mr. Kassam said he was surprised to hear that Mr. Insch thought he had been denied training opportunities as a reprisal for his decision to file a grievance. He had never held it against the grievors that they had filed a grievance. His recollection was that there were relatively few suitable training opportunities available at the time.

[171] Mr. Kassam was “appalled” and very hurt by the allegation that management had fraudulently concealed information about coding files. He had thought morale was very high — “phenomenal”, as he put it — and he had gone out of his way to develop a constructive working relationship with everyone at Calgary.

d. Restructuring in 2011

[172] With respect to the 2011 presentation (outlined in Exhibit U-18), Mr. Kassam had thought even before he became chief of appeals that a restructuring in the large-file appeals area would be desirable. He sent a memo to national headquarters within days of his arrival, trying to raise awareness of the administrative issues involved. He thought the existing structure was not the most effective for handling the file inventory.

[173] He made the presentation at a national meeting of chiefs of appeal; the content was provided by the MG-05 team leader and the large-file appeals officers. Mr. Kassam stated that the colouring adopted on the slide of ageing files was to indicate files that had been managed by an AU-05 senior large-file appeals officer or AU-06 case manager in the Audit Division, but the point of the slide was to show the length of time that some files had taken before resolution. He clarified that they were current files as some older files would have been in the Audit Division when no AU-05 or AU-06 case managers were there.

[174] He pointed out that although the position of case manager in the Audit Division would be classified AU-05 or AU-06, the bulk of the work would be done by AU-04 auditors. This configuration did not have any impact on the assignment or the nature of the work in large-file appeals.

[175] When he arrived as chief of appeals, the issue was pending of whether the AU-05 senior large-file appeals officer position created in 2009 should be staffed. He decided that adding it would not be helpful and would not fit in with the reorganization ideas he was working on. He might have considered staffing the position if his proposal for change had not been successful. He understood that the AU-05 senior large-file appeals officer job description (Exhibit U-26) was national but it did not mean that there had to be positions corresponding to the description at every location.

[176] He had no contact with Ms. Clozza about the issue; he did not feel bound by any steps Ms. Clozza had taken, as his vision for how the unit should be structured was quite different from the existing structure. He had assisted Ms. Clozza with screening employee competencies to compose the pool of candidates for the AU-05 position; it was merely a paper screening that did not involve any discussion of the appeals group's structure or its operational needs.

[177] The reorganization proposed, and ultimately implemented, by Mr. Kassam, involved creating several AU-06 large-file appeal coordinator positions to replace the MG-05 team leader position. The incumbents in those positions spend a considerable proportion of their time on human resources issues and very little on technical work.

[178] Under the new structure, which was put in place on August 15, 2011, each coordinator had three or four large-file appeals officers reporting to him or her. Whatever had been understood by the term "team approach" before, in his view, the restructuring would lead to the creation of genuine teams. Under the previous structure, it was necessary for the MG-05 team leader to be familiar with the files of nine large-file appeals officers to review them. He disputed the grievors' testimony that the team leader had little involvement with their files and that the team leader had been called upon to learn a lot about a wide range of files to review them. Mr. Kassam had concluded that it was unworkable, based on his observations of Ms. Tse.

[179] Mr. Kassam observed that Ms. Tse, who sat immediately outside his office, was very busy. Although he authorized her to work overtime in some circumstances, it led him to think that the MG-05 classification was not appropriate for the amount of work she was doing. He arranged for her to be compensated as an acting MG-06 while the restructuring was taking place, using an existing position number that was vacant in the Audit Division.

[180] Mr. Kassam reviewed an email (Exhibit U-76) outlining a discussion in a conference call involving representatives from Calgary and Toronto North. The call's purpose was to see if their ideas of a "team approach" were being implemented consistently. The email recorded that Mr. Kassam had estimated that the new AU-06 coordinators would spend about 70% of their time on supervisory duties and the other 30% on files. Mr. Kassam thought that might overestimate the supervisory proportion over the long run, although one might expect that there would be more managerial duties in the early days of the new structure; he thought the proportion might eventually be more like 60-40 or even 50-50. The expectation was that the AU-06 coordinators would be more involved in the individual files than was the case under the previous structure.

[181] Mr. Kassam said he could not comment on morale problems at Toronto North, as he had no direct knowledge of them. When he heard information about the situation there, he did not investigate further, because he thought it was not relevant to Calgary, where he perceived the morale as very good.

[182] Mr. Kassam was not aware that any damage had been caused to morale because of the large-file appeals officers' ineligibility to apply for the AU-06 coordinator positions.

e. Acting Pay

[183] Mr. Kassam had not encountered a situation in which acting pay was paid because someone was working on a file managed by someone in a higher classification. He had no specific budget for acting pay. It had been paid a number of times in his experience when AU-04 large-file appeals officers were relieving MG-05 team leaders. When assessing the money he had available for different purposes, he could take into account vacant positions, employees moving from one section to another, and absences on leave, which gave him some flexibility to consider paying overtime or to

make assignments that would attract acting pay. There was no separate budget line for these costs.

[184] Mr. Kassam had asked his assistant to correlate time sheets with the AIMS screens filed as Exhibits U-11 and U-33, and he concluded that AU-04 auditors performed most of the work on the files in the Audit Division.

[185] Mr. Kassam could not comment on what steps were taken in Ontario TSOs with respect to incorporating provincial government employees. He said that when he heard that Toronto North's management had offered acting pay to employees, he did not know the rationale behind it, and he did not think it had any bearing on what was going on at Calgary.

III. Summary of the arguments

A. For the grievors

[186] The bargaining agent argued that the grievors made their claim under the collective agreement. According to the bargaining agent, the collective agreement rests on the pillars of good faith, equity, and reasonableness, and any assessment of employer conduct in relation to an obligation under the collective agreement should be made in light of these principles. The collective agreement is a national document and that it is incumbent on the employer to apply it the same way across the country. The employer was not proceeding in good faith by arguing that all the duties performed by the grievors were captured within their existing job description. Its position failed to take into account the extreme complexity of the files the grievors handled. It was incumbent on the employer to make conscientious efforts to measure the complexity of the work they did and to find ways of differentiating it from more routine work.

[187] With respect to the employer's objection that I do not have jurisdiction over the grievances because they are essentially concerned with classification issues, the bargaining agent alluded to the characteristics that distinguish a classification grievance from an acting pay grievance outlined as follows in *Bungay v. Treasury Board (Department of Public Works and Government Services)*, 2005 PSLRB 40 at para. 59:

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

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

[188] The bargaining agent submitted that, in this case, the grievors had all specified the same end date (August 15, 2011) for the period in which they should receive acting pay, although their start dates depended on when they became AU-04 large-file appeals officers. The evidence established that the grievors had not sought reclassification. The duties they performed had changed since August 15, 2011, in that the AU-04 large-file appeals officers had more contact with the AU-06 large-file appeals coordinators than they had with the team leaders. Although the grievors' case had required an assessment of the work the employees in the Audit Division perform to establish the nature of the work being done by the large-file appeals officers, the grievors were not comparing their duties to those done by employees in the Audit Division but to the duties of AU-06s in the Toronto North TSO.

[189] According to the bargaining agent, the requirement for claiming acting pay is that the duties at a higher level must be assigned by the employer, and the evidence showed that is what occurred. Although clause 45.07 of the collective agreement establishes a minimum threshold of three days for entitlement to acting pay, there is no clause precluding that the acting period cannot go on for a considerable time. For all the grievors, the periods covered some years.

[190] The bargaining agent referred me to a number of decisions in which acting pay had been awarded or a finding that the adjudicator did not have jurisdiction had been overturned. In *Chadwick v. Canada (Attorney General)*, 2004 FC 503, for example, the Federal Court overturned the decision of an adjudicator that he did not have jurisdiction when the adjudicator had held that he was unable to award acting pay when an employee had been performing the duties of a new and higher classification

but a delay had occurred in implementing the compensation scheme connected with the new classification. The court made the point that the case essentially dealt with the issue of whether the employee was being appropriately compensated — a matter within the adjudicator’s jurisdiction — and not with the issue of whether the classification was appropriate.

[191] In *Deley v. Treasury Board (Department of National Defence)*, PSSRB File No. 166-02-289 (1970, *Shanley v. Treasury Board (Department of National Defence)*, PSSRB File No. 166-02-3044, and *Macri and Treasury Board (Indian and Northern Affairs)*, [1987] C.P.S.S.R.B. No. 295 (QL)), the adjudicators found that employees were entitled to acting pay when they had shown that they had performed or substantially performed the duties associated with a higher classification. In *Deley*, the adjudicator observed that it is not necessary that the grievor show that every one of the duties were performed as not all the circumstances requiring particular duties occurred in a given period.

[192] The bargaining agent responded to the employer’s suggestion that the grievances’ wording did not accurately set the stage for the case that the bargaining agent made at the hearing. It argued that it is inconsistent with constructive labour relations for an adjudicator to interpret grievances in an overly technical manner and that a generous interpretation should be adopted, in keeping with the grievors intent in filing their grievances. In support, he referred to *Re Blouin Drywall Contractors Ltd. and United Brotherhood of Carpenters and Joiners of America, Local 2486*, (1975), 8 O.R. (2d) 103, and *North Bay General Hospital v. O.P.S.E.U.* (2006), 154 L.A.C. (4th) 425. It mentioned as an example that, although the grievances specifically referred to performing the duties of the AU-06 classification, it might reasonably be interpreted to also include the duties in the AU-05 job description.

[193] In the event that the jurisdictional objection is dismissed, the bargaining agent responded to the employer’s argument that the grievances were untimely. It argued that the grievors could not have been expected to know that they should be claiming acting pay until they received the information about their Toronto North counterparts, who were being paid acting pay for similar anomalies in the duties they were performing. The bargaining agent argued that those time limits do not apply in circumstances when the employer fraudulently conceals information critical to the employees’ understanding of the facts.

[194] Indeed, the bargaining agent stated that the employer knew there was a problem at an earlier stage. It argued that the documents submitted in evidence the bargaining agent obtained through an ATIP request, going back as far as 2002, showed that the coding problems existed, and Ms. Clozza's testimony on the difficulties slotting in an AU-05 position also showed that the grievors were being expected to perform higher-level duties. The bargaining agent alluded to the discrepancy between the coding suggested in the national appeals manual and the coding used at Calgary and submitted that this was evidence that the grievors had not been appropriately dealt with. When they found out that the Toronto North employees were receiving acting pay in circumstances similar to theirs, they felt it was only fair to ask for acting pay to compensate for the additional responsibility they had been carrying.

[195] The bargaining agent argued that the doctrine of fraudulent concealment should be applied in this case. In *Halloran v. Sargeant*, 217 D.L.R. (4th) 327, the Ontario Court of Appeal found that a referee under employment standards legislation had erred in failing to apply the doctrine. At paragraph 31, the Court cited the following passage from *Guerin v. The Queen*, [1984] 2 S.C.R. 335 at 390:

It is well established that where there has been a fraudulent concealment of the existence of a cause of action, the limitation period will not start to run until the plaintiff discovers the fraud, or until the time when, with reasonable diligence, he ought to have discovered it. The fraudulent concealment necessary to toll or suspend the operation of the statute need not amount to deceit or common law fraud. Equitable fraud, defined in Kitchen v. Royal Air Force Association, [1958] 1 W.L.R. 563, as "conduct which, having regard to some special relationship between the two parties concerned, is an unconscionable thing for one to do towards the other," is sufficient....

[196] The Court found that the employment relationship may give rise to the application of that doctrine. The bargaining agent argued that in this case, the grievors filed their grievances promptly when they became aware of the discrepancy between the duties they were performing and the compensation they were receiving, as compared to the Toronto North employees. However, the employer knew of the situation considerably earlier and concealed it from the grievors, which met the test of unconscionability adopted in *Halloran*.

[197] The bargaining agent requested that the grievances be upheld and that the grievors be compensated with acting pay for the true period during which they

performed duties at a higher level.

B. For the employer

[198] The employer made two basic arguments. The first was that the evidence showed that the differences between the grievors and the employer were fundamentally about classification, and therefore, I do not have jurisdiction. The second argument was that even if the dispute is correctly characterized as being over acting pay, the bargaining agent failed to make the case that the grievors had been assigned responsibilities outside their job description.

[199] On its first argument, the employer referred to the factors outlined in *Bungay* that have been used to distinguish a classification issue from an acting pay issue. It stressed that it is not necessary for all factors to be present to characterize an issue as one of classification. With respect to the first factor, the ongoing nature of the claim, the employer submitted that, although the grievors chose a common end date of August 15, 2011, the evidence did not show any change to their responsibilities after that date, and the date must be seen as an arbitrary choice. Each grievor also claimed to have been acting in the AU-05 or AU-06 positions since beginning in their large-file appeals officer positions, which is a period of some years in each case. The employer argued that the length of these periods makes it difficult to differentiate them from the “ongoing claim” referred to in *Bungay*.

[200] On the second factor from *Bungay*, whether the grievors had sought reclassification, the employer submitted that, while it is clear that the grievors had not asked to be reclassified, some of the employer documentation placed in evidence demonstrated that the concerns about workloads and the complexity of work in the Calgary appeals office had been dealt with through the reclassification process when the large-file appeals officer classification was changed from AU-03 to AU-04.

[201] The third factor in *Bungay* has to do with whether the employees continued to perform the duties previously performed. The employer submitted that the test was not whether there was a restructuring in August 2011, as workplaces often undergo restructuring. The real question was whether there was any definable change in the duties the grievors performed, and the employer suggested that the evidence did not show any.

[202] Finally was the question of whether comparisons were being made with similar positions. The employer stated that the grievors clearly wanted to compare their positions with those of Toronto North employees and with the new AU-05 senior large-file appeals officer position. The employer noted that the witness the bargaining agent called was an employee who did not have the full information about the circumstances under which the decision to pay acting pay was made. The evidence was not adequate to demonstrate that the circumstances at Toronto North and at Calgary were comparable. There may be a variety of reasons for adopting a particular course in one TSO and not another, and there was insufficient evidence in this case to allow a direct comparison. In any case, the basic test is whether the duties assigned to the grievors were within the scope of their job description. The employer referred me to the analysis in *Allain v. Treasury Board (Royal Canadian Mounted Police)*, 2014 PSLRB 52, in which the presence of the *Bungay* factors led to the conclusion that the issue was one of classification.

[203] In that respect, the grievors' claim that they worked at the AU-05 or AU-06 group and levels failed to take into account those aspects of the AU-05 or AU-06 job description that deal with managerial or human resources responsibilities. Although there was evidence that the grievors participated in committees and in organizing presentations, they must be seen as activities that employees in any workplace might be involved in, and neither their nature nor scale raised the levels of the grievors' duties to higher levels than was contemplated by their job description.

[204] The employer referred to the grievors' argument that the truncation of the Globus coding system prevented recognizing that the large-file appeals officers were doing work at the AU-05 or AU-06 group and levels. The testimonies of Ms. Clozza and Mr. Kassam made it clear that the distinctive use of the Globus codes at Calgary had no bearing whatsoever on assigning work to the large-file appeals officers or to the nature of the work they did. In fact, she pointed out that when the only person in the group occupying a position classified AU-06, Mr. Veltri, was working on large files, those files would have had a code no higher than 207, which did not change his position's classification.

[205] The employer also noted the grievors' argument that the files they dealt with were in fact "AU-05 files" or "AU-06 files" because they were listed in the name of an AU-06 case manager in the Audit Division. The employer argued that the classification

of the case manager for the file was not relevant to the nature of the work in the Audit Division, which was mostly done by AU-04 auditors, and it certainly did not have a bearing on how the work should be characterized in the Appeals Division. The work done in large-file appeals involves not simply redoing what was done in the Audit Division but reviewing specific issues raised in the notices of objection.

[206] In the event that the employer's jurisdictional objection is dismissed, the employer referred me to the Federal Court of Appeal's *Coallier* decision, in which it held that the stated time limits in the collective agreement (then 20 working days) begin to run when an employee becomes informed or learned of an action or circumstances giving rise to a grievance, not when the employee is advised that the employer's action is illegal. In light of *Coallier*, even if the grievors are successful, their claim would be limited to 25 days before the grievance was filed.

[207] The employer submitted that the grievors did not make a case for fraudulent concealment. No critical information had been hidden from the grievors; they had access to the coding systems, and the way files were coded in the Globus system was never concealed. The employer also cautioned me that, when assessing the documentation provided by the bargaining agent that was gathered through an ATIP request, I should take into account that the documents might have been part of a larger context and that I was not provided with any information about background discussions or what options were being considered at any given time. These documents should not be interpreted as showing a coherent plot or initiative.

[208] Finally, the grievors' argument seemed to suggest that some kind of estoppel or binding past practice had arisen because of the payment of acting pay at Toronto North. The evidence fell far short of demonstrating that there was a clear practice against which the position taken by Calgary management could be compared, and there had been no detrimental reliance on anyone's part, which would generally be required to establish estoppel.

[209] Alternatively, on its second argument, should I find that the dispute is over acting pay, the employer argued that the bargaining agent has not met the necessary burden of showing that the grievors had been assigned duties outside their job description. The fact that the duties listed in their job description were also included in job descriptions for other classifications was not relevant as the requirements in different classifications often overlap. The employer referred me to *Currie v. Canada*

(Attorney General), 2009 FC 1314, a decision of the Federal Court on judicial review, in which the Court found that, among other things, it was reasonable for an adjudicator to adopt wording from a higher-level job description to amend the job description under consideration.

IV. Reasons

[210] The circumstances in which a claim may be made for acting pay under the collective agreement and those in which a reclassification is the appropriate outcome display certain similarities. In both cases, employees claim that their work has not been valued properly and seek redress. In light of the similarities, it is not surprising that in a large number of cases, adjudicators have found it necessary to differentiate between the two.

[211] For adjudicators, the distinction is particularly critical. If the issue is properly characterized as a claim for acting pay, the adjudicator may proceed to determine whether the claim is well founded; however, if the issue relates to classification, an adjudicator lacks jurisdiction pursuant to section 7 of the PSLRA. The parties provided me with copies of many decisions in which these issues are discussed. Although I have not cited or referred to all of them in this decision, I have reviewed and considered them all, and I am grateful for being referred to them.

[212] In *Bungay*, as was discussed, the adjudicator made an effort to capture some of the indicators that would suggest the issue is one of classification and therefore outside an adjudicator's jurisdiction such as:

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

[213] In that case, the adjudicator stressed that his list was not exhaustive.

[214] As the adjudicator observed as follows in *Laqueux et al. v. Treasury Board (Department of National Defence)*, 2012 PSLRB 80 at para. 58:

[58] ... *There is, however, no requirement that all of the indicators discussed in Bungay must be present to support a conclusion that classification comprises the real subject matter of a grievance. The individual indicators suggested in Bungay are neither necessary conditions nor, taken together, do they constitute an exhaustive or definitive list. They nevertheless do provide a helpful test....*

[215] I should state that the argument the bargaining agent seemed to be making at one point — that the absence of one or more of the *Bungay* factors turns the situation into one supporting acting pay — is not consistent with the idea that those indicators represent a partial but not definitive effort at defining classification issues.

[216] In *Cooper and Wamboldt v. Canada Revenue Agency*, 2009 PSLRB 160 at para. 38, the adjudicator listed as follows the requirements that must be met to found an acting pay grievance under a collective agreement:

[38] *It seems to me that clause 64.07 (a) [which is comparable to clause 45.07] of the collective agreement by its very nature requires the grievors to establish that four things have occurred. They are as follows:*

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

[217] In *Doiron v. Treasury Board (Correctional Service of Canada)*, 2006 PSLRB 77 at para. 97, another adjudicator tried to capture the essential differences between classification issues and acting pay issues in the following language:

[97] *I add to this test [from Bungay] a commonsense [sic] appreciation of what lies behind the two types of grievances: in an acting pay case, the grievor's substantive position is normally presumed to be properly classified. The grievor argues that the employer has assigned extra duties for a specified period over and above those of the employee's substantive position, as outlined in the job description. These extra duties are associated with a higher level role. The grievor asserts, as a result, an entitlement to acting pay. In a classification case, by contrast, the grievor claims that the*

duties the employer requires on a continuing basis are undervalued. The grievor argues that an assessment of these duties against the relevant classification standard justifies upgrading the level of his substantive position within an occupational group (and/or changing the occupational group).

[218] In my view, the common-sense distinction made in that quote captures important elements of the difference between classification issues and acting pay issues. On one hand, for acting pay, the employer requires that an employee undertake duties that are not required in his or her regular position but are associated with a higher-level position, and the period is limited during which the higher-level duties are to be carried out.

[219] In the case of a classification issue, on the other hand, there is a systemic and continued undervaluing of the duties carried out by an employee on a regular basis, and that problem can be rectified only by permanently assigning a new value to the job.

[220] The essential question raised by the employer's jurisdictional objection is whether the issue raised by the grievors has the characteristics that would make acting pay an appropriate remedy or whether instead it is an issue that would have to be resolved by considering whether the AU-04 large-file appeals officer positions should be reclassified.

[221] That question is somewhat complicated by the nature of the work done by the grievors and by how they do it. The grievors are all highly qualified professional employees who have been regularly assigned to analyze notices of objection in which the taxation issues are highly complex, the taxpayers are very sophisticated and often very aggressive, the amounts of money at stake are high, and the issues must be considered in relation to other taxation years and notices of objection. The grievors' testimony was that they work independently, with little supervision or guidance, and that they are typically responsible for whole files rather than being assigned single issues or partial files. Those factors, along with others, were apparently taken into account when the large-file appeals officer positions were reclassified from AU-03 to AU-04.

[222] In 2011, two events important to these grievances occurred. The grievors became aware, largely through an email exchange with their counterparts in the

Toronto North appeals office, that large-file appeals officers there had been offered acting pay to compensate for certain duties they were performing. On the basis of that exchange, the grievors concluded that their files were not being coded properly, which they put partly in terms of the way the Globus coding system had been modified at Calgary and partly in terms of the way the files had been coded and assigned while they were in the Audit Division. Since acting pay had been used at Toronto North to deal with issues the grievors saw as similar, they filed grievances on July 6, 2011 seeking acting pay.

[223] The other significant event was the restructuring of the Appeals Division, which took effect on August 15, 2011. The grievors selected that date as the end of the period during which they claimed acting pay; the beginning date of each grievance was tied to the date on which each grievor had commenced work in the AU-04 large-file appeals officer position.

[224] Despite the fact that the grievors specified beginning and end dates for their claims, I have concluded that, in their essence, the issues they have raised are one of classification, and an acting pay claim is not the appropriate vehicle for dealing with them. Their concern is that the duties they had performed since the beginning of their respective appointments into AU-04 large-file appeals officer positions had been chronically undervalued. They performed complex duties, and neither the nature of those duties nor the way they performed them changed during the lengthy period specified for each grievance. Indeed, although the bargaining agent argued that the nature of the duties changed as of August 15, 2011, it was inconsistent with the testimonies of several of the grievors that the nature of their duties did not change after the restructuring, although they might have had slightly different relationships with the AU-06 large-file appeals coordinators than they had had with the MG-05 team leaders.

[225] Furthermore, the comments of adjudicators in cases like *Cooper* suggest that one feature of an acting pay scenario is that the employer assigns additional, extra, or higher-level duties to an employee to serve a particular, often short-term, purpose. It is certainly true that a situation in which acting pay is warranted can last for some time, and it is also true that an employer's inattention to the need to regularize an employee's circumstances does not necessarily negate the soundness of a claim for acting pay; see, for example, *Macri*.

[226] Nonetheless, a common sense understanding of the idea of acting pay suggests that an employer must have some intention to require more from an employee than he or she would normally expect or at least an awareness that it is doing so; there must be some change to the employee's level of responsibility that the employer initiates. In this case, the evidence did not suggest that management attempted to exploit the grievors by changing their duties to a higher level without compensating them properly; they continued to perform the same duties they always had. Although they developed a concern about whether the employer undervalued those duties, that concern belongs more appropriately to a discussion of whether their position's classification was misaligned with its duties.

[227] Therefore, I find that I am without jurisdiction to consider the grievances.

[228] In addition to arguing that an adjudicator is without jurisdiction to determine what is in effect an issue of classification, the employer argued that in any case, the grievances referred only to the performance of duties at the AU-06 classification, and not to the AU-05 classification, though the bargaining agent and the grievors at the hearing were asking for acting pay at either of these levels. Given that my conclusion is based on a finding that the grievors were not being assigned work outside of their own position description, it is not necessary for me to decide whether the reference in the grievances to the AU-06 classification should be taken to include the AU-05 classification as well.

[229] In the event I am incorrect in that finding, I have also concluded that the bargaining agent has failed to meet its burden of showing that the grievors were assigned work that fell outside the scope of the job description for the AU-04 large-file appeals officer positions.

[230] In part, the grievors' argument depended on showing that the classification (AU-06) of the case manager assigned to a file in the Audit Division should be equivalent to the level recognized for a file in the Appeals Division. The argument was that "AU-06 files" from the Audit Division should be treated as "AU-06 files" in the Appeals Division.

[231] A related argument was that the Globus coding system used for the files in the Appeals Division was artificially limited by the use of the 208 and 209 codes for Lethbridge and Red Deer files and that this prevented the files from being coded

properly to recognize that the work involved in them was at the AU-05 or AU-06 group and levels.

[232] I do not find either argument well founded. Ms. Clozza and Mr. Kassam, who were both in positions to know how the coding system worked, testified that the Globus system was purely a statistical tool used to track different kinds of files and that how it was used had no impact on assigning work to the large-file appeals officers or on the kind of work involved in their files. I accept this evidence. Although the particular way the Globus system was used at Calgary might have created a risk of confusion, I am persuaded that its use did not influence assigning files to the grievors.

[233] With respect to the argument that the level of the files the grievors handle should depend on the level of the case manager overseeing the files when they were in the Audit Division, I find it also without merit. Considerable evidence showed that when the files were going through the audit system, the preponderance of work on them was being done by AU-03 or AU-04 auditors. In any case, the large-file appeals officers' work was qualitatively different from that done in the Audit Division. In short, it is difficult to see that the terms "AU-05 files" and "AU-06 files", which the grievors used frequently in their testimonies to refer to the files that came to them from the Audit Division, had any clear reference point.

[234] The grievors also argued that they performed duties described in the job descriptions for the AU-05 and AU-06 positions in their group. In a number of decisions, adjudicators have made the point that it is not unusual for the same or similar language to appear in different job descriptions. In *Cooper*, the adjudicator put it this way, at paragraph 41: "Job descriptions are not mutually exclusive. Rather, unless otherwise stated, it can be expected that, to allow the employer to manage its workforce, two or more classifications may overlap."

[235] As an employee moves upward from one classification to another, a complete discontinuity in the nature of the duties performed is unlikely. Rather, duties performed in a lower classification may be augmented by a group of new duties or the duties may be described in relation to a modified list of competencies. To use the example of the one member of the large-file appeals group classified AU-06 before August 15, 2011; it is clear from the description Ms. Clozza and Mr. Kassam gave of that position that, in addition to some duties similar to those of the grievors, Mr. Veltri had additional duties that called on particular competencies and experience.

[236] The job description associated with the AU-04 large-file appeals officer position outlined the large-file appeals officers' duties in terms of the highest levels of complexity and sensitivity. The evidence that the grievors provided did not succeed in showing that they were asked to do anything that was not included within the scope of their positions' job description. The work they did on files was, of course, very demanding and called on a high level of professional training, careful judgment, and sensitivity on their parts, but the job description refers to that kind of work. They acknowledged that "highly complex" is the most complicated level of file, to use the term from their job description. They did not claim that they had any managerial or human resources responsibilities, except when some of them acted for brief periods to replace their MG-05 team leader. That they worked for the most part independently, with relatively little supervision, is a feature of many workplaces having employees with professional qualifications and expertise.

[237] A reading of the job description (Exhibit U-1) reveals the use of phrases like "us[ing] initiative and judgment," "planning, organizing and controlling the conduct of the review activities", "negotiating highly complex and controversial and significant assessment issues", and "maintaining a professional attitude and detachment", all of which make it clear that that group of employees is expected to operate as a matter of course in a difficult and demanding environment.

[238] Given my finding that I am without jurisdiction to consider the grievances, it is not necessary for me to reach a conclusion about the issue of the timing of the grievances raised by the employer and countered by the bargaining agents with the allegation of fraudulent concealment.

V. Sealing Order

[239] During the hearing, the employer requested that a number of exhibits be sealed and not retained as part of the publicly-accessible file in order to protect taxpayer information. The employer noted the obligations in this respect under section 241 of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.):

241 (1) Except as authorized by this section, no official or other representative of a government entity shall:

(a) knowingly provide, or knowingly allow to be provided, to any person any taxpayer information;

- (b) knowingly allow any person to have access to any taxpayer information; or
- (c) knowingly use any taxpayer information otherwise than in the course of the administration or enforcement of this Act, the Canada Pension Plan, the Unemployment Insurance Act or the Employment Insurance Act or for the purpose for which it was provided under this section.

[240] At the hearing, the grievors assented verbally to the employer's request. They made no further submissions on the issue, either at the hearing or in response to the written application filed subsequently by the employer.

[241] The proceedings of this Board, and the documentation related to those proceedings, are generally accessible to the public. The open court principle has been discussed in numerous Board decisions and decisions on judicial review. Any departure from this principle by granting a request such as that made here to seal part of the evidentiary record must be rationalized by reference to the *Dagenais/Mentuck* test (in reference to *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 SCR 835 and *R. v. Mentuck*, [2001] 3 SCR 442. In *Canadian Broadcasting Corporation v. The Queen*, 2011 SCC 3, the Supreme Court of Canada held that this test is applicable to all discretionary decisions affecting the openness of proceedings.

[242] In *Pajic v. Statistical Survey Operations*, 2012 PSLRB 70, the adjudicator described the nature of the *Dagenais/Mentuck* test as follows at paragraph 9:

In the same vein, the parties have also requested that I seal a number of exhibits that contain information protected by the Statistics Act. In dealing with such a request, I must act within the parameters developed into what is known as the "Dagenais/Mentuck" test. The rule is that Court and quasi-judicial tribunal proceedings are public and documents that are on the record of those proceedings, such as exhibits, are also public. However, a Court or a quasi-judicial tribunal may impose limits on the accessibility to their proceedings or record in certain circumstances, where in its view the principle of open justice should give way to a greater need to protect another important right. In Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41, the Supreme Court of Canada reformulated the Dagenais/Mentuck test as follows:

- i. such an order is necessary in order to prevent a serious risk to an important interest, including a commercial*

interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and

ii. the salutary effects of the ... order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[243] Thus, the test requires that I consider carefully whether the interest of the public in the transparency of the proceedings conducted by a body whose authority derives from a public statute is outweighed by a competing interest - in this case the confidentiality of corporate taxpayer information.

[244] I have concluded that the interest of corporate taxpayers in protecting sensitive tax information here is important to Canadian society as shown by the safeguards enunciated in section 241 of the *Income Tax Act*. The interest of corporate taxpayers outweighs the value the exposure of this information would contribute to the open court principle. The exhibits that would be covered by the sealing order contain information related to the tax information of a number of major corporations. They were produced to show the nature and complexity of duties carried out by the grievors in these proceedings. I was not called upon to assess the substance and contents of the documents themselves, and removing the tax information from public scrutiny does not affect the comprehensibility or effect of my decision.

[245] It should also be noted that the public has an interest in encouraging candour on the part of taxpayers, and in inducing them to co-operate with the Government of Canada in carrying out the objectives of the *Income Tax Act*.

[246] I have reviewed the exhibits listed in the request for a sealing order, and concluded that, though there is a persuasive rationale for ordering some of them to be sealed, many of them may be dealt with in a less intrusive manner, making the record publicly available more complete.

[247] The following files were named in the request for a sealing order, but I have concluded that they should be neither sealed nor redacted. They relate to human resources issues concerning the grievors, and I am not persuaded that there is any reason to remove them from the public record.

- E-8 - Training activities
- U-23 - Performance appraisals
- U-53 - Performance appraisals
- U-64 - Performance appraisals
- U-66 - Mr. Leung's e-mail dated September 13, 2013
- U-73 - Budgeted hours calculation
- U-75 - Calgary LFC Appeals presentation

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

(The Order appears on the next page)

VI. Order

[249] I have concluded that the request for a sealing order should be granted in the case of the following exhibits:

- U-3 - File document created by Mr. Insch
- U-18 - Calgary LFC Appeals presentation slides
- U-46 - Large Case Inventory by Group
- U-47 - Joint Venture chart
- U-56 - Presentation slides dated November 15, 2010

[250] Rather than order that the following exhibits be sealed, I am directing that they be redacted to remove information that would identify corporate taxpayers. Other than the corporate names, the information in these documents relates to work assignments and workflow within the Large File Appeals Division which does not need to be redacted.

- U-4 - E-mail from Ms. Tse to group dated May 20, 2009
- U-7 - Email from Ms. Tse to group dated April 5, 2011 with chart of files attached
- U-11 - Screenshots
- U-21 - Inventory list
- U-22 - Possession of tax returns
- U-25 - Ms. Lok's e-mail dated September 16, 2011
- U-30 - Inventory document
- U-31 - Ms. Ziesel's time sheet
- U-32 - Ms. Ziesel's completed inventory 1
- U-33 - AIMS/Globus list
- U-35 - Mr. Green's inventory
- U-36 - Globus inventory
- U-37 - Mr. Green's letter dated December 2, 2010
- U-38 - Mr. Green's e-mail dated June 17, 2011
- U-45 - Mr. Fong's inventory
- U-49 - AIMS screen
- U-50 - Mr. Fong's charged out files
- U-51 - Mr. Fong's time sheet

- U-52 - Taxpayer settlement
- U-58 - Mr. Fong's e-mail to Mr. Insch e-mail dated July 2, 2013
- U-59 - Mr. Leung's inventory
- U-60 - List of large case files
- U-61 - AIMS screen
- U-62 - Group listing
- U-63 - Chargeout sheet
- E-10 - Mr. Insch's e-mail dated June 24, 2011
- E-11 - Mr. Kassam's e-mail dated July 12, 2013
- E-12 - Log of time
- E-21 - Ms. Ziesel's e-mail dated June 21, 2011
- E-22 - Mr. Green's time sheet
- E-25 - AIMS document re: file in U-49
- E-26 - Mr. Fong's time sheet, list of files
- E-27 - Audit hours
- E-28 - Hours spent
- E-30 - Hours spent
- E-31 - Mr. Leung's time sheets
- E-32 - Hours spent
- E-33 - Hours spent
- E-34 - Hours spent
- E-37 - Mr. Kassam's e-mail dated July 14, 2011
- E-42 - Audit completion document
- E-43 - Files audit
- E-44 - Audit file summit
- E-45 - Audit files - nine files
- E-46 - Mr. Green's file
- E-47 - Company files

[251] The parties shall redact as follows all exhibits contained in the file and will file a copy of those redacted exhibits by 4:00 p.m. Ottawa local time on June 2, 2017:

- a) the corporate tax payers name shall be replaced by initials;
- b) other information that would identify them shall be blacked out;

[252] The original exhibits on the Board's file shall be temporarily sealed until, the first date on which the parties file a copy of the redacted exhibits or 4:00 p.m. Ottawa local time on June 2, 2017. The original exhibits in the Board's file will be replaced with those redacted by the parties upon filing of those redacted exhibits.

[253] In the event that the parties have difficulty redacting the documents contained in the Board's file, I will remain seized of this matter until it is finalized.

[254] The grievances are denied for lack of jurisdiction.

[255] In the event that I am incorrect in my finding that I do not have jurisdiction, I would dismiss the grievances.

May 1, 2017.

**Beth Bilson,
adjudicator**