



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

GORDON S. THOMSON

Grievor

and

TREASURY BOARD
(Revenue Canada - Customs & Excise)

Employer

Before: J. Barry Turner, Board Member

For the Grievor: Chris Dann, Public Service Alliance of Canada

For the Employer: Ronald Snyder, Counsel

Heard at Nanaimo, British Columbia.,
February 4, 5, 6, 9, 10, 1998.

DECISION

Gordon Thomson, a former Customs Inspector, PM-1 classification level, Revenue Canada, Nanaimo, British Columbia and Sergeant in the Canadian Scottish Regiment (CSR), "B" Company Militia, in Nanaimo, is grieving the termination of his employment from Revenue Canada. His grievance reads:

I grieve the termination of my employment effective Jan. 23, 1996. I do not believe that full and proper consideration has been given to the facts in the matter and that the discipline action taken is too harsh and unusual in the circumstances.

His grievance was referred to adjudication on May 21, 1997.

The employer's letter of termination signed by Blake Delgaty, Interim Director, Customs Border Services, Pacific Operations, Revenue Canada dated January 22, 1996 reads:

The investigation into the complaint which stemmed from the incident of January 26, 1995 has been completed. More specifically, the complaint was received from a member of the traveling public who on January 26, 1995 was unable to obtain customs clearance from the Port of Nanaimo.

The results of this investigation clearly demonstrate that on January 26, 1995 during the period that the client attempted to obtain customs clearance from Nanaimo, you were the only customs inspector scheduled to be on duty and the reason why service could not be provided by Nanaimo, was because you were absent from duty without permission while you were attending to business on behalf of The Canadian Scottish Regiment. When you were initially questioned by Ms. Bradfield, Chief, Customs Operations, North Coast Area, West Coast/Yukon District, you reported that you were in attendance at your place of work for the duration of the shift with the exception of a lunch break from 2000 to 2030 hours.

A review of the records provided by the Canadian Scottish Regiment show, and by your own admission, on more than one occasion, while on duty as a customs inspector, you were involved in militia activities away from your place of work. Furthermore, during the Department's investigation into your conduct, without authorization you amended and shredded original Attendance Registers related to your attendance at militia activities because, by your own admission, you were afraid to lose your employment with Revenue Canada and that you could not see any other avenue to "satisfy" management than to amend the attendance registers.

Your gross misrepresentation of the truth and the dishonest manner in which you conducted yourself on more than one occasion has seriously damaged the bond of trust that must exist between yourself as a Customs Inspector and Management at all levels in the District and in the Pacific Region as a whole and, you have shown no remorse for your misconduct nor did you admit any culpability for your actions.

In view of all of the foregoing, I have decided to terminate your employment for cause with Revenue Canada and this termination will take effect at the close of business on Tuesday, January 23, 1996.

As you are aware, since the filing of the original complaint, the investigation into this matter has been ongoing. Much of the elapsed time was spent obtaining and reviewing records from the Canadian Scottish Regiment. During this period you also presented additional information in your defense which required research and further discussion with the military.

You have the right to grieve this management decision in accordance with the terms and conditions of employment set out in the relevant collective agreement. Details concerning your benefits on separation will be forwarded to you at a later date.

Mr. Thomson is requesting the following corrective action:

To be reinstated with all pay and benefits effective the day of termination.

I am being asked to decide if the employer's decision was appropriate under the circumstances. The hearing lasted five days, with fourteen witnesses testifying and eighty-seven exhibits submitted into evidence.

A request for the exclusion of witnesses was made and granted.

Summary of Evidence

1. Major Heiks Behn, has been Officer Commanding, "B" Company, Canadian Scottish Regiment (CSR), Nanaimo, since October 1994 as a member of the Canadian Militia. He joined the militia in 1967. There is also an "A" Company and an Administration Company in Victoria. All three companies report to Lt. Col. Derek Egan, also a member of the militia based in Victoria. The grievor is

under Major Behn's command as a Militia Sergeant in Nanaimo primarily responsible for recruiting.

Major Behn explained militia pay is \$38.75 for a half day, that is less than six hours work, and \$77.52 for a full day, that is more than six hours work. He agreed that the grievor had no set work schedule since he performed recruiting, but "B" Company had a set budget each fiscal year. Major Behn explained that a 'parade' is defined in military terms as a militia activity for training, or a work session for administration. Parades are generally held on Thursday evenings, 1900 to 2200 hours or on Saturdays all day. There were some on Tuesdays from 1900 to 2200 hours. He identified a sample attendance register for militia activity as Exhibit E-1, also called an 895.

Major Behn testified he expected the attendance register to be filled in reasonably accurately, particularly by leaders, that is someone from a Sergeant level or up. The time logged on the attendance register was not always exactly equivalent to the time that was worked on the day that it was logged. In the case of Sergeant Thomson, since he did recruitment, he set his own agenda, particularly when he would visit schools. For example, if he went to a school on a Wednesday, he would in effect fill in that time for one parade evening either on the Tuesday or a Thursday. Although this seemed confusing, since the time that was signed for on the attendance register did not necessarily exactly reflect the time or the date that the individual worked, it was an acceptable practice. Major Behn testified that the 895's are then sent to Victoria for processing and that the information from an 895 is transferred to an 896 which is an annual attendance record for each militia person. He added that all pay information is then compiled on an 1177 form that is sent to St-Hubert, Québec for cheque issuance. Major Behn was not aware of any militia person ever requesting permission to amend an 895 before it was sent to Finance, nor was he ever aware of one being amended that had already been sent to Finance.

Major Behn identified a letter from Caroline Bradfield, Chief, Customs Operations, North Coast area, addressed to his Commanding Officer, Lt. Col. Egan, dated February 16, 1995 (Exhibit E-2) asking for clarification of some dates where there may have been an overlap or conflict of work schedule for the grievor between his responsibilities at Revenue Canada and dates he had claimed to be at the militia.

Major Behn reviewed the dates supplied to him and indicated that there were seven dates, six half days and one full day, where it appeared the grievor had done both Revenue Canada and militia work at the same time. Major Behn indicated he called Customs Superintendent Bill McSeveney after he identified the seven potentially conflicting dates to explain to him that these dates did not particularly concern Major Behn, since the dates claimed on the militia register may not necessarily have been the exact same dates that the grievor actually worked. Major Behn testified that he communicated the same seven dates to a Captain David Beyer who was the adjunct to Lt. Col. Egan.

Major Behn identified as Exhibit E-3, an 895 for April 28, 1994 that indicates the grievor signed in for militia work that day between 1900 and 2200 hours. He added that these may in fact not have been the actual hours worked on that particular day but the form would have to have been signed between 1800 and 2300 hours on April 28, 1994. Exhibit E-2, page 2 indicates that the grievor was scheduled for a Revenue Canada shift on April 28, 1994 between 1600 and 2400 hours. Major Behn testified this was one of the seven apparent conflicts he had identified earlier. He agreed that, if the scheduled time worked by the grievor as indicated on Exhibit E-3, page 2, for April 30, 1994 from 0001 to 1600 hours is added to the time he was scheduled to have worked on April 30, 1994 Revenue Canada shift from page 3, Exhibit E-2, from 1600 to 2400 hours, the grievor would have worked a full twenty-four hours. When asked by Mr. Snyder to compare the Thursday, September 15, 1994 Revenue Canada shift from 1600 to 2400 hours on page 3 of Exhibit E-2 with the 895 register for 15 September 1994 that indicates the grievor worked for the military from 0900 to 1500 hours, and therefore claimed one full day of militia work, Major Behn said that the grievor would have been entitled to one-half day of militia work but it seems he put in for a full day. He added the chances of being paid for a full day when everyone else had put in for a half-day on September 15, 1994, were "slim to nil".

During cross-examination, Major Behn testified he and the grievor had discussed recruitment quotas and how much time they thought would be needed to meet those quotas. Major Behn thought that they had agreed to approximately ten days of recruiting per year. He agreed that the grievor could have done some of the recruiting at his home and still got paid for it. Major Behn added it was rare for

him (Major Behn) to miss a parade on Thursday evenings. He did not see the grievor at all Thursday evening parades since Mr. Thomson was in effect an independent employee. Major Behn added that the signing in at the front desk of the military establishment was based on trust, that there was normally someone around to see infantry or officers sign in but no one could really say what exact time someone was signing in for. Most 895's would cover the period from 1900 to 2200 hours. He added leaders are not so strictly monitored since he must be able to trust them. Major Behn reiterated that the 895's were completed in Nanaimo, sent to Victoria where they were then processed for payment, and on to St-Hubert. He added the actual days' worked were not listed on the final form sent to St-Hubert, only what a militia person was owed in pay. He testified their practice was probably outside of DND policy in terms of how they accounted for their time, but he felt it was the most expedient way to complete the 895's. Major Behn further reiterated when he discovered the seven apparent conflicts concerning the grievor's work schedule, he was not too concerned that there may have been double dipping by the grievor since the dates accounted for on the 895's did not necessarily reflect the dates that the work was done. Major Behn recalled speaking to Mr. McSeveney about these conflicting dates early in March 1995, and to a Senior Customs Investigator, Mr. Rodrigue later on. Major Behn added the 895's are normally sent signed by the Commanding Officer as soon as possible in order that processing of payment can begin quickly. Major Behn testified Customs Inspector Rodrigue interviewed him by phone and told him that their administrative procedures were improper.

Major Behn added that, after 1995, the accounting of 895's was watched much more closely.

2. Captain Clifford Jamieson, a member of the regular Armed Forces, has been stationed at the Edmonton garrison since July 1996. From May to September 1995, Captain Jamieson acted as the adjunct to Lt. Col. Egan since the regular adjunct, Captain David Beyer was away. Captain Jamieson was also the Officer Commanding "A" Company stationed in Victoria during this time. When asked if a Reservist had ever requested to amend an 895 before it was sent to Victoria, Captain Jamieson said: "Yes for an additional payment to be added if a name had been omitted or if a Reservist had worked more hours than what was indicated on his pay sheet." He said he had never seen anyone strike a name from an 895. He added that a clerk can strike

off a name from an 895 before the sheet is sent to Victoria but it is hard to do once the pay sheet has been finalized. He added if a Reservist feels that he or she requires more pay in the event that he or she did not sign an 895, it is possible to fill out another sheet. He had never seen a name struck from any of the 895's until the case arose regarding Gordon Thomson. He had also never seen a situation when a Reservist requested permission to amend an 895 that he had already been paid for. For example, he said if a Reservist requests additional pay for something that he or she may not have been paid for, it is possible to complete one but it must be signed by his or her Commanding Officer. He added this can be done for a previous fiscal year providing a letter of explanation is prepared by the Reservist's Commanding Officer.

Captain Jamieson identified as Exhibit E-4, a very brief memorandum from Gordon Thomson to the Commanding Officer of the CSR dated 18 July 1995 that reads: "I request authority to amend attendance registers to reflect actual time worked on dates in question." Captain Jamieson received this when he was in the adjunct's office in July 1995. He added the grievor told him that he (Mr. Thomson) had a problem with his employer who was out to get him. Captain Jamieson testified he did not pass Exhibit E-4 on to Lt. Col. Egan. He added if Mr. Thomson wanted to remove his name from some pay sheets that were not yet processed, he had no difficulty with this. He added the grievor also wanted copies of his pay documents that had already been paid. Captain Jamieson felt that this was Mr. Thomson's right and he instructed the grievor to see the pay clerk and ask for what he wanted. He added however that the grievor could only amend pay sheets that were not yet sent out of his unit and that they needed to be seen by his Company Commander. When asked by Mr. Snyder if he allowed the grievor to alter already processed 895's, Captain Jamieson responded: "I did not give him permission to do this. They are audited documents and you can't just change original ones. There is a process to follow for ones that have already been actioned through the chain of command." Captain Jamieson added that, as Sergeant Thomson was a leading officer with a lot of experience whom he felt was in a mess, he tried to help him. He added: "He knew you cannot alter 895's already actioned but he could alter 895's not yet actioned and I was going to allow him to photocopy the old ones that were already actioned."

When asked if he ever told Sergeant Thomson that he could shred old 895's, Captain Jamieson responded: "He had no permission to do this, and I never told him to substitute, or alter or change any document that had gone outside his unit." Captain Jamieson said he told his commanding officer how he had dealt with Sergeant Thomson's request. He further testified that Lt. Col. Egan confirmed he had discussed this request with Sergeant Thomson as well. Captain Jamieson testified that in the fall of 1995 he spoke to someone from Revenue Canada regarding an investigation as well as to the Military Police.

During cross-examination, Captain Jamieson said he has been in the Canadian Armed Forces for eighteen years. When asked in general terms by Mr. Dann how 895's can be amended for militia personnel, Captain Jamieson admitted that the pay administration system for the militia is the worst problem that they face. He added he first found out the grievor had changed pay sheets sometime after he heard of the allegations against him, but he did not know if these changes benefitted Sergeant Thomson. He reiterated that when he was given Exhibit E-4, Mr. Thomson's memorandum to Lt. Col. Egan, either by the clerk or by the grievor himself, he clearly said that Sergeant Thomson could change 895's that were not yet actioned. Sergeant Thomson altered the documents in the adjunct's office in Victoria. He said that it was not necessary to receive approval from a Commanding Officer to remove a payment from someone, only if a payment was being added for someone. Captain Jamieson added: "A Sergeant like Thomson knows you do not change previously processed documents." Captain Jamieson threw out the original copy of Exhibit E-4 because he did not think it was necessary to keep it. He added he did not see the amended 895's but he recalls seeing Sergeant Thomson photocopying something in the adjunct's office. He added that Exhibit E-4 actually was not following the proper chain of command in that it was addressed by Sergeant Thomson directly to the Commanding Officer of the CSR.

3. Captain Ali Laal, a Reservist in the Militia, was the Unit Financial Officer and Logistics for the Administration Company in Victoria in 1995. He was a Lieutenant in 1995. He testified he would get the original 895's from "A" Company and the Administration Company in Victoria; "B" Company in Nanaimo would fax him copies of their 895's and send the originals to him later. The times worked on the 895's are transferred to an 896 form which is an individual pay document for a financial year

for each militia person. The original attendance registers are kept in the Finance office under lock and key for a period of up to two years. Other 895's are filed in storage somewhere in the base orderly room.

Captain Laal testified that he had no experience where a Reservist ever came to ask to amend an original copy of an 895. He had one full time clerk who worked in his office, a Private Glen Ereault. Captain Laal first became involved in the Thomson situation when the grievor called him sometime during the summer of 1995 from Nanaimo, to say that there were a few work dates in question between Sergeant Thomson and his employer that he wanted to verify with the records in Victoria. Captain Laal said he would have to speak to his Commanding Officer, that is Lt. Col. Egan, before he could release any information to the grievor. He said Lt. Col. Egan was already aware of the Thomson situation and told Captain Laal that he should cooperate. Captain Laal told Mr. Thomson that he was quite busy, but Mr. Thomson volunteered to prepare a letter for him regarding the dates in question. He identified this letter as Exhibit E-5 that refers to a number of dates between January 4, 1994 and April 8, 1995 where there may have been some confusion. Captain Laal testified the grievor wanted copies of his attendance registers for the dates in question but said he could not provide these to the grievor since there were hundreds of them in storage. He added the 896's do not indicate the exact hours worked but only whether a militia person worked a half-day or a full day. He did not confirm the actual times listed on Exhibit E-5. Captain Laal confirmed that he signed Exhibit E-5 but Sergeant Thomson had prepared it for him.

Sometime later, Captain Laal said he found out after discussions with Lt. Col. Egan, that Revenue Canada wanted copies of the 895's for the dates in question but since he was extremely short staffed he agreed that, if Sergeant Thomson helped to do a search for the copies of 895's for the dates on Exhibit E-5, he would cooperate. Captain Laal said he made it clear to Sergeant Thomson that the 895 originals were not to be removed from the office area; that his clerk, Private Ereault was to be with him at all times when he was reviewing the 895's; that the original 895's were to be photocopied and all other names blacked out and then a copy made of the blacked out sheet, so that only Sergeant Thomson's name would appear on the 895; and that the originals were not to be touched or altered in any way. He told Private Ereault that these documents were subject to audit and must be treated very

carefully and gave him the same instructions he gave to Sergeant Thomson regarding how to process them.

He added a few weeks later, Private Ereault told him that he (Private Ereault) was “busted and got caught”, with respect to how the 895’s were treated. Private Ereault told him that Sergeant Thomson had in fact altered some of the 895’s with liquid paper and that he had seen some on his desk that were tampered with liquid paper. Captain Laal added when he asked Private Ereault how he could let this happen, Private Ereault looked at him strangely. Captain Laal gathered that, since Sergeant Thomson was a senior non-commissioned officer, he had intimidated Private Ereault and that Private Ereault felt he was put in a position where he should let something happen and he never told Captain Laal what was going on. Captain Laal added Sergeant Thomson never told him that he intended to shred any of the original 895’s.

During cross-examination, Captain Laal admitted that he was aware of the practice of putting a time on a dated attendance register that did not necessarily reflect the exact time or date that a militia person worked. This was not done for Privates but for more senior personnel since officers are trusted. However, he generally assumed that all of the names and the times on a particular attendance register reflected that work was done on that day. Captain Laal stated that he would keep an 896 for two years in the office. He added when Sergeant Thomson first spoke to him on the telephone concerning the problem, he indicated that there were only a few days that he wanted Captain Laal to verify for him. Captain Laal indicated that he believed he and Sergeant Thomson met only once in Victoria, the day Sergeant Thomson offered to type Exhibit E-5 for Captain Laal’s signature. He added he did not see him type Exhibit E-5 but that it was acceptable and he signed it. Private Ereault told him that the grievor had been caught by Revenue Canada and that Sergeant Thomson had actually used liquid paper to alter documents.

4. Corporal Glen Ereault was a full time Private in the reserve in May 1995 and Assistant to then Lieutenant Laal (now Captain Laal) in the office in Victoria. During July and August 1995 there was only himself doing clerical work in the Victoria office. He first became involved in the situation concerning Sergeant Thomson during August of 1995 when he was advised by then Lieutenant Laal that Sergeant Thomson

was coming to the office to go through some 895's. Corporal Ereault was given the same instructions that were given to Sergeant Thomson by Lieutenant Laal; namely, that Sergeant Thomson could remove the original 895's from the file, photocopy the originals, black out the names and service numbers on the photocopies, except his own name of course, and then make a photocopy of the blacked out version and return the originals to the file. Corporal Ereault was to make sure that Sergeant Thomson followed these instructions. Corporal Ereault added the originals could not be amended since it was a legal document subject to military auditors. He testified Sergeant Thomson came into the office six or seven times during the two week period to review the 895's. He said he gave him the instructions as to how Sergeant Thomson should deal with the 895 documents but he did not help him directly by doing any writing or research for him. Corporal Ereault added the grievor at no time gave him any indication that he wanted to amend, shred, or replace some of the originals. The witness indicated that he would not have let him do this in any event. He added he saw the grievor remove and photocopy a certain number of 895's but that he was not in constant supervision of Sergeant Thomson. He stated that he saw the grievor put the files back but that he never checked to see if all the originals had been returned. Corporal Ereault said he saw the grievor change the work times on photocopies of the 895's with liquid paper three or four times but he did not know how many forms were altered. He added the grievor did not discuss what he was doing at the time with him. As far as Corporal Ereault was concerned, they were Sergeant Thomson's personal copies; he was of a superior rank to the witness and it was not his place to question him.

Corporal Ereault testified that in January 1996 he noticed some of the original 895's had been altered with liquid paper next to Sergeant Thomson's name. He then recollected the August 1995 visits by Sergeant Thomson. As far as he could recollect, he had never seen any 895's altered before since they are legal documents and this could not be allowed to happen.

During cross-examination, Corporal Ereault said he never told Captain Laal that he got "busted or caught" and he was not aware that Revenue Canada had found out Sergeant Thomson had altered documents. Corporal Ereault added that the 895's were audited in 1995 and the audit passed. He did not see the results. In early 1996, Corporal Ereault said he told Captain Beyer who was the adjunct to Lt. Col. Egan that

he had seen the grievor alter the photocopied versions of the 895's when he was in the office in August of 1995. He later saw original copies whited-out. Corporal Ereault added that he never spoke to Lt. Col. Egan about this situation but the Military Police contacted him around January or February 1996 and took a statement from him. He did not recall writing a statement to Captain Beyer explaining what had happened in August 1995.

5. Lieutenant Colonel Derek Egan is the former Commanding Officer of the Canadian Scottish Regiment in Victoria during the time of the incident concerning Sergeant Thomson. He is a member of the Militia and also the Deputy Chief Constable for the Saanich Police Force. In January 1995 Lt. Col. Egan recalled a meeting he had with Barry McKee, Manager, West Coast and Yukon District, Revenue Canada, Victoria, when he discussed with him the pay system for the militia. Lt. Col. Egan said he told Mr. McKee he was unsure about his authority to release 895's because of the *Access to Information Act*, but that he would follow up and get back to Mr. McKee as soon as possible. Lt. Col. Egan testified he spoke to a Lieutenant Graham Underwood, a lawyer in Vancouver and member of the Naval Reserve, to find out if he could release 895's and was told that they could be released through the *Access to Information Act* or by a very strict protocol; that is, photocopying the original and blacking out all but Sergeant Thomson's name, then making an additional copy of the blacked out version and releasing that to Sergeant Thomson; it could then be released by Sergeant Thomson to Customs. Lt. Col. Egan advised Captain Laal that this process would be acceptable and he advised Revenue Canada of the same. Lt. Col. Egan testified he told Sergeant Thomson exactly what the protocol would be in order to get copies of his 895's for the dates in question. Lt. Col. Egan testified that he never gave permission to Sergeant Thomson to alter 895's since this would be illegal. Lt. Col. Egan testified in the fall of 1995, Senior Investigator Rodrigue attended his office in Victoria with Captain Beyer, his adjunct. He became aware that Captain Beyer had a sealed envelope with the copies of the 895's in it that Sergeant Thomson wanted. Lt. Col. Egan recalled that, on that particular day, a parade day in Nanaimo, he phoned Sergeant Thomson and asked him if he (the witness) could give the envelope with the 895's in it to Inspector Rodrigue. As Sergeant Thomson said that he could, he opened them and reviewed them with Mr. Rodrigue. Lt. Col. Egan testified Mr. Rodrigue told him at the time that he believed some of the

895's had been altered and times were changed. Lt. Col. Egan testified he and Mr. Rodrigue examined them carefully and it appeared that some times had been changed on some of the 895's. Lt. Col. Egan asked Captain Beyer to conduct a Company investigation. This was done, and Captain Beyer told Lt. Col. Egan that he believed some of the 895's had been altered by Sergeant Thomson in the pay office and some original 895's had been removed from the files and destroyed. A Military Police investigation followed. Lt. Col. Egan said that the 895's in question were not released to Mr. Rodrigue because there was a Military Police investigation. Lt. Col. Egan wrote Mr. Rodrigue accordingly on December 15, 1995 (Exhibit E-6) indicating that he would not be providing him with copies of Sergeant Thomson's attendance registers. Lt. Col. Egan added he believes Mr. Rodrigue wanted the original copies of the 895's and not the photocopies.

During cross-examination, Lt. Col. Egan corrected himself and said that he thought the first time he was contacted regarding this matter was in February or March of 1995 and not January 1995. He looked at two letters from Barry McKee, addressed to him in March of 1995 as Exhibits G-1 and G-2, asking for the 895 information that Revenue Canada was looking for but he could not recall getting either Exhibits G-1 or G-2. Lt. Col. Egan believed that he had instructed Captain Laal to give the 895's to Sergeant Thomson and that he had spoken with Captain Jamieson who had a great deal of authority in the unit since he was there all the time and was able to exercise a lot of judgment regarding correspondence, for example. He added Captain Jamieson would brief him every Thursday about what had gone on during the week. Lt. Col. Egan testified that he had never received a memorandum addressed to him from Sergeant Thomson requesting copies of the 895's (Exhibit E-4) but he found out later there was one which he never saw. He testified he did not believe Captain Jamieson exceeded his authority by not showing it to him at the time. Lt. Col. Egan believed he became aware of the existence of Exhibit E-4 in July 1995. Lt. Col. Egan reiterated that he informed Captain Laal and Captain Jamieson what his instructions were regarding Sergeant Thomson retrieving 895 information. He felt Captain Laal would have had a member of Captain Laal's staff prepare the information for Sergeant Thomson. Lt. Col. Egan became aware in the fall of 1995 that it was in fact Sergeant Thomson who retrieved the information for his own benefit. When he learned this, he took no action because there was an investigation going on internally

by Captain Beyer since Captain Beyer believed Sergeant Thomson had altered originals and destroyed others.

When asked if it was permitted for a leader to log time on an 895 that was not his actual hours of work, Lt. Col. Egan said it was not condoned but it happened. Lt. Col. Egan recalled meeting in the fall of 1995 with Captain Beyer and Investigator Rodrigue. When asked by Mr. Dann if Lt. Col. Egan remembered telling Mr. Rodrigue that he deplored Sergeant Thomson's behaviour, Lt. Col. Egan responded he did not use the word deplored but wished Sergeant Thomson had been more cooperative early in 1995. He first became involved in this matter when Sergeant Thomson contacted him in February 1995, when Sergeant Thomson asked him to speak to Superintendent McSeveney to explain the militia pay process. He spoke to Superintendent McSeveney and then he told Sergeant Thomson that he should cooperate in any way that would make matters easier for everyone. Lt. Col. Egan added Sergeant Thomson told him he felt there was animosity between Sergeant Thomson and Mr. McSeveney. Lt. Col. Egan said he told Sergeant Thomson: "To take his lumps and cooperate"; he added that after Mr. McKee spoke to him, he again told Sergeant Thomson to cooperate since he did not believe this incident was going to go away. Lt. Col. Egan spoke to Mr. Rodrigue several times on the telephone who told him that Sergeant Thomson was not cooperating. Lt. Col. Egan added he told Sergeant Thomson again to be forthright and to cooperate, and that by September 1995 he felt Sergeant Thomson did not appreciate the seriousness of the problem. Lt. Col. Egan indicated that during a number of phone calls from Mr. Rodrigue regarding the release of 895's, Mr. Rodrigue said that he had not yet received them. Lt. Col. Egan said he would speak to Sergeant Thomson and would try to get them. Lt. Col. Egan recalled in November 1995 speaking with Mr. Rodrigue, and the gist of the conversation was that 895's had been falsified by Sergeant Thomson.

6. Captain Peter Moseley is the Captain of a vessel docked in Nanaimo called the Blaze, a commercial fishing troller. Captain Moseley testified that during the evening of January 26, 1995 he was on his vessel coming back to Nanaimo from Billingham, U.S.A. Between the hours of 2130 and 2300 on that evening he tried to contact the port of Nanaimo to arrange for a Customs Inspector to meet him when he arrived in the harbour to provide clearance for his re-entry into Canada. Captain Moseley testified that he called two phone numbers at least a half dozen times before he

arrived in Nanaimo around 2300 hours. He also called the Revenue Canada office once from a pay phone on the wharf where his boat is docked. Captain Moseley identified a selective boarding document provided to him by Revenue Canada with phone numbers on it (Exhibit E-7). For Nanaimo, numbers 0344 and 0341. He said that since he received no answer from the Nanaimo office during all of his attempts to reach it, he called the Vancouver number on Exhibit E-7 to get a temporary clearance. When he called the Nanaimo office, he said the phone rang seven to eight times and that he never got an answer from an answering machine, from a voice mail or a fax line. Captain Moseley said he called a number in Victoria on the selective boarding sheet and he got through to the Victoria airport; they gave him the marine number to call in Vancouver also handwritten on the selective boarding sheet (Exhibit E-7). He said he called that number from his boat and was told that he could go in the next day to the Nanaimo office with his papers. He closed his boat down and went home. Captain Moseley testified that the next morning on January 27th at approximately 0930 hours he went to the office to clear in and explained his story from the night before to an officer but he could not remember who it was.

During cross-examination, Captain Moseley said he had cleared Customs many times in Nanaimo and that he would be met when returning to the harbour. He had never had any problem with the telephone in the past. He reiterated that he called both Nanaimo numbers on the selective boarding sheet but did not get through to any of the numbers in Nanaimo. The phone just kept ringing. Captain Moseley said he expected to get service twenty-four hours a day and that after 2300 hours there was always someone on standby from Revenue Canada.

7. Barbara DeGrace was a Senior Customs Inspector in 1995. The bulk of her duties involved clearing vessels. There were three shifts in 1995: 0700 hours to 1500 hours, 1500 hours to 2300 hours, and 0830 hours to 1630 hours. She testified that normally there were three Customs Inspectors on a shift at one time and after 2300 hours there was a Duty Officer on standby. The main phone numbers for their office are 0341 and 0344 (see Exhibit E-7). She testified that during the evening shift there is a cell phone that is used by the Duty Officer in case he or she has to go to the airport or port to clear somebody and the second phone is used by the Standby Officer from 2300 to 0700 hours the next morning. The call forward feature is on both lines in the office and there are three different options one can use if one is attempting to

reach the office. She said on line 0341 there is an option for an answering machine that says you can call 0344. She said the line 0344 can be call forwarded to the cell phone. Witness DeGrace said that if an officer forgets to activate 0341 it would just ring. If the machine was on, 0341 would ring once and then switch to 0344 but you would hear the first ring. When asked if there were any problems with the phone in 1995, she responded that sometimes there was a loose wire that would not activate the machine, but the phone would ring on line 0341 in any event. She also added that sometimes the machine would kick in on its own for some strange reason. She identified the call forwarding instructions as Exhibit E-8 and stated that the cell phone number 5820 was normally the one given to the person who was on duty from 1500 to 2300 hours. If that individual went out to check an entry for some reason, the phones would be call forwarded to cell 5820. She added before leaving the shift at 2300 hours the Duty Officer would forward the phone to the Standby Officer. The call forwarding feature would be cancelled by the officer who was on duty normally at 0700 hours the next day.

Inspector DeGrace said that another option for using the phones would be to put the 0341 main line directly on to the cell phone 5820 to get all phone calls coming in from wherever but even so, the phone in the office would ring once on all lines even if it was forwarded to the cell phone. She added that, if the lines were both forwarded to the cell phone but the cell was turned off, anyone trying to reach the office would get the message from the cellular operator that the line was not available and try again. She added even if the cell phone was dead, the same message would be given to someone trying to reach it. She added if 0344 was not working properly, the phone would still ring in the office.

Witness DeGrace also added that if both numbers were on call forward to the cell, one would have to have 0344 forwarded to 0341. She said the office also had a fax number, and there were never any complaints from clients during her years in the office regarding dead lines or getting a fax tone when they were trying to phone. She also could not recall ever getting a complaint from working colleagues regarding problems with the telephones. She met Captain Moseley on the morning of January 27, 1995 when he came in to report the incident of the night before. She did a report that same morning regarding the complaint by Captain Moseley (Exhibit E-9). Ms. DeGrace thought that when Inspector Sendey, the first person in the next morning

on January 27, 1995 at 0700 hours came in, the answering machine was on line 0341. Mr. Sendey had been the Standby Officer the night before and should have got a call forwarded to him from the office telephone if indeed a call had been placed. When asked what Captain Moseley had told her, Inspector DeGrace said he phoned on his way in from the U.S.A. but the phone just kept ringing. She said she gave Exhibit E-9 to her Chief, Caroline Bradfield. Ms. DeGrace identified a General Declaration regarding Captain Moseley's return that indicates there was no answer on lines 0341 or 0344 between the hours of 2130 and 2300 hours for January 26, 1995 (Exhibit E-10). Exhibit E-10 was signed by Captain Moseley.

During cross-examination, Inspector DeGrace testified that the phones in the office are located on the desk just behind the counter at the entrance area. She added the washroom is down the hallway and that you could not hear the phone from the office, but one should never leave the phone unattended. She added that Mr. Sendey did not receive any calls after 2300 hours on January 26, 1995. The loose wire was repaired eventually but she was not sure when. She added however even if there was a loose wire, 0341 would normally ring. She could not recall any time when all of the phones in the office did not work. When asked if both lines were call forwarded and if the cell phone was off, would 0341 ring once, she responded: "Yes." She denied telling Chief Bradfield that Mr. Thomson had gone to the militia on January 26, 1995 but she knew he was a member.

8. John Sendey, a Customs Inspector in Nanaimo since 1978, was on standby duty from 2300 hours January 26 to 0700 hours on January 27, 1995. He testified that during the night he did not receive any calls even though both lines had been call forwarded when he went into the office on the morning of January 27, 1995. He identified his report regarding the office phones on January 27, 1995 as Exhibit E-11. He said the answering machine did not seem to have been activated. Mr. Sendey added that even if the answering machine is on you can hear the phone ring once when you are in the office and then you can hear the machine clicking on. He did not recall any troubles with the lines coming into the office and there were no complaints from customers regarding improper circuits on January 26 or January 27.

During cross-examination, Inspector Sendey said that in January it was not normal to get calls on standby since it was not a very busy time of the year. He

testified that there was a problem with one of the wires under the carpet to the telephone when the chair rolled over it but that he did not think it ever caused a problem with line 0341.

When asked if he knew of anyone who had combined his or her lunch and coffee break to leave early, he said yes he did it once during the winter on a Saturday and a Sunday but his supervisor was aware that he was doing this. He added however that a memorandum was sent, probably sometime after he combined his lunch and coffee, instructing staff not to combine lunch and coffee breaks together and then leave early. When asked if he told Chief Bradfield that Sergeant Thomson had spent Thursday evening, January 26, 1995 at the Nanaimo militia camp, Inspector Sendey responded: "No I did not."

During re-examination Inspector Sendey recalled seeing the memorandum once regarding combining coffee breaks and lunch breaks but added that he sometimes would leave at 1545 hours in the winter time but his supervisor was aware of this. He added that the sometimes faulty telephone line under the carpet, he was sure, was not line 0341 or 0344.

9. Caroline Bradfield has been Chief, Customs Operations in Nanaimo since 1994. She testified that after 1630 hours there is only one Customs Inspector on duty during the off season between October and April. The grievor was on duty from 1500 hours to 2300 hours on January 26, 1995 (Exhibit E-12). The grievor was paid for his shift on January 26, 1995 as per Exhibit E-13. The witness testified that during a 30 minute lunch period employees are not paid but for two 15 minute coffee breaks the employees are paid. There is a policy that does not allow employees to combine their lunch and coffee breaks as evidenced by her memorandum of August 4, 1994, addressed to "All employees, Customs Nanaimo" (Exhibit E-14), and this policy was the same one that was in effect before she became Chief in Nanaimo. Ms. Bradfield also testified Mr. Thomson would have required military leave to attend military functions as per the policy outlined in Exhibit E-15. When asked if in January 1995 Mr. Thomson had been given permission to combine lunch and coffee breaks to attend a military function, Chief Bradfield responded: "No. He had no authority to attend military activities while on shift." Chief Bradfield testified that when Customs Inspector DeGrace approached her on January 27th to tell her about the

incident the night before involving Captain Moseley, she asked Inspector DeGrace to submit a written report (Exhibit E-9). She testified that she gave Exhibit E-9 to Mr. Thomson and asked him for his response as soon as possible. She identified Inspector Thomson's response as Exhibit E-16. Chief Bradfield testified that according to Exhibit E-16 the grievor went out for dinner at 2000 hours and that he should have been back at 2030 hours. When he wrote in his memorandum that he had been in the office between 2130 hours and 2300 hours she believed him. When asked what happened next, Chief Bradfield said someone had told her there had been a militia meeting on January 26. She knew Inspector Thomson was a member of the militia. She called him back to her office to see if he wanted to add anything to Exhibit E-16. She said he told her no, that he had nothing further to add, that he was sorry there was a problem on January 26th. Chief Bradfield testified that she asked Inspector Thomson if there had been a militia meeting on the 26th of January to which he responded: "Yes", and that he had combined his coffee and lunch breaks to go up to the meeting. Chief Bradfield recognized that Mr. McSeveney was also a member of the militia and the person to whom Gordon Thomson reported. She asked him to look into this matter a little further. Witness Bradfield identified an incident report that she wrote on February 6, 1995 (Exhibit E-17) after discussing further the incident of January 26 with Gordon Thomson. In Exhibit E-17 she referred to the fact that Mr. Thomson acknowledged he made an error with the cellular phone by not returning it from call forward after he came back from attending the militia meeting.

Witness Bradfield identified an E-mail that she sent to her boss, Mr. Barry McKee, regarding the problem of January 26th where she stated that other staff members advised her that they believed Mr. Thomson had attended a militia meeting on January 26th (Exhibit E-18). Chief Bradfield highlighted the fact in Mr. Thomson's response to the confusion surrounding January 26, 1995 (Exhibit E-16); there is no mention there that he went to participate in a militia function. Chief Bradfield's suspicions were therefore aroused and she wrote a second incident report (undated) (Exhibit E-19) indicating that an investigation should be conducted to determine whether the situation on January 26th was an isolated incident.

Chief Bradfield identified the evening shift check off list that indicates what an officer should do on leaving the office at the end of an evening shift (Exhibit E-20).

Chief Bradfield identified a memorandum from Superintendent Bill McSeveney from Campbell River, Revenue Canada, Customs and Excise indicating that Mr. McSeveney had requested information from the militia regarding attendance at parades as Exhibit E-21. Chief Bradfield testified that because she suspected there may have been other occasions when the grievor was absent without permission, she looked at the shift schedules as far back as January 1993 when Inspector Thomson would have been alone on shift on Thursdays and Saturdays, the two days where there were militia meetings. She prepared a list of dates when his Revenue Canada schedule may have overlapped with a militia meeting and sent it to Lt. Col. Egan to see if in fact Inspector Thomson had been paid twice (Exhibit E-2). The shifts attached to Exhibit E-2 were scheduled when Inspector Thomson was either alone or unsupervised on a Saturday day shift. She said there were a total of 50 shifts on both sheets that she sent to Lt. Col. Egan.

Chief Bradfield identified a memorandum from Bill McSeveney to herself dated February 21, 1995 indicating that it would be very difficult to get the information they requested from the military without the authority of Inspector Thomson (Exhibit E-22). Chief Bradfield then identified another E-mail sent by her on March 2, 1995 to Germaine Lafortune, Head of Staff Relations, Revenue Canada in Vancouver, indicating that she was attempting to get more information regarding this incident particularly since the Deputy Minister at the time expressed an interest in getting a report on this (Exhibit E-23). Chief Bradfield identified an additional incident report regarding the January 26 incident dated March 4, 1995 as Exhibit E-24 and an additional interview she had with Gordon Thomson on March 13th where Mr. Thomson explained to her that Lt. Col. Egan had told him that there would be an apparent overlap of work for both Customs and the militia at the same time on six evenings and one Saturday (Exhibit E-25). Chief Bradfield commented at this point during the hearing with respect to wrongdoing referred to in Exhibit E-25, that Mr. Thomson did not seem to mind being away at the militia when he was supposed to have been doing Revenue Canada duties instead. She reiterated that he had no authority to leave for such purpose, nor could he combine his coffee breaks with his meal break. She identified an additional memorandum sent to her on March 14, 1995 from Bill McSeveney with respect to the release of 895 information if Inspector Thomson authorized such a release (Exhibit E-26). Chief Bradfield identified

another E-mail from herself to Mr. Barry McKee dated March 14, 1995 expressing her view that there may be more than seven dates when Inspector Thomson could have combined his militia work with his Customs' duties (Exhibit E-27). She identified Inspector Thomson's personal authorization dated April 11, 1995 to review his time sheets while attending militia meetings between January 14, 1993 and January 28, 1995 (Exhibit E-28). Ms. Bradfield identified another memorandum from Mr. Thomson dated April 20, 1995 identifying seven dates where there was a potential overlap between his work with the militia and Revenue Canada (Exhibit E-29). She added that, since there were no supporting documents to prove the dates on Exhibit E-29, she contacted Lt. Col. Egan to confirm those dates; she identified a summary of her conversation with Lt. Col. Egan on April 20, 1995 as Exhibit E-30. Chief Bradfield identified a follow-up memorandum she sent to Mr. McKee on April 20, 1995 in which she expressed her frustration with the fact that the military was not doing everything possible to provide her with the information she had been requesting (Exhibit E-31). Chief Bradfield continued to express her interest to Lt. Col. Egan in getting as much information as she could as is indicated in the fax she sent him on April 20, 1995 (Exhibit E-32). Chief Bradfield identified a response to her fax from Lt. Col. Egan dated May 3, 1995 confirming that the seven dates mentioned in Mr. Thomson's memo to her (Exhibit E-29) were in fact dates when Sergeant Thomson did parade with the militia (Exhibit E-33). Ms. Bradfield identified an E-mail sent to Brian McKee on May 8, 1995 in which she refers to a discussion with Inspector Thomson of that day indicating that Inspector Thomson still maintained that the only conflict occurred on January 26 and that she did not believe him (Exhibit E-34).

Witness Bradfield identified a summary of notes of another interview she had with the grievor on May 9, 1995 attended also by the grievor's wife, Maureen Thomson as Exhibit E-35. She concluded at the end of this interview that the grievor still did not fully understand the allegations against him, even though he expressed some regret for the inconvenience the investigation was causing everyone. Ms. Bradfield went on to point out in Exhibit E-35, page 2, last paragraph, that Mr. Thomson was aware of the military leave policy (Exhibit E-15) that was attached to the summary notes of Exhibit E-35. The witness identified a letter she received from Major Burns that explained how Mr. Thomson would have reported his work times on the 895's

(Exhibit E-36). With particular reference to Exhibit E-35, page 4, paragraph 5, where the grievor refers to burdening the system of Revenue Canada Administration if he had asked on fifty or sixty occasions for military leave, whether or not he was actually suggesting that he had been away from Revenue Canada on fifty or sixty occasions to do military activities, Chief Bradfield understood by his comment that he had been away that often.

Chief Bradfield identified four letters of support for the grievor testifying to his whereabouts for January 26, 1995 that were received from four members of the militia in Nanaimo (Exhibit E-38).

Witness Bradfield identified a May 10, 1995 memorandum she sent to Barry McKee (Exhibit E-39) further explaining to Mr. McKee the incident under investigation; in particular she referred to page 2, bullet 3, where she indicated that Mr. Thomson did not see anything wrong with attending militia activities while on duty for Revenue Canada providing he took a cellular phone with him while he was working. Chief Bradfield ended Exhibit E-39 to Mr. McKee by recommending a suspension of significant duration be imposed upon Mr. Thomson.

Chief Bradfield explained that she was still not comfortable at this point in the investigation with respect to the grievor's military attendance sheets because no one from Revenue Canada had reviewed any of the military documentation that she had been requesting from Lt. Col. Egan. Chief Bradfield explained earlier that she had communicated with a Ms. A. Flagel, Staff Relations, Revenue Canada, Vancouver to try to get Ms. Flagel to look at the military records. Finally, Chief Bradfield received a copy of a memorandum from National Defence, Director of Pay Services in Ottawa sent to Linda Maher, Staff Relations, Revenue Canada Personnel, in Ottawa (Exhibit E-40) that showed some of the attendance records of the grievor while on militia duty. Chief Bradfield now finally had something from the military confirming half days or full days from April 1994 until April 1995 that the grievor had been paid for while on militia duty. Chief Bradfield then did a comparison of Customs hours worked and the grievor's militia payments from Exhibit E-40 for the period April 1994 to April 1995, and sent a copy of this to Ms. Flagel (Exhibit E-41). Ms. Bradfield did not draw any conclusions from the shift comparison on Exhibit E-41; she just compared them for the purpose of identifying potentially conflicting dates where the

grievor was on duty with Customs. She noted however in a covering memorandum to A. Flagel that in all previous discussions with the grievor, they had only focussed their attention on Thursdays and Saturdays, not on any other days, some of which are referred to in her comparative study, in particular, some Tuesdays when the grievor drew pay from both sources, the militia and Revenue Canada. Chief Bradfield then identified as Exhibit E-42 a further accounting of dates worked for the militia by Sergeant Thomson for the period April 1993 through to March 1994 again showing full days or half days for which he was paid. She did another comparison of Customs' duties compared to militia payment as indicated on Exhibit E-42 and identified this comparison as Exhibit E-44, again showing Customs' hours worked compared to militia payment received for the same work period. Chief Bradfield convened another interview meeting with Mr. Thomson for June 6, 1995 and identified the summary notes of that meeting as Exhibit E-43. She indicated that at that meeting she showed the grievor his militia record of payments as sent to her by National Defence Headquarters in Exhibits E-40 and E-42. She also testified that she gave a comparative analysis of the times worked for Revenue Canada and the days that the grievor received militia payment (Exhibits E-41 and E-44) to Mr. Thomson at the June 6th meeting and highlighted all areas of apparent conflict for him. Chief Bradfield indicated that the total number of overlapping dates that were highlighted were 39. The grievor worked alone for part of or all of the highlighted 39 shifts.

Mr. Snyder pointed out on the comparative work schedules from Exhibit E-44 that on May 6, 1993 the grievor was on Family Related Leave from Customs but was paid one-half day for militia activities; on November 4, 1993 the grievor was on sick leave but was paid a full day for militia activities; and on November 17, 1994 the grievor was on sick leave from Customs but was paid one-half day for militia activities.

Chief Bradfield pointed out on Exhibit E-44, that the seven dates that the grievor identified where there was an alleged conflict, are all listed as provided by the grievor in Exhibit E-29. Chief Bradfield added that, even though the seven dates were provided by Mr. Thomson, there are a total of 39 days of potential conflict between both work schedules for Customs and militia; she indicated this to the grievor during the interview she had with him on June 6, 1995 (Exhibit E-43), bottom of page 1 and top of page 2. With reference to Exhibit E-43, page 2, paragraph 3, Chief Bradfield said

that this admission by Mr. Thomson that he was sometimes absent from the office for his half hour meal break only, did not coincide with what he told her earlier regarding the evening of January 26, 1995 when he admitted he had combined his meal and coffee breaks to go to the military establishment in Nanaimo. Again she referred to Exhibit E-43, the last paragraph on page 2 and the first paragraph on page 3 that reads:

Mr. Thomson stated that he had no further information to add; that he had already explained everything to Ms. Bradfield. Mr. Thomson further stated that he makes every attempt to have Militia clients see him when he is not working Customs shifts however, if he receives a call from the Militia and is working a Customs shift which is not busy, he may go to the Military camp on his meal break to deal with the client. Mr. Thomson stated that it would be possible for him to call Chief Bradfield or Superintendent McSeveney to obtain permission to combine his meal period with his coffee break on such occasions if this is what Ms. Bradfield would prefer.

Ms. Bradfield testified that this is not what Mr. Thomson had said to her earlier. She said he would need permission to attend military activities while on Customs duty. She said he first told her he would go on his meal breaks and now he was telling her that he would combine his breaks, coffee and meal. She did not believe him because, on the balance of probabilities, there was no consistency in his explanations in her mind and he was not forthcoming from the beginning of the investigation. With respect to page 3 of Exhibit E-43, the reference to Chief Ruttan (her predecessor), allegedly telling Mr. Thomson that his time was his own if his work was done, Chief Bradfield said that this was not true. She called former Chief Ruttan to confirm this and he in fact said you cannot do what you want, and cannot leave the work place when you wish without permission.

Chief Bradfield identified an E-mail she sent on June 7, 1995 to Barry McKee indicating that in her opinion there were 39 occasions when the grievor received pay from the militia while working on evenings or mid shifts for Customs (Exhibit E-45). Chief Bradfield identified a summary of another meeting with Gordon Thomson on June 6, 1995 that indicates all of the 39 dates where she saw a potential conflict between his Revenue Canada and militia duties (Exhibit E-46). Chief Bradfield again

recommended at the end of Exhibit E-46 that the grievor be suspended until a final decision was reached as to the quantum of discipline that should be imposed on him.

Ms. Bradfield identified Exhibit E-5, that is the memorandum signed by Captain Laal summarizing attendance registers for the grievor between January 4, 1994 and April 8, 1995. The witness said she saw this for the first time the same morning she was to have a disciplinary hearing for the grievor on July 28, 1995 when she discovered it was slipped under her door. Chief Bradfield identified as Exhibit E-47, a copy of Exhibit E-5 to which she had added the times for Customs shifts that coincided with the list of militia register attendance on Exhibit E-5. Exhibit E-47 includes the seven dates of potential overlap provided to Chief Bradfield by the grievor when he submitted Exhibit E-29. Chief Bradfield testified that initially she thought it would be impossible to compare Revenue Canada times with his attendance register times from the militia but she now realized she could compare all of his potential shifts of overlap even though seven were only initially given to her on Exhibit E-29 and confirmed by Lt. Col. Egan. By doing this comparison, Chief Bradfield recognized that on January 6, 1994, on April 28, 1994, and April 30, 1994, there was no conflict between work schedules. She identified October 19, 1994 as a conflict and November 17, 1994 as a potential conflict since the grievor had booked in sick to Customs but was apparently paid for militia activities. She recognized January 26, 1995, the time of the original complaint from Captain Moseley, was a conflict as well since the grievor, by his own admission, said that he had done militia work that evening.

Chief Bradfield identified an E-mail she sent to Barry McKee (Exhibit E-48) outlining her analysis of Exhibit E-47. What was to have been a disciplinary meeting on July 28, 1995 was turned into a hearing instead. The grievor's father was permitted to attend. Chief Bradfield identified summary notes of the interview with the grievor on July 28, 1995 as Exhibit E-49. She indicated at the outset of this meeting that it was only fair to the grievor that the material she had received under her door that morning be reviewed with him and that a disciplinary meeting be postponed.

Chief Bradfield indicated that the grievor went on vacation for the month of August 1995 and that she was away for the month of September and the first two

weeks of October 1995. When she returned, the incident was being investigated by Norm Rodrigue of the Internal Affairs Section of Revenue Canada. Chief Bradfield assisted Mr. Rodrigue by posing some questions to Mr. Thomson on October 18, 1995 (Exhibit E-50) that Mr. Rodrigue had developed. Chief Bradfield identified the *Code of Conduct and Appearance* for Customs and Excise that she said was given to all Customs employees (Exhibit E-52). Chief Bradfield identified sections of the *Code* that had been breached in her mind by the grievor as: page 007 1.(d), 1.(e)5, page 009 8. and 9., page 010, 10.(b)(1), (2) and (4) which would have been breached by the grievor on January 26, 1995 when Captain Moseley attempted to contact the office to check in with his vessel. Chief Bradfield also believed that the grievor had breached section 11.(a)(1) on page 12 and section 40 on page 21. She also identified a position description for the grievor's position and identified certain elements that applied to him (Exhibit E-53).

When asked why Chief Bradfield had recommended on June 9, 1995 in her summary notes (Exhibit E-46) that the grievor be terminated, she stated that she felt that a Customs Inspector needed to have a high degree of integrity in the exercise of his duties and should be beyond reproach. Mr. Thomson had failed in this. She referred to the number of duties that he must perform as outlined in Exhibit E-53 dealing with many statutes and regulations, processing customs entries, handling revenue, inspecting vessels and aircraft and that she had concerns regarding his honesty from the beginning of what was a routine response to a complaint. She said that throughout the course of the investigation the grievor was not forthcoming and that when he was only confronted about what really happened on January 26, 1995, he finally admitted he went to the militia camp for about an hour. She testified that his dates had changed, information had changed, and that he had in fact asked to amend pay sheets, and was dishonest with her. She referred to his statement that a former Chief Ruttan had empowered him to be able to go to the militia, even though Chief Ruttan told her he had never said that, and she concluded that Mr. Thomson had lied. She indicated that the grievor took three days of sick leave on November 4, 1993 (Exhibit E-44) but yet he claimed and was paid for one full day of militia activity. Chief Bradfield added that in a small port like Nanaimo, an employee often works alone and is under no direct supervision. She concluded there were lots of time frame conflict between the grievor's militia duty and Revenue Canada duty. She admitted

that she considered other factors: the grievor's length of service, approximately 13 years; his performance reviews that had been satisfactory; he never expressed any appreciation or acknowledgment of his wrongdoing; he amended and shredded military documents; there was no evidence he ever misunderstood any of the rules or regulations or instructions of Revenue Canada employees. She therefore recommended termination to Mr. McKee on June 9, 1995 in Exhibit E-46.

During cross-examination by Mr. Dann, Chief Bradfield said that an employee did not necessarily need written permission to combine a coffee and lunch, but one did need permission and that her memorandum to this effect (Exhibit E-14) was posted and circulated to all staff in August 1994 when she became Chief.

Chief Bradfield identified a handwritten memorandum she gave to the grievor on February 2, 1995 (Exhibit G-3) asking him to provide a written response to the incident complaint that came from Captain Moseley (Exhibit E-9). Chief Bradfield testified that Exhibit E-9, Senior Customs Inspector DeGrace's report of the January 26th incident, was faxed to Bill McSeveney on January 27th by her Assistant with Chief Bradfield's permission. Chief Bradfield recognized that the grievor responded on the same day, February 2, 1995, that she asked for his response to the incident of January 26. She said she did not specifically ask him in her memorandum to explain his whereabouts at 2000 hours on January 26. With respect to the grievor's response in Exhibit E-16, and whether or not she asked Ed Reid, a Customs Inspector in Sidney near Victoria, about his comment that there was a dead line in the office, she said, yes she had. She admitted there was a discrepancy between what Mr. Reid said and what Captain Moseley said, but she never found out the reason for the different stories regarding the phone in the office on the evening of January 26, 1995.

Chief Bradfield agreed with Mr. Dann during her first interview with Gordon Thomson regarding the incident of January 26 (Exhibit E-17) that the grievor did admit he had combined his lunch and two coffee breaks to go up to the militia location, that he stated he was sorry about the incident of January 26, and that he made an error with the cell phone by returning it from call forward. Regarding the reference in Exhibit E-18 to four staff members advising her separately that they believed Mr. Thomson attended a militia meeting on the evening of January 26, Chief Bradfield could not recall who the individuals were, only that his militia

attendance had been discussed in the outer office area. With respect to the reference in Exhibit E-18 to “above discrepancy”, Chief Bradfield said that Mr. Thomson first told her that he took his normal meal break at 2000 hours and went out of the office, but then he later said he combined his coffee breaks with dinner to go to the militia. Chief Bradfield could not recall ever discussing combining breaks with meals to leave the work place with the grievor, but she did remember her memorandum (Exhibit E-14) was posted for all staff to see. She agreed that she was speculating somewhat in Exhibit E-18 that there may have been other occasions when the grievor was absent from his Revenue Canada work for militia duties, but she added, he did work unsupervised on a number of occasions. Chief Bradfield also acknowledged in Exhibit E-19, an incident report that she wrote, that she had had a conversation with Customs Inspector Reid from Sidney and he stated there was something wrong with the telephone line on January 26, 1995. He was unable to receive an answer. Chief Bradfield testified with respect to Exhibit E-19, page 2, paragraph 1, that she began the investigation into the grievor’s activities in view of Mr. Thomson’s failure to mention his attendance at the militia meeting and his apparent reluctance to fully account for his whereabouts on the evening of January 26 in his response to her request for an explanation as to what happened that night.

With respect to Exhibit E-20, the evening shift check off list, Chief Bradfield confirmed that the ASI Reports are a statistical report that should be faxed to Vancouver at the end of every evening shift. She did not know at this point during the hearing if this had been done for January 26, 1995.

Chief Bradfield identified as Exhibit G-4, a series of E-mails she sent to Barry McKee on February 7, 1995.

With reference to Exhibit E-23, an E-mail between Chief Bradfield and Germaine Lafortune, in Vancouver, Chief Bradfield confirmed that Lt. Col. Egan had said to Mr. McSeveney that he would advise Mr. Thomson to come forward to either Chief Bradfield or Mr. McSeveney and “come clean”, or something along those lines. Chief Bradfield testified she did not wish to appear to be harassing Mr. Thomson in Exhibit E-23. She added, if Deputy Minister Gravelle had received a report regarding the incident, it would not have been through her but through Staff Relations and she would not have seen it. Chief Bradfield wished in March 1995 that the investigation

into the incident had been done from the beginning by somebody outside of her office but that was not to be until the fall of 1995 when Senior Inspector Rodrigue took over the investigation.

Mr. Dann referred to Exhibit E-25, an undated summary by Chief Bradfield of an interview with Gordon Thomson, that the witness said must have been written on or after March 13, 1995. When asked what she meant by the words *overlap* and whether or not Mr. Thomson explained what he meant by this, Chief Bradfield responded that to her it meant working for both Revenue Canada and the militia at the same time. She added that she asked Mr. Thomson for copies of his militia pay sheets “numerous times”. She never saw copies of the grievor’s military time sheets. When asked if she still believed that the last paragraph in Exhibit E-25 that reads: “At no time did Thomson admit to any wrongdoing; consequently, he did not express any remorse for his actions, either.” was still true, she responded: “Yes.”

Chief Bradfield confirmed again that in March 1995 when she wrote Exhibit E-27 to Barry McKee, she had not seen any military work sheets for the grievor. She did not doubt however that the time recorded on military work sheets was not necessarily the time that someone was actually there doing the work that they were claiming. She referred to paragraph 2, Exhibit E-27 that reads:

McSeveney and I both are certain but cannot confirm that the militia stopped checking the list when they reached a total of “six evenings and one Saturday.” We both feel that if the whole list covering two years was checked a large portion of the dates he worked for Customs would be also worked for the militia with pay claimed for both.

Chief Bradfield testified that she simply did not believe the military in March 1995. She also felt that it was important to go back at least two years because one year was not enough due to the nature of rotating shifts at Customs. When she referred to “tip of the iceberg” in Exhibit E-27, she had a feeling in March that there would be numerous occasions that would demonstrate the grievor worked for both Customs and the militia at the same time. With reference to Exhibit E-30, the summary of her conversation with Lt. Col. Egan on April 20, 1995, Chief Bradfield indicated she wanted someone from Customs Management to review the military time sheets, preferably not herself, and that she found the accounting procedures by the militia for

their pay system to be “unbelievable”. Chief Bradfield added as of April 20, 1995 she still had no copies of military pay sheets. She never got them. Chief Bradfield felt that the delay in producing copies of the grievor’s military pay sheets was the responsibility of his superior officer, and that the delay was frustrating for her since she wanted the investigation over with as quickly as possible. The information she was requesting could have been released in a more timely manner.

Regarding Exhibit E-35, a summary of the notes of an interview with Gordon Thomson on May 9, 1995, Chief Bradfield explained that her Assistant, Carla Clifford, took minutes during their meeting and transcribed them into the notes that are now before us. Regarding Exhibit E-35, page 3, paragraph 5, Chief Bradfield indicated that she had the phone checked in May 1995 and discovered that one of the phones had a reception problem in certain parts of the building.

Chief Bradfield did not contact the four militia soldiers who wrote letters on behalf of Mr. Thomson (Exhibit E-38).

Regarding Exhibit E-39 a memorandum from her to Barry McKee and the reference to 50 dates between January 1993 and January 1995 where the grievor was scheduled to work for Customs which coincided with militia meetings, Chief Bradfield said she checked these comparative shifts as is indicated on Exhibit E-2. She testified that in May 1995 when she recommended a suspension of significant duration, Staff Relations wanted to pursue the matter further before deciding what kind of discipline should be imposed. She assumed that the information on Exhibit E-40 that showed the half days and full days where the grievor worked between April 1994 and April 1995, had been taken by the military from the grievor’s attendance registers.

Chief Bradfield confirmed that she had spoken to Chief Ruttan, her predecessor, that he told her he had never said to anyone in the office that his time was his own and he could do whatever he chose if the work was caught up.

Regarding Exhibit E-45, Chief Bradfield’s E-mail to Barry McKee on June 7, 1995 where she referred to the fact that the grievor was on sick leave for three days but yet still did receive military pay for one of those days, she agreed it is conceivable that he could have legitimately done military work while on sick leave for Customs Canada. Regarding Exhibit E-47 that was received by the Revenue Canada office in Nanaimo on

July 28, 1995, Chief Bradfield said she now had accurate references to military times that she could compare to Customs shifts. She added that Exhibit E-47 was put under her door on the same day she was to have met with the grievor on July 28, 1995.

She never spoke with Captain Laal but she understood the military allowed Mr. Thomson considerable flexibility when making his time claims.

When presented with an excerpt from the departmental policy on Discipline and Disciplinary Procedures (Exhibit G-5), Chief Bradfield said that she did not refer to this when she made her recommendation for discipline, but based her recommendation on advice from Staff Relations in Vancouver. Chief Bradfield identified a memorandum sent to all staff in her area in March 1995 asking those who might have an interest in early retirement to advise her office accordingly (Exhibit G-6). When asked by Mr. Dann if she had received any additional information regarding the Thomson matter before she recommended termination, Chief Bradfield responded: "No, I did not."

During re-examination, with respect to Exhibit G-5, Chief Bradfield said that even though it was outdated, in her opinion any reference to honesty and integrity was covered in the Group 5 reference to Defalcation. With respect to Exhibit E-35, the summary notes of her interview with the grievor on May 9, 1995, Chief Bradfield confirmed that between the January incident and the May 9th interview, the grievor had said nothing to her about faulty phones or an audio vox that did not appear to be working properly. She could not recall any other members of the staff during that same period telling her anything about faulty phones.

10. Terry Ruttan, the former Chief in the Nanaimo office during the period May 1993 to August 1994, testified he was aware the grievor was a member of the Militia, and that there were many occasions when Mr. Thomson would work alone on afternoon shifts or on weekend shifts during the day. He added that for an employee to attend to a military duty would require either a shift change or a request for annual leave or compensatory time. He stated that he was not aware of the departmental policy with respect to military leave. However, when he was shown Exhibit E-15, which refers to military leave with or without pay, he indicated that he was familiar

with this since this leave is allowed for under Other Reasons. He also served in the military at one time.

Chief Ruttan testified that an employee's lunch period is his or her own time and that coffee breaks are permitted if operational requirements permit. He added that his expectation would be that, if Mr. Thomson wanted to go to do some military work, he would request to do so. Approval could come from Mr. Ruttan or generally speaking from the grievor's supervisor, Mr. McSeveney. Chief Ruttan testified that, as far as he knew, Mr. Thomson never attended militia work while he was on duty for Customs; the witness stated as well that he never received a request for leave from the grievor for militia activity.

When asked if he recalled the gray basket in the office, Chief Ruttan said that there was an old metal basket that sat on a cabinet where work was placed to be done by Inspectors. He added that it was partially true that, when the work was done in the gray basket, free time belonged to various Inspectors, in that at the time there were five Inspectors working in the Nanaimo office and they did not all need to be there at the same time. In fact, some of the shifts can become quite boring when there is not a lot of work to do or the work is caught up; Inspectors could therefore do other things to fill in their time. He never said to any of the Inspectors, nor did he ever give impression, that they could leave the work site if work in the gray basket was caught up. Chief Ruttan was not aware of anyone ever leaving the work site when someone was on shift alone to do something other than Revenue Canada work. Regarding combining lunch and coffee breaks, Chief Ruttan said there was no policy on this but there was a discussion with employees where he indicated that breaks were not an entitlement as lunch is and, if they wished to seek an extension to their lunch period, they would need approval. He was not unreasonable on this. He also added there was no policy permitting an employee to take lunch and coffee break at the end of the shift and leave early.

During cross-examination, Chief Ruttan could not recall getting complaints from the public about Mr. Thomson not being at his post, nor could he recall complaints from other Inspectors. He added that sometimes his employees would leave the building for coffee breaks but most of them would have a coffee break at their desk.

11. William McSeveney, retired from Revenue Canada in January 1996. He has had years of service in two armies and also served in the Canadian Militia. He was the grievor's Superintendent during the time of the incident. Mr. McSeveney reported to Chief Bradfield. He testified that February 10, 1995 was the first time he became involved in the situation concerning Mr. Thomson (Exhibit E-21). He confirmed in Exhibit E-22 that he believed the information Revenue Canada was seeking could be released under the authority of Mr. Thomson or National Defence in Ottawa. With respect to Exhibit E-26, a memorandum from Mr. McSeveney to Caroline Bradfield dated March 14, 1995, Mr. McSeveney said he determined there were seven occasions after contacting Major Behn, Officer Commanding Nanaimo Company in March 1995, where there may have been an overlap between the grievor's militia duty and Revenue Canada duty. He only discussed this with Chief Bradfield at the time and not with the grievor.

Mr. McSeveney identified as Exhibit E-54 summary notes of an interview he had with Gordon Thomson on June 22, 1995 when he was Acting Chief in the absence of Chief Bradfield, that was essentially giving the grievor a notice that his shift had been changed where he would be on day shifts only during June and July, from Monday to Friday working in cooperation with a Senior Customs Inspector. When asked why he felt it was necessary to change these hours, Mr. McSeveney said he felt the employer had enough information that the grievor had been absent from Revenue Canada duty for other purposes and that he could not be trusted to be left alone. After the grievor had been on day shifts, Monday to Friday only, some of the staff gave Mr. McSeveney "hell" since they had to do the grievor's weekends. As they did not feel this was very funny, after a number of months the grievor's shift was changed whereby he would then start working weekends again. The witness identified all of the various activity records or shift schedules that the grievor worked from June 30, 1995 up to the end of January 1996 as Exhibit E-55. He testified that in November 1995 the grievor was back on evening shifts. This was done partly to restore some office harmony since Mr. Thomson had commented once that he had a nice time doing straight days for a long period. This had upset the staff. Mr. McSeveney identified a Notice of Disciplinary Hearing that he sent to the grievor dated January 22, 1996 (Exhibit E-56), but the witness did not attend the hearing, nor did he have any further involvement in the Thomson matter after this date.

During cross-examination, with respect to Exhibit E-26, Bill McSeveney's memorandum to Caroline Bradfield dated March 14, 1995 where he speaks about being advised by Major Behn that the grievor would sometimes report to the militia building/area/office during his coffee and lunch breaks to sign in for attendance purposes but would not necessarily be there for the full time specified, Mr. McSeveney said this is what Major Behn told him.

Regarding Exhibit E-54, and the notification attached to this exhibit regarding the shift change for the grievor, Mr. McSeveney agreed that during part of this period between June and October, the grievor was on vacation and on sick leave, and that the total time he served on week days only was about two months. Mr. McSeveney testified he in fact heard Mr. Thomson telling the staff once something to the effect that he was on straight days during the July to October period as if he had been rewarded for something.

12. Norm Rodrigue, Senior Investigator, Internal Affairs Division, Revenue Canada, Vancouver, first became involved in the Thomson incident on September 13, 1995 when he was first asked to look into a possible conflict between Revenue Canada and the militia concerning the grievor for the period January 4, 1994 to April 8, 1995. Mr. Rodrigue identified his investigation report as Exhibit E-57. He testified that he reviewed all that had been gathered by Caroline Bradfield up until his investigation began. He added he received copies of the 895 reports that supported the dates on Exhibit E-5 at the end of an interview he had with Captain Laal and Lt. Col. Egan on October 28, 1995 in a sealed envelope at the end of their meeting. Some of them were originals and some were copies. He opened the envelope in front of Lt. Col. Egan and Captain Laal, and identified 26 copies of attendance registers as Exhibit E-58. Mr. Rodrigue concluded it was evident that some attendance times had been altered on a number of the documents. Mr. Rodrigue said he showed Lt. Col. Egan the 895's, and pointed out some discrepancies where times had been altered, and added that Lt. Col. Egan said they did not look right or correct to him as well. Lt. Col. Egan then called grievor Thomson in Nanaimo from Victoria and the witness overheard him telling Mr. Thomson the purpose of Mr. Rodrigue's visit to Victoria and that the grievor should "cooperate fully with the investigation". He further added that Lt. Col. Egan said he would look into the matter and, if indeed records had been falsified, he would take further action. When asked by Mr. Snyder who drafted

Exhibit E-5 and who gathered the information in Exhibit E-5, that is the dates that Captain Laal signed the memorandum for, Mr. Rodrigue said Captain Laal told him that grievor Thomson typed the memo in the administration office since Captain Laal did not have time to do it himself. Mr. Rodrigue added that he reviewed the 895's later in more detail and the times had been changed on some of them; the initial dates identified earlier in the process were different from those that appeared on the 895's. When asked to compare the seven dates submitted by the grievor in Exhibit E-29 in April 1995, Mr. Rodrigue commented that when he looked closely at the 895's (Exhibit E-58), with respect to five of the dates from Exhibit E-29, he noted that five dates had been changed to no longer conflict with the grievor's Revenue Canada work schedule, that is, they had been altered.

With reference to Exhibit E-58, page 18, the attendance register for Thursday, January 26, 1995, the day of the Captain Moseley incident, Mr. Rodrigue testified that the grievor was scheduled to have worked that day from 1500 hours to 2300 hours, and the militia parade was in the evening from 1900 hours to 2200 hours. He added that all other militia personnel signed in the 895 for January 26 for the hours of 1900 to 2200 hours. Mr. Dann did not dispute this. Mr. Rodrigue pointed out that the time now indicated on page 18 of Exhibit E-58 shows that Mr. Thomson signed in for the hours 0900 to 1400 hours; that would no longer pose a conflict with Revenue Canada's work schedule for January 26, 1995. He also noted that the time under the authorized training was altered to read 0900 to 1400 hours as well.

Mr. Snyder showed me and Mr. Dann the original copy of the 895 that had white out on it that he had received from the Judge Advocate General's Office; he could not leave the original copy with me since he had promised to return it to the JAG Office. Mr. Dann did not dispute the original nature of the document.

Mr. Rodrigue testified that he noticed a pattern in the other 895's to show that the times had been changed beside grievor Thomson's name to 0900 to 1400 hours to reflect no conflict with his Revenue Canada schedule on other days, whereas the regular training militia was from 1900 to 2200 hours for others who would sign in on the original sheets. Mr. Rodrigue pointed out that page 2 of Exhibit E-58, the attendance register for January 6, 1994, had been altered in a similar fashion. Again Mr. Dann did not dispute the fact that page 2 had been altered. Mr. Rodrigue pointed

out a similar change on page 8 of Exhibit E-58 for September 15, 1994; the grievor's time slot had been changed to 0900 to 1500 hours on the register whereas all other militia personnel on that day signed in for 1900 to 2200 hours. Mr. Rodrigue testified that the 895's that were not altered were the ones that did not conflict with the grievor's work schedule at Revenue Canada.

Senior Investigator Rodrigue added that on October 31, 1995 Lt. Col. Egan phoned him to tell him that he suspected information on the 895's had been altered because somebody in his Company wrote to him saying that the 895's had been changed. Lt. Col. Egan did not identify who that person was to Mr. Rodrigue at the time, but indicated there would be a military inquiry. Mr. Rodrigue testified that on November 29, 1995 he contacted Lt. Col. Egan again to get true certified copies of the original 895's for his investigation, and was told by Lt. Col. Egan a Captain Beyer had been asked to conduct an inquiry; Lt. Col. Egan referred Mr. Rodrigue to Captain Beyer. The witness said he spoke to Captain Beyer who told him that several of the 895's were missing and that some had been amended, prompting Mr. Rodrigue to think that he would not get originals of the 895's. Mr. Rodrigue added that on December 5, 1995 Lt. Col. Egan spoke to him and advised him that the military inquiry had been completed and Lt. Col. Egan believed Mr. Thomson had amended some original 895's, made copies of the amended originals, shredded the originals, and placed a copy of the amended 895's back in the file. Lt. Col. Egan added therefore that Mr. Rodrigue could forget about getting true copies of some of the originals; Mr. Rodrigue referred to Lt. Col. Egan's letter along these lines dated December 15, 1995 as Exhibit E-6.

Mr. Rodrigue interviewed the grievor on December 13, 1995 in the presence of his bargaining agent representative Mr. Bob Primeau. He added that he told the grievor the purpose of the investigation was to review his attendance registers from January 4, 1994 to April 8, 1995. A summary of the interview with Customs Inspector Thomson is contained in Exhibit E-57, at pages 6, 7, 8 and 9. Mr. Rodrigue testified that the grievor told him it was permissible to sign in the attendance register for militia work that you had actually done prior to the night you sign in on. Mr. Rodrigue added the grievor told him he had left his work place during working hours to go to do militia activities three times to sign the register, but he was only away for a short period of time from his work place. Mr. Rodrigue said that he

referred to three 895's that were completed by the grievor for January 26, 1995 that are attached in Exhibit E-58 as pages 18, 19 and 20, but the grievor did not offer an explanation why there were three of them. It was brought to my attention that pages 18 and 19 had been tampered with more than once. Mr. Dann agreed that this was so.

When Mr. Snyder asked the witness how Exhibit E-5, the July 26, 1995 memorandum from Captain Laal had been generated, Mr. Rodrigue testified that the grievor told him that he had asked Captain Laal for dates from 1993 onwards but later found out that the 1993 dates on the 895's are not available. Mr. Rodrigue added that the grievor told him he had made three trips to Victoria to get various dates from Captain Laal: the first trip Captain Laal was not there; the second trip Captain Laal had not yet prepared the list but said he would; and the third trip on or about July 26, Captain Laal was there but the memorandum was not prepared yet. He added the grievor told him the Finance clerk had been asked to get 895's for the periods in question, and that the clerk had written the dates and times that the grievor was requesting on a piece of paper, and that Mr. Thomson asked someone to type these dates for him in a memorandum addressed to Mr. Thomson for Captain Laal's signature.

At this point in the interview Senior Investigator Rodrigue testified that he interrupted Mr. Thomson to tell him he was lying and that he should not insult Mr. Rodrigue's intelligence, that it would be better to start over and to tell him exactly what happened. Mr. Rodrigue added in his testimony before me that Captain Laal had told him Gordon Thomson had typed the memorandum for his signature (Exhibit E-5), but when Chief Bradfield asked Gordon Thomson some questions on behalf of Mr. Rodrigue (Exhibit E-50) the grievor told her that Captain Laal composed the memorandum (Exhibit E-5). Now Mr. Thomson was telling Mr. Rodrigue that a clerk had composed it by writing the information on a piece of paper. Mr. Rodrigue added that that clerk was Private Erealut.

When asked if he told Mr. Thomson that his statements conflicted, Mr. Rodrigue said he could not recall exactly what he said, but he told him he was not telling the truth. Mr. Rodrigue added that the grievor then told him he had not made three trips to Victoria but only two between July 10 and July 26, 1995. On the first

trip, Captain Laal was not there; on the second trip, he was there but the information Mr. Thomson was seeking was not ready. Mr. Rodrigue added that the grievor told him he had asked a Sergeant Milburn to type a memorandum to Lt. Col. Egan from Mr. Thomson requesting authority to amend attendance registers (Exhibit E-4). Mr. Rodrigue added that Lt. Col. Egan was not there at the time, and that the grievor told him Captain Jamieson told Mr. Thomson that he could amend the 895's to actual times worked and that Mr. Thomson went about doing this. Mr. Rodrigue said the grievor indicated that he had amended the registers to reflect the actual time that he worked for the militia, destroyed originals and filed the amended ones in his unit file.

I intervened at this point and asked witness Rodrigue if in fact Mr. Thomson had admitted to him that he amended and shredded attendance registers to which Mr. Rodrigue responded: "Yes."

When asked to clarify what Captain Jamieson had said or may not have said regarding amending and shredding, Mr. Rodrigue said that he and Captain Jamieson spoke about this and that Captain Jamieson may have suggested that the grievor prepare new 895's. It was unclear whether or not Captain Jamieson had actually said he could amend and shred 895's.

Mr. Rodrigue said he asked Mr. Thomson how he could determine the actual time he worked for the militia going back such a long period of time, but Mr. Thomson could not explain how he remembered what times he had actually worked for the militia particularly since he had no travel documents to justify his time claims. Mr. Rodrigue added the grievor told him he blamed the militia for having allowed him to amend documents that put him in the position he is in today. When asked if he thought the grievor had shown any remorse, Mr. Rodrigue responded: "My personal view is that he lied to me all the way through my investigation, that he was not remorseful at all, and that all was a pure lie."

During cross-examination, Mr. Rodrigue testified that the Internal Affairs Division was aware of the situation before he began his investigation, but that the investigation was primarily left to Chief Bradfield with whom he spoke several times. Regarding the reference to Lt. Col. Egan calling Mr. Thomson on the telephone in front of Mr. Rodrigue, the witness testified that his perception of what took place on the

telephone call was that Lt. Col. Egan's "light went on" during their meeting regarding the entire incident surrounding Mr. Thomson. With respect to Exhibit E-5, the Captain Laal memorandum dated July 26, 1995, Mr. Rodrigue reiterated that Captain Laal told him Mr. Thomson had typed it. When asked if he recalled speaking to Sergeant Milburn during his investigation, Mr. Rodrigue responded, yes, and identified a brief note that he wrote with respect to the interview (Exhibit G-7) dated December 14, 1995, that indicates "Milburn reported that he typed the memo addressed to T. [Thomson] bearing Laal's signature." Mr. Rodrigue indicated that this statement conflicted with what Captain Laal told him. Mr. Rodrigue agreed that Exhibit E-29 signed by the grievor indicating seven dates where there may have been overlaps in his work schedules, was now down to five dates, since Mr. Rodrigue's investigation only covered the period January 1994 to April 1995 and no portion of 1993. When asked if all five dates had been changed on the attendance registers in Exhibit E-58, Mr. Rodrigue did not know how many were changed. He added that the ones that were changed were the ones that originally conflicted with the grievor's Revenue Canada work schedule. He suspected that Mr. Thomson used the information from his work schedule to alter the 895's that previously conflicted with his Revenue Canada schedule. For example, pages 14 and 15 of Exhibit E-58, Mr. Rodrigue did not believe were amended.

When asked if he was aware of the military inquiry into the situation, Mr. Rodrigue responded, yes, that he was and that he spoke to Lt. Col. Egan about this sometime in December 1995 but the military report was not used in Revenue Canada's determination.

Mr. Rodrigue identified his handwritten notes of his interview with the grievor on December 13, 1995 as Exhibit G-8. He added that his notes did not specifically refer to Private Ereault as the one who wrote the information on a piece of paper regarding dates the grievor asked for, but only refer to a clerk during the grievor's third visit to Victoria. Mr. Rodrigue added, even though Captain Laal had signed Exhibit E-5, he did not believe that Captain Laal reviewed the 895's in Exhibit E-58 to see if the dates that he was signing for were correct or not but the amended 895's reflected the information and the dates in Exhibit E-5.

When asked if he was concerned about the grievor signing 895's on a Thursday for time not actually served on a Thursday, Mr. Rodrigue said yes he was concerned, because this was a liability for Mr. Thomson if the wrong times were written on the 895 for the time that was actually worked. When asked if the grievor admitted to him on December 13th that he had altered and shredded forms, Mr. Rodrigue responded: "Yes he did, because he felt they did not reflect the correct times he had actually worked for the militia." Mr. Rodrigue reiterated that he asked the grievor to provide him with some evidence to somehow prove the actual times he worked. He felt Mr. Thomson did not cooperate. Mr. Rodrigue added that he served with the Canadian Forces 29 years, 20 of them as a Military Police Officer conducting investigations. He said the militia have similar if not the same rules and regulations to follow as regular military officers; however, as a member of the regular Forces, you do not have a shift schedule and you do not sign in.

Mr. Rodrigue added that the grievor took military vehicles on occasion for various recruitment displays and that he had asked him for some supporting claims or receipts that could demonstrate that he did this on the days in question in the best interest of the grievor's own defence. He said he was being as objective as he could, but Mr. Thomson never gave him any additional information. Mr. Rodrigue concluded again that, from the information he had collected from all of his investigation, particularly since the grievor's story changed from his first interview to his second, Mr. Thomson was lying and showed no remorse by blaming the militia for his problems.

13. Barry McKee has been the Manager, West Coast and Yukon District for Revenue Canada since 1991. He testified that Chief Bradfield told him in early February 1995 of the January 26, 1995 incident regarding Captain Moseley and that she was going to follow up this particular incident and keep him informed. Mr. McKee acknowledged that he had written Exhibit G-2 to Lt. Col. Egan in March 1995 requesting militia attendance register information concerning Mr. Thomson, and that he spoke twice with Lt. Col. Egan to tell him exactly what their concerns were. He added Lt. Col. Egan explained to him how the sign in sheets actually work.

Mr. McKee also identified Exhibit E-59, the follow-up letter to Lt. Col. Egan with the attached release form signed by Mr. Thomson authorizing the military to release

information. Mr. McKee also identified page 2 of Exhibit E-54, a memorandum he sent to grievor Thomson advising him that his shifts would be on days only so that he could be buddied up with a Senior Customs Inspector to ensure that his job was done properly. In other words, the grievor would no longer be working on his own. Mr. McKee identified an E-mail he sent to Audrey Flagel in Staff Relations on June 24, 1995 (Exhibit E-60) summarizing a meeting he had that afternoon with Mr. Thomson. He added that Exhibit E-46, that has 39 dates where there may be potential overlap between militia work and Revenue Canada work, was given to the grievor during the meeting. When asked what doubt Mr. McKee had at this point that Mr. Thomson had in fact left Revenue Canada to perform militia work, he responded that he felt he had done it more than once.

Mr. McKee testified that he was given a draft copy of the grievor's termination letter (Exhibit E-61) and added a few comments to the draft. He concluded that Mr. Thomson had in fact violated the *Code of Conduct* of the Department and that on the balance of probabilities he was away without leave more than once from his work place. He added that the grievor destroyed records that his Department wanted and that his report for January 26 regarding the incident with Captain Moseley was not truthful. He concluded the bond of trust was broken and the Department could no longer trust him. He added that a Customs Inspector's job is to enforce a number of laws and acts of Parliament and to catch liars, but in fact, Mr. Thomson had lied.

During cross-examination, Mr. McKee testified that he was given the research into the incident done by Chief Bradfield. When asked why it took so long to change the grievor's shifts to day shifts, that is from January until June 1995, Mr. McKee responded that the Department attempted through a local investigation in Nanaimo to ascertain the total extent of the problem that they were dealing with and that this took time. He said: "We tried to be fair all along." When asked what he meant by the balance of probabilities Mr. McKee said: "I believe this is what a reasonable person would base a decision on what they believe to be true." Mr. McKee said that he felt the grievor's report of the January 26, 1995 incident was untrue and that it took until June 1995 for the grievor to admit that he had left work for military reasons on three occasions.

This concluded the employer's case.

Mr. Dann advised me that the grievor does not deny combining lunch with his two coffee breaks on January 26, 1995 and admits that this was wrong, nor does he deny altering forms to make them correct to reflect his actual times worked with the militia. Mr. Dann added however the grievor does not believe he is guilty of all the rest.

14. Gordon Thomson started with Customs and Excise, Revenue Canada in 1982. He has been a militia member of the CSR, "B" Company, since 1974. Mr. Thomson gave a brief overview of what his work responsibilities with Customs and Excise were and identified a duty list for July 4, 1994 (Exhibit G-9). Mr. Dann submitted five performance reviews of the grievor for the years 1989 to 1993 inclusive all of which were satisfactory (Exhibit G-10). He also submitted some thank you letters that had been sent to the grievor for a job that he had done well as Exhibits G-11, G-12, G-13 and G-14. Mr. Thomson added that his supervisor, when he was terminated, was Bill McSeveney from the Campbell River location who would come once a month to Nanaimo. In Mr. McSeveney's absence, the supervision was left to two Senior Customs Inspectors, DeGrace and Wiley. He added that Chief Bradfield arrived in August 1994 and that he had a good working relationship with her. His previous supervisor had been Al Wiley up to 1991.

When asked by Mr. Dann if Mr. McSeveney had ever threatened him, Mr. Thomson responded: "Yes." Mr. Snyder objected to this line of questioning as being completely irrelevant. I agreed and indicated that I would give little or no weight to the last comment.

Mr. Thomson agreed he was on duty from 1500 hours to 2300 hours on January 26, 1995, that he stayed until after midnight to work on three committees that he had volunteered to give some time to for Customs. He added that he left the office area and went to the Nanaimo military camp on his shift at approximately 2000 hours and that it takes five to ten minutes to drive there. He returned about 2100 hours. He said he had the Nokia cell phone with him during the trip and that he got no calls while he was at the military camp. He added that some individuals had seen him there, in particular, Private Long and Private Callow who had signed letters accordingly (Exhibit E-38). Mr. Thomson solicited these letters to present to Chief Bradfield for her information. When asked why he thought he could take an

hour off in his evening shift, Mr. Thomson explained during the slower months staff were allowed to take time off on breaks and combine breaks and lunch.

Mr. Snyder again objected to this line of questioning. I indicated that I would allow such a question.

When asked if this applied to a day shift as well, Mr. Thomson responded that it did but, if they were busy, they were told to take a longer lunch break. Mr. Thomson explained that on the evening of January 26 he received a phone call at the Revenue Canada office from Private Long regarding a new recruit; therefore he went up to the militia camp to help this recruit with some forms and he got his mail and left. Mr. Thomson testified that when he returned there were no messages on the telephone; he explained that Captain Moseley could not have contacted him because he had shut the cell phone off and had forgotten to take the call forward off from the telephone to the cell phone. He said he finished the gray basket work and did some volunteer committee work. He added that, when the cell phone is off, he does not know how the office phone could ring. Mr. Thomson added that on Saturday, January 28 when he was checking a boat down at the docks and came back to the office and shut off his cell phone, it hit him then what he had done on the evening of Thursday, January 26.

Mr. Thomson added, when he was asked by Chief Bradfield to respond to the incident report on February 2nd, he did so the same day with his Exhibit E-16 response. He said he spoke to Ed Reid who asked him if they had numbers other than 0341 and if they had a fax number in the Nanaimo office. Mr. Thomson identified a schematic layout for the office as Exhibit G-15. He also testified that later on in the day on February 2nd Chief Bradfield met with him to ask him what happened on January 26 and he admitted to her at that time that he had combined his coffee and lunch breaks and had gone to the military camp but that was it.

Mr. Thomson explained that he was a Sergeant in the militia and that in 1995 he was a recruiting non-commissioned officer. He explained that he would go to high schools in their region to recruit potential members of the militia. He would sometimes use a military vehicle to do this and, if so, a Master Corporal would drive him who would sign out the book for the vehicle or sometimes he would use his own

personal vehicle. He estimated that he spent approximately 75 percent or more of his time with the militia doing recruiting.

Mr. Thomson also explained that the sign in time on attendance registers for the militia does not necessarily reflect the actual time that one worked, particularly for him since he did recruiting at odd times during the week, but when the register was signed it was usually a clerk at the military camp who observed the signing. The grievor added that, when he explained this process to his employer, it did not understand this for quite a long time. With reference to Exhibit E-29, Mr. Thomson's letter to Chief Bradfield outlining the seven dates where there was a potential overlap, the witness said that he had received these dates from Major Behn who handed them to him on a piece of paper. He explained what he meant by "overlap" in Exhibit E-29 to Chief Bradfield, that is, if she had overlapped his military time sheets with his Customs time sheets it would appear that he was at two places at one time on duty. He said there should be seven dates of this potential overlap. Mr. Thomson added that he apologized early on in the investigation by saying he was sorry for the whole mess that had occurred. When asked if he had met with Chief Bradfield to review the dates and times of a potential overlap, Mr. Thomson said that he had and that he asked her for some time to analyze it and reflect on it.

When asked how long he had been on the changed shift, Mr. Thomson replied from late June until late October but that he was on stress leave for the month of July and annual leave for the month of August. He added it was not true that he bragged about being on the day shift only, but that he had taken a lot of harassment from staff for this. Mr. Thomson testified that he received Captain Laal's memo sent to him by fax and that he had been requesting this information for quite a while since Captain Laal said he was short staffed and it took time to do.

Mr. Thomson explained that on June 23rd he met with Mr. McKee and Mr. McSeveney. Mr. McKee gave him some militia pay sheets that he asked him to explain and expressed his personal frustration that he felt Mr. Thomson and the militia were stonewalling the investigation. Mr. Thomson said he told them it would take some time and that even he was getting nowhere. Mr. Thomson said that Mr. McKee advised him that on the balance of probabilities he could be terminated as result of this investigation. This was the first time the grievor realized the severity of

the whole situation. Mr. Thomson said he became very upset, that he saw his doctor, and still no information from Captain Laal had arrived. He testified that he drove to Victoria to see Captain Laal; he had hoped to see Lt. Col. Egan and explain to them how important it was that he get this information quickly. He said Captain Laal opened two drawers that were full of hundred of pay sheets, all out of order. When he asked Captain Laal if there was any way he could amend the sheets, Captain Laal said yes there was but the Commanding Officer had to approve the attendance sheets. Mr. Thomson said he drove down the next day but, as the Commanding Officer was not in, he asked Sergeant Milburn if he could type a memo to Lt. Col. Egan requesting the information that he wanted (Exhibit E-4). He said he signed this and put it into the Commanding Officer's basket after which Captain Jamieson walked in, looked at the CO's mail, read Exhibit E-4, and handed it to Mr. Thomson saying he should not bother the Commanding Officer and that he could go ahead and amend the attendance registers. Mr. Thomson said he then went to the pay office and started the process by removing the proper sheets, photocopying them, drawing a line through the rest and returning them to the file. Mr. Thomson added that Captain Jamieson asked him why he did not just make up new time sheets to which he responded he was trying to alter them to reflect actual times worked. When asked by Mr. Dann how he knew what actual time he worked, Mr. Thomson responded that recruiting was done in the day or between 1500 and 1530 hours while visiting a school and that he was "trying to do what I thought was the right thing".

Mr. Thomson testified that he phoned a Col. Johnson, who is a former commanding officer and a military lawyer, who said to him that the original 895's were invalid documents since they had the wrong times on them and that Mr. Thomson could replace them. He added that he also spoke with a Judge Advocate General lawyer as well, whom he could not name, but he said he told him the same thing. He said he was not trying to get more pay, only to put in the correct times that he had worked for the militia.

Mr. Snyder objected to this line of testimony as being completely hearsay. I responded that I would allow the question but I would weigh it accordingly.

Mr. Thomson added that Private Ereault was side by side with him at another desk when he changed the documents and there was someone around when he

shredded the originals. When asked why he shredded them, he responded they were invalid documents and he was trying to replace them with valid ones.

When asked if he was employed at the present time, Mr. Thomson responded that he was working part-time for the Canadian Scottish Regiment, part-time at the B.C. Ferries as a stores men, and doing some estimations for gas furnaces for a company called Blue Flame. He added the economic impact when he lost his job was quite significant, and that he could not get a letter of reference from Revenue Canada. He added that he did census work in 1996. He is married with two children.

When asked if he in fact returned to the office on the evening of January 26, 1995, Mr. Thomson responded that he did, and sent out an ASI report at 0006 hours as a report of the day's activities (Exhibit G-16).

During cross-examination, Mr. Thomson agreed that he held the position of a Peace Officer and a high degree of responsibility, honesty, and integrity was expected of him by Revenue Canada. He added that he recalled Lt. Col. Egan describing to him the protocol that he should follow with respect to altering any 895's, particularly that he should return the originals to the file. When asked if Captain Laal outlined the same protocol, he responded, yes, but not to the same degree as Lt. Col. Egan. He added that during his testimony, Captain Laal said he had told him to place the original back in the file, but that is not what he told him at the time. He added the Commanding Officer explained the protocol to amend the 895's to Captain Laal and to him one evening but he did not recall Captain Laal telling him the same as what Lt. Col. Egan told him. He added Private Ereault did not discuss the protocol with him, but that Captain Laal instructed Private Ereault in front of Mr. Thomson.

Mr. Snyder added that at no time during the hearing was the testimony of Captain Laal or Private Ereault ever questioned on this matter, only the part about photocopying and then blacking out the photocopied version of other names.

Mr. Thomson said that he was not told by Lt. Col. Egan on two separate occasions what the protocol should be for making the copies or amending the originals, only once did he tell him this in front of Captain Laal, but the next day, Captain Laal, Mr. Thomson and Private Ereault reviewed the same protocol. Again,

when asked by Mr. Snyder if Private Ereault had given him the same guidelines, Mr. Thomson denied this.

Mr. Snyder argued this was not contested during Private Ereault's testimony either.

When asked if it was not correct that Captain Jamieson testified he told the grievor he could not amend the originals, Mr. Thomson responded: "I never discussed that and Captain Jamieson's recollection was poor, and Private Ereault's recollection was wrong." When asked if Captain Laal and Lt. Col. Egan said not to amend the originals, Mr. Thomson said: "No, they did not say that." Mr. Thomson said that all four persons: Captain Jamieson, Captain Laal, Lt. Col. Egan and Private Ereault, were not accurate in their testimony since he believed he could amend the originals and replace them with amended copies.

Mr. Snyder presented the grievor with a photocopy of a portion of a statement he gave to the military on August 8, 1996 (Exhibit E-62) and asked him if this was indeed his statement to which he responded: "Yes, it is."

Mr. Dann objected to the entry of this exhibit. I allowed its entry.

Mr. Snyder referred to page 2 of Exhibit E-62, the last ten or eleven sentences and asked Mr. Thomson if he recollected Captain Jamieson saying that he could not amend originals and, if he intended to do so, he would have to seek permission from the Commanding Officer. Mr. Thomson responded: "No, I do not recollect this."

Mr. Snyder reminded the grievor that he testified he had talked to a Col. Johnson who was a lawyer, and a Judge Advocate General lawyer, and they had told him he could change originals and shred them to which Mr. Thomson said: "Yes." When asked by Mr. Snyder if he had ever told this to Mr. Rodrigue, Mr. Thomson said, that he had, but that this issue was not raised with Mr. Rodrigue during his testimony. Mr. Thomson agreed that he never raised the reference to Col. Johnson or the JAG lawyer with Chief Bradfield or with Mr. McKee. Mr. Thomson also added that he did not incorporate this conversation he had with the two military lawyers into investigation report by the military (Exhibit E-62). He confirmed again that the two

lawyers told him that he could replace invalid documents but they never discussed the protocol to do that.

Mr. Thomson confirmed that he had no notes or diaries of the dates that he actually worked for the militia, or of what he did on those dates, but yet he agreed he told Mr. Rodrigue that the 895's were changed to reflect the correct dates that he worked for the militia. When asked how, without notes or diaries, he could determine which 895's to amend, Mr. Thomson said that the 895's were written on a weekly basis, and that he went on militia work during the day when he was working afternoons for Revenue Canada. When asked, since he spent up to 20 percent of his time in the militia doing other duties, how would he have known which 895's to amend, he responded that the only things he did was to recruit and he did some field work or range exercises. When asked if he was guessing at the dates and the amendments, Mr. Thomson responded: "No." Mr. Thomson agreed that the dates he changed were only those conflicting dates given to him by Chief Bradfield. He took her dates and amended the 895's without any notes or diaries and he was not guessing at which dates to amend even though his work schedule varied for the militia.

When asked if he simply had a fabulous memory on the days in question, Mr. Thomson responded that he was recruiting on the days in question, had no list of the days of duties, but was not guessing at what dates he worked. When asked if he knew exact dates, Mr. Thomson responded: "No." When asked how he knew which days to put down for exact times worked over a two year period, he responded: "From memory."

Mr. Thomson said that twice in twelve years he had applied for military leave but that Revenue Canada frowned on it. He knew the various leave types that were in force at the time (Exhibit E-63) that has a code on it, 650 for Other Paid Leave for military, as well as Leave Without Pay, Code 975 for military purposes. Mr. Thomson identified an annual leave report (Exhibit E-64) where he applied for military leave under Code 975, and a subsequent memorandum he sent at the time in July 1984 requesting cancellation of the leave he applied for (Exhibit E-65). The grievor identified an additional leave report (Exhibit E-66) under the Code 650 that also applied for military leave with pay.

Mr. Snyder referred the grievor to Exhibit E-42, page 2, under November 1993, and asked Mr. Thomson if he in fact had signed for a full day of militia activity for November 4, 1993 to which he responded: "Yes." When presented with a Leave Application and Absence Report (Exhibit E-67), for a period in November 1993, and asked if he had applied for sick leave with pay for the period November 3, 1993 through to and inclusive of November 5, 1993, Mr. Thomson responded: "Yes, I did." Mr. Snyder pointed out that if Mr. Thomson had been sick on November 4, 1993, how could he have signed in at the militia for that particular day and claimed a full day of militia activity. November 4 was a parade day on a Thursday. The original militia pay sheets for 1993 were not available. Mr. Thomson added that he could sign the militia pay sheet other than on a Thursday but he never brought this up with Major Behn.

Mr. Snyder presented another Leave Application and Absence Report (Exhibit E-68) for the period of November 17, 1994 that indicates the grievor had Sick Leave With Pay whereas the attendance register for the militia, the same date, November 17, 1994 (Exhibit E-69) indicates that the grievor signed in on that particular evening at the militia camp and was credited with his pay for that day. Mr. Thomson said he was feeling better in the evening and signed the militia register.

Counsel returned to January 26, 1995, and confirmed that the grievor had been away for one hour that evening, and had not heard Captain Moseley phoning because he had the telephone line forwarded to the cell phone that was turned off. Mr. Thomson agreed. When asked if he agreed with Senior Customs Inspector DeGrace, who said that if the cell phone is off an operator would come on to say that there is no one available at the number at that time or, if in fact the cell phone was dead, the operator would come on and say the line was not available at the moment, Mr. Thomson also agreed. The grievor agreed that Captain Moseley said he had allowed the phone to ring seven or eight times. When asked what explanation he had as to why he could not hear the phones, Mr. Thomson said there were problems with the phones on January 26, 1995 even though he heard staff testify and a client say that there were no problems with the phone. When asked to be forthcoming, and in fact admit that he was not there, Mr. Thomson responded: "No, I was there." When he was reminded by Mr. Snyder that Mr. Reid had called once on the evening of January 26, Mr. Thomson said he may have called.

With reference to Exhibit E-38, the four letters of testimony from his militia colleagues, Mr. Thomson admitted that he in fact had typed Private Callow's statement. When asked if he was good friends with the four militia persons, he responded that he had known them a long time. Mr. Thomson agreed that Exhibit E-38 does not say exactly what time he left the military camp, but added he left at 2050 hours. Mr. Thomson agreed that there were other parade nights between January 26 and Private Callow's letter (Exhibit E-38) dated February 9, 1995 and that there were a lot of people at parade nights. When asked how his colleagues could exactly remember his whereabouts going back a number of parade nights, and noting that Private Long's letter was dated February 10th and Sergeant Farrely's letter was dated February 15, Mr. Thomson did not respond.

When asked by Mr. Snyder if he ever gave Exhibit G-16, the Activity Report for January 26, 1995, to his employer during the investigation, Mr. Thomson responded: "No, never." Even though his shift ended on January 26 at 2300 hours, the grievor had nothing to show that he was in fact in the office between 2100 and 2300 hours. Mr. Thomson explained that Chief Bradfield's assistant had preprogrammed the fax machine for Inspectors who just had to insert the activity report and press a button and it would be sent off. Mr. Thomson said he partially blamed former Chief Ruttan for saying that he could leave the office if his work was done, and that he told this to Chief Bradfield during an interview with her. He added: "The work place is where the cell phone is." When asked while he was at the militia on the evening of January 26th if he was working at the same time for Revenue Canada, Mr. Thomson responded: "Yes." When asked if he in fact told Mr. Rodrigue that he blamed the militia for his problems, Mr. Thomson said that is not what he said. Mr. Snyder argued that Mr. Rodrigue's testimony regarding this was not contested. Mr. Thomson added: "The militia policy helped create my problem and I do not agree with what Mr. Rodrigue wrote on this." When asked if he blamed the militia, Mr. Thomson said: "Part of my problem was caused by the militia." He also felt that former Chief Ruttan was partly responsible for his problem.

Mr. Thomson applied for Unemployment Insurance after his termination, and was initially refused. He appealed that decision, and during the Board of Referees' appeal process, when asked to explain to the Board why he had actually been terminated, Mr. Thomson could not recall. When Mr. Snyder entered Exhibit E-71, a

copy of the Board of Referees' decision dated May 31, 1996, that indicated on page 2, number 4, that the grievor told the Board the employer's real reason for terminating was based on the appellant's role (that is Mr. Thomson) in discussing information which lead to the dismissal of a senior officer Mr. Thomson denied that this was true. He also said the Rodrigue report was not true and that it has all been taken out of context.

Mr. Dann objected to Exhibit E-71. Mr. Snyder argued that it was being presented not for the value of its content but to test the credibility of the witness. I allowed its entry.

During re-examination, when asked what his illness was on November 17, 1994 (Exhibit E-68), the grievor responded he believed he had a cold at the time.

I asked the grievor to explain the reasoning for the third sheet for the militia attendance register for January 26, 1995 (Exhibit E-58, page 20). Mr. Thomson responded that this was from the Nanaimo office. I asked him why it was dated April 1995, a long time after the January 26, 1995 attendance register date. Mr. Thomson did not know why. I then asked Mr. Thomson how it was that Private Long was able to phone him on the evening of January 26 to ask him to come up to the militia camp to deal with a new recruit, to which he responded that the phone was working then. He referred me back to the problem of the wire under the carpet that must have been bad later on that evening.

Argument for the Employer

Mr. Snyder initially argued what the case was not about. He said it was not about the militia sign in policy, or when the grievor actually did his militia work, and it was not about double dipping. He said it is about the character of the grievor, and that the grievor's qualities of honesty and integrity were essential in order to maintain the bond of trust with his employer. A serious deficiency in either one of these qualities is a breach of trust, particularly since Revenue Canada is a department compelled to place a lot of trust in its employees who are Peace Officers responsible for enforcing a multitude of laws. He argued that the employer depends heavily on the honesty and integrity of a Customs Inspector who is generally unsupervised, and that Mr. Thomson was wholly deficient in these two traits when he committed a

serious act of fraud by abandoning his position. This warranted his termination. He argued this was compounded by his lying and half truths, and being less than forthcoming throughout this entire process. He said the fact that the grievor altered and shredded militia documents was unfathomable and he can no longer be trusted.

Mr. Snyder argued nine reasons why the grievor's termination was reasonable.

1. After getting a copy of Exhibit E-9, Inspector DeGrace's incident report, Mr. Thomson said that he was in the office between 2130 and 2300 hours, but yet he missed Captain Moseley's phone calls and he said he forgot to deactivate the call forward feature when the cell phone was shut off. Mr. Snyder argued that the grievor's response in Exhibit E-16 dated February 2, 1995 was simply false and that he was not in the office all that evening. He reminded me that John Sendey wrote in Exhibit E-11, that the answering machine did not seem to have been activated when he went in to work on the morning of January 27th, and that he cancelled the call forward on phone 0344. Mr. Snyder argued this was consistent with Captain Moseley's testimony who said that the phone was simply ringing off the hook. Counsel reminded me that, if the call forward had been activated and the cell phone had been shut off, Captain Moseley would have received a message that the party was unavailable. He got no such message. Inspector DeGrace said that in any event, the office phone should have rung once. That would have triggered Mr. Thomson to act. Mr. Snyder reminded me that there are two lines in the office, and that Private Long called the grievor on one of them to ask the grievor to go up to the Nanaimo military establishment on January 26. Mr. Snyder argued that Inspector Sendey and Senior Customs Inspector DeGrace had no phone line problems that they could recall, nor did any clients complain as far as they knew. Mr. Snyder concluded that the phones were functioning properly on the evening of January 26, 1995. He argued the reason the grievor did not hear the phones that night was because he was at the militia camp committing fraud on the government. If Captain Moseley had never complained, the employer would never have known the difference. Mr. Snyder argued that there is no way it can be determined how much money was bilked by the grievor over the years. He added the statements by members of the militia in Exhibit E-38 that said that the grievor was there at the military camp at 2050 hours, is only hearsay since none of them were called to testify. These individuals were also friends of the grievor, in fact, Mr. Thomson typed one of the statements for Private Callow. He argued there were in

fact two parades between January 28 and February 9 and 10, and that there was no corroborating evidence to say when he left or where he went on the evening of January 26. Mr. Snyder argued that Exhibit G-16, the faxed copy of the ASI report was sent at six minutes after midnight which was in effect more than one hour after the grievor's shift ended. This should have no bearing on the case before me.

2. Mr. Snyder referred to the leave policy for military purposes (Exhibit E-15). He said Mr. Thomson gave a copy of this to Ms. Bradfield, and that he had in fact requested military leave twice in the past (Exhibits E-64, E-65, E-66). Counsel concluded that the grievor had been away without leave, and that this was not a one time event. He argued that during an interview in May with Chief Bradfield (Exhibit E-35), the grievor said he could have asked for military leave fifty or sixty times but did not want to overburden the Revenue Canada administration. This was not attacked by his counsel. Mr. Snyder argued this was a very serious pattern of pure fraud and that the grievor had abandoned his position while getting paid for it on more than one occasion. Counsel reminded me that Chief Bradfield wrote on March 14, 1995 in Exhibit E-27, she felt the incident that was under investigation was simply "the tip of the iceberg". Mr. Snyder concluded that she was very insightful for this early observation.

3. Mr. Snyder referred me to the policy of lunch and coffee breaks (Exhibit E-14) that was posted in August 1994. He reminded me Inspector Sendey knew of it and that he sought approval when he wanted to get special privileges. He argued Mr. Thomson never denied the existence of this policy.

4. Mr. Snyder referred to the *Code of Conduct* (Exhibit E-52) and the references made to it by Chief Bradfield were very clear. Mr. Snyder concluded that many elements of the *Code* had been breached by Mr. Thomson.

5. Counsel argued the grievor had been very evasive in his statement regarding his initial whereabouts for January 26 when he was given the DeGrace incident report. He argued Mr. Thomson should have given a full account of what actually happened that evening in his response in Exhibit E-16 on February 2, 1995. Only when he was confronted by Chief Bradfield, after she read Exhibit E-16, did he say in Exhibit E-35,

during an interview in May, that he had been away longer than he initially wrote. Mr. Snyder concluded the grievor was not forthcoming from the beginning.

6. He argued the grievor fraudulently used sick leave that seriously affects his credibility but was not in itself reason for termination. Mr. Snyder argued Captain Behn said the 895's do not reflect the actual work times, but the grievor had to sign the 895's on the day dated on the form. This was confirmed by Captain Behn to Mr. McSeveney on March 14, 1995 in Exhibit E-26. Mr. Snyder argued along the same lines that Mr. Rodrigue in cross-examination, said Lt. Col. Egan said the grievor would sign the attendance register forms when evening activities took place, and for Mr. Thomson to say differently now is too little, too late. Mr. Snyder reminded me that the grievor had been given sick leave for the period November 3 to November 5, 1993 but if I look at Exhibit E-42, he was apparently healthy enough to sign the 895 on Thursday, November 4, 1993 for militia attendance. Similarly for November 17, 1994, the grievor was on sick leave (Exhibit E-68), yet he signed into the militia register on November 17 (Exhibit E-69). Mr. Snyder also referred me to Exhibit E-44, in particular, May 6, 1993, that indicated that the grievor was on Family Related Leave, but yet he was paid half a day for militia activity. Mr. Snyder concluded that the grievor had misused his collective agreement benefits and the issue of his dishonest character must come into play here.

7. Mr. Snyder argued that the grievor changed his explanation on a number of issues: (i) Mr. Snyder argued with respect to Exhibit E-35, the May 9, 1995 meeting between Chief Bradfield and the grievor, Mr. Thomson said he had combined his lunch and coffee breaks to attend the Nanaimo militia establishment, but on June 6, 1995 in Exhibit E-43 again with Chief Bradfield, he said he had limited his office absences to lunch only, but later said he combined them both. Mr. Snyder argued this was never contested but is very inconsistent; (ii) with respect to Exhibit E-50 and a meeting with Chief Bradfield on October 18, 1995, to answer the questions composed by Mr. Rodrigue, particularly regarding the generation of the Laal memorandum, Mr. Thomson said he did not know who generated the memo. Later, during the investigation by Mr. Rodrigue in his report (Exhibit E-57), the top of page 8, Mr. Thomson changed his story again and said that Private Ereault had written the times and the dates relating to his attendance at the militia on a piece of paper. Private Ereault testified that he did not help the grievor by doing this. Mr. Snyder

concluded that Mr. Thomson lied to Chief Bradfield and to Senior Investigator Rodrigue regarding the memorandum by Captain Laal (Exhibit E-5); (iii) again with respect to Exhibit E-50, the questions posed by Chief Bradfield on behalf of Mr. Rodrigue, when asked who composed Exhibit E-5, Mr. Thomson responded that Captain Laal had composed it. Captain Laal testified that he did not prepare it, but felt that Mr. Thomson had. Again when Mr. Rodrigue interviewed him, Mr. Thomson said that the clerk had composed it. Mr. Snyder cannot understand why he would lie about such a thing; (iv) during a December 13, 1995 interview with Mr. Rodrigue (Exhibit E-57), Mr. Thomson said he left the work place only three times to sign in to the militia, but he told Chief Bradfield on May 9, 1995 (Exhibit E-35) that he had left on seven occasions and that her assessment was a fair summary of what had taken place; (v) Mr. Snyder argued that the grievor maintained Captain Jamieson gave him the right to amend original time sheets and that Mr. Thomson also testified two lawyers, one of whom was from the Judge Advocate General's office, said he could do this. He argued Mr. Thomson was desperate to say this, that he lied under oath, and it is incredible that he would make such a statement during the hearing. He reminded me that in Exhibit E-62, the excerpt from the military police investigation, there is no reference to the grievor speaking with two lawyers, and that he never told Mr. Rodrigue this or any other management person. Counsel concluded this was all pure hearsay.

8. Mr. Snyder reminded me that Lt. Col. Egan, Captain Laal and Private Ereault all told the grievor what protocol he was to follow to retrieve the original 895's; that is, he was to copy and return the original unamended. None of these witnesses told him he could amend the original in any way. Captain Jamieson said he could not amend the original without first speaking to the Commanding Officer. Mr. Snyder argued that Captain Jamieson had no authority to allow someone to amend an original attendance register, but he also argued Mr. Thomson should have known or ought to have known he could not alter them; but, he defied all four persons by amending some originals and destroying some originals. He concluded the grievor lied to Revenue Canada personnel on this matter and then in Exhibit E-62, he lied to the military police and made no reference in his interview with the military to Captain Laal or Lt. Col. Egan. Mr. Snyder argued Mr. Thomson's destruction of

evidence not as a sudden act of desperation, but was done over a two week period, during six or seven visits to Victoria according to Private Erealut.

In Mr. Rodrigue's investigation report (Exhibit E-57), the bottom of page 7, top of page 8, where the grievor said he amended 895's because it was not the correct militia time and date that he had actually worked, Mr. Snyder wondered how he could have determined actual times going back over two years when the grievor could not prove with any documentation, diaries, or notes, what dates he actually worked. He also reminded me that the grievor said he used his personal vehicle for recruiting purposes but no receipts were ever provided to prove this.

9. Mr. Snyder argued during the December 13th interview with Mr. Rodrigue, with respect to the true history of the Captain Laal memorandum (Exhibit E-5), when the grievor was told to tell the truth, he did not but continued to lie.

With respect to the quantum of discipline, Mr. Snyder argued that fraud is a very serious offence as the courts and the Public Service Staff Relations Board (PSSRB) have held. Mr. Snyder argued that when someone is caught lying, the penalty warrants termination. Mr. Snyder argued that Mr. Thomson lied to the military police, to Mr. Rodrigue, and to myself as adjudicator, and that by his own admission of what he did, is justification for his own demise. His continuous dishonesty warrants dismissal, and the PSSRB has a low threshold of tolerance when it comes to dishonesty. Mr. Snyder referred me to: *Di Vito v. Macdonald Dettwiler & Associates*, (1996) B.C.J. No. 1436; *Parsons* (Board file 166-2-27007 and 166-2-27006); *Cudmore* (Board file 166-2-26517); *Zakoor* (Board file 166-2-25882); *Mercier* (Board file 166-2-9313); *Livingston Distribution Centres Inc. and Teamsters Union, Local 419*, (1996) 58 L.A.C. (4th), 129; *Taylor* (Board file 166-2-27332).

Regarding any mitigating factors that the grievor possesses with respect to honesty and integrity, Mr. Snyder argued that Mr. Thomson should have had an appreciation of his misconduct, and that he alone, is responsible for his actions. Mr. Snyder concluded that neither of these elements are present in the grievor and that he has no sense of appreciation for what he has done as is evidenced by his own testimony. In Exhibit E-57, at the top of page 9, Mr. Thomson blamed the militia for what happened. This is a blatant lie. In Exhibit E-43, on page 3, he told

Chief Bradfield that he blamed Mr. Ruttan for telling him that their time was theirs. Another lie as Mr. Ruttan testified to. He concluded the grievor felt he was a victim, but is truly in a state of denial.

In conclusion Mr. Snyder argued that the grievor violated the *Code of Conduct* (Exhibit E-52), the leave policy (Exhibit E-15), and combined his breaks which was against office policy (Exhibit E-14). He argued the grievor had demonstrated a complete absence of honesty and integrity throughout the entire process, and that the employer has shown Mr. Thomson abandoned his position on January 26, 1995 and this is an act of fraud. He argued the grievor admitted to Chief Bradfield and to Mr. Rodrigue that he had done this on at least two other occasions. He argued that the lack of contrition by the grievor has also contributed to his demise, and asked me to dismiss the grievance.

Mr. Snyder asked, in the event I reinstate Mr. Thomson, that I remain seized of the matter regarding compensation.

Argument for the Grievor

Mr. Dann agreed with Mr. Snyder that this case is not about when the grievor actually signed in for his militia work, nor is it about double dipping but it is partially about the very flexible policy that the militia has regarding accounting for one's hours of work. With respect to the January 26, 1995 incident, Mr. Dann argued that the grievor was on shift and that he gave his evidence as to what happened that evening. He said no one knows where he was that night for sure, but the grievor said he was at the military camp from 2000 hours to 2100 hours. The letters of testimony from four militia members (Exhibit E-38) indicates that one in fact even said goodbye to the grievor that evening. Private Long was the one who phoned Mr. Thomson and asked him to come up to the military camp in the first place and therefore had good reason to remember that date. He argued that these individuals were not called as witnesses, but the letters of support that they wrote were never contested by the employer either. Mr. Dann argued that the grievor returned to the office until midnight on January 26 as is evidence by Exhibit G-16, the ASI report fax that he sent out at 0006 hours. Mr. Dann argued it would be ridiculous to assume that the grievor set the fax time for some specific hour in the evening.

With respect to the grievor's testimony and the call forward being on the phones, but the cell phone was turned off, Mr. Dann said he can understand this, since that is the reason why no calls got through. Regarding the fact that the main phone should ring at least once, Mr. Thomson denied that he heard it ringing and could have been in the washroom when it did ring. Mr. Dann argued the grievor testified the office had telephone trouble particularly with the lines under the carpet and a loose wire. Mr. Dann argued that, if the grievor deliberately intended to absent himself, why would he have taken the cell phone with him.

With respect to the grievor's response to the DeGrace incident report (Exhibit E-9), Mr. Dann argued that the grievor was not lying by omission in his report of what took on January 26 (Exhibit E-16), because the grievor said he was out for lunch. He said he later admitted that he combined his coffee breaks with his lunch.

With respect to Exhibit E-18, an E-mail from Chief Bradfield to Barry McKee, on February 7, 1995, wherein Ms. Bradfield said that four staff members advised her that Mr. Thomson had attended a militia meeting on January 26, 1995, two of these staff members (DeGrace and Sendey) denied this on the witness stand before me. Mr. Dann argued that management's attitude in a summary of their meetings early on, came to the conclusion that the grievor was guilty and the department then began to build its case accordingly.

With respect to the militia pay sheets, Mr. Dann argued it is obvious that there was flexibility for reporting times worked for leaders. He argued Captain Behn said there were three options for signing in after September 1994: Option 1, a sheet could be signed during the day at any time; Option 2, one could make a separate pay sheet, but that was not the preferred option since it created an administrative burden; or Option 3, sign in on a parade night for work previously done. He argued Captain Behn found some dates regarding Mr. Thomson were in conflict on paper at least, but Captain Behn told Mr. McSeveney that this did not really concern him. He reminded me Captain Jamieson also testified that accurate times and dates did not have to be registered on pay sheets. This was substantiated by Lt. Col. Egan in Exhibit E-30 and Major Burns in Exhibit E-36.

Mr. Dann said that he never denied that Mr. Thomson had amended or destroyed some forms, but the grievor had a reason for doing this. He argued the militia encouraged leaders to sign in accurate times, and Mr. Thomson had a dilemma to provide information to his employer that he had trouble getting because of legal ramifications. Mr. Thomson knew that the militia registers would be inaccurate, on the one hand, but on the other Revenue Canada said he was being uncooperative. He argued Mr. Thomson tried to rectify the situation by amending the 895's, but he first sought authority to do that from Lt. Col. Egan (Exhibit E-4) on July 18, 1995. Exhibit E-4 was intercepted by Captain Jamieson who denied saying to Mr. Thomson he could amend the forms. Mr. Dann argued that this testimony obviously conflicts at this point, and I will have to decide which one to accept. He argued Mr. Thomson altered 895's in order to get Revenue Canada to believe him.

With respect to the question of honesty, Mr. Dann argued that paragraph 2 of the termination letter (Exhibit E-61) is still up for question. It is for me to decide whether or not the grievor was in effect absent from duty without permission. He argued that Mr. Thomson said he was out for lunch on the evening of January 26 only in response to Senior Customs Inspector DeGrace's incident report (Exhibit E-9), but he did not say what time he was out.

With respect to the reference, 'a review of the records' provided by the CSR, in the termination letter paragraph 3, Mr. Dann argued that these records are the 895's which we now know are inaccurate in what they show regarding actual times and dates for militia duties. He argued that the grievor, by his own admission, told his employer that he had combined lunch and coffee only three times over a two year period, one of which was January 26, 1995, and that this was not excessive.

With respect to page 2, paragraph 1 of the termination letter, Mr. Dann agreed that the grievor had amended some attendance registers but he did this with the permission of Captain Jamieson. The reference to gross misrepresentation of the truth in paragraph 2 of page 2 of the termination letter, the grievor was not lying by omission when he responded to the DeGrace report by not immediately saying he combined his coffee and lunch breaks, nor did he lie about his leave request to attend the militia since there is no proof what he did was wrong.

Mr. Dann argued it is true that the grievor was on sick leave on November 17, 1994, but he signed in for militia duty that evening as he felt better by the end of the day. He also argued that the grievor had been given a three day sick leave period in November 1993 and had signed in on one of those days to the militia. Mr. Dann reminded me that all of the sign in times were inaccurate and could not be given much weight in the first place. He also argued the rationale used by the grievor to destroy some of the 895's may have been influenced by the fact that he was on stress leave in July 1995, and this may have affected his judgment.

Regarding the famous Captain Laal memorandum (Exhibit E-5), Mr. Dann argued Captain Laal assumed that Mr. Thomson had typed it, but a close look at an extract from Mr. Rodrigue's report of his interview with Mr. Milburn (Exhibit G-7), Mr. Milburn said that he typed the memorandum for Captain Laal and Captain Laal signed it.

Regarding the point raised by Mr. Snyder with respect to how the grievor would know which times and which dates to change on 895's, Mr. Dann argued the grievor said he only worked on recruiting during days of the week, never on a Saturday, but since these recruiting times were recorded on Thursday's time sheet, it was easy to make changes since he could calculate his times back from Thursday evening parades. Mr. Dann argued that an accurate day reading would be 0900 hours to 1400 hours for a half day of recruiting, so the grievor used this time on the amended 895's.

Mr. Dann argued that the reference in the termination letter to not showing any remorse is simply untrue. He said the grievor did show remorse in Exhibits E-17, E-35, and E-60. He argued since the grievor did not believe he was culpable, other than combining his lunch and coffee on a couple of occasions, he had nothing to express remorse for. He did not feel remorse for amending the 895's since he testified he had been told he could do that.

Mr. Dann argued that it took an unusually long time to dismiss the grievor, that is approximately 12 months, and that the employer said it wanted to get it right. He argued the grievor was not suspended, that he worked alone until the end of June 1995, in July 1995 he was on stress leave, in August 1995 he was on annual leave, and at the end of October he was back on shifts alone to ease office morale as

Mr. McSeveney said. Mr. Dann referred me to *Da Cunha* (Board file 166-2-24725) to support his argument regarding the employer's delay in its final decision.

Regarding the severity of the penalty, Mr. Dann felt that it should fit the crime. He reminded me the grievor admitted combining coffee and lunch three times, and he also admitted altering and shredding documents. He concluded however the grievor should not have been discharged for doing this. To strengthen his argument Mr. Dann referred me to: *Sample* (Board file 166-2-27610); *McGoldrick* (Board file 166-2-25796); *Brown and Beatty, Canadian Labour Arbitration*, 7:4422 and argued Revenue Canada should have used progressive discipline because the grievor had rehabilitative potential.

With respect to mitigation, Mr. Dann referred me to: *Wm. Scott & Company Ltd. and Canadian Food and Allied Workers Union, Local P-162*, (1976) C.L.R.B.R., in particular page 4 of this decision that refers to ten points that I should consider in the matter before me. Mr. Dann argued that close examination by myself of these ten points will demonstrate that there are many mitigating circumstances for the grievor. Mr. Dann also argued with respect to the *Scott* decision (supra) that Mr. Thomson admitted he combined breaks and destroyed documents, but the employer's punishment is excessive.

As far as the redress the grievor is seeking, he wants full reinstatement.

Mr. Dann agreed that the case before me has a lot to do with character, but he reminded me Mr. Thomson worked for twelve and a half years for Revenue Canada with an unblemished record, and that the preponderance of evidence supports the grievor's defence. He argued the shredding of original militia registers was not unfathomable, as Mr. Snyder said, because it has been explained. Mr. Dann agreed the grievor said he left the work place at 2000 hours on July 26, 1995 but he also said he returned that same evening and I must sort this out from the evidence, and from the testimony before me. With reference to Exhibit E-55 and the reference to 50 or 60 occasions, and Chief Bradfield taking this to mean that the grievor had actually been away without leave 50 or 60 times is inaccurate, since what Mr. Thomson meant was, if he had done this 50 or 60 times, he would have burdened the administrative system

of Revenue Canada. Mr. Dann argued one does not ask for military leave for one to two hours, normally it would be for at least a day.

Mr. Dann also argued that counsel for the employer said the grievor changed his mind more than once, but he argued in a meeting it is natural to make a mistake once in a while as in Exhibit E-43, the summary notes of the interview Mr. Thomson had with Chief Bradfield on June 6, 1995. Mr. Dann reminded me that there is a conflict in evidence between what Captain Jamieson said, and what Mr. Thomson said. There is also a conflict regarding the genesis of the Captain Laal memorandum (Exhibit E-5), but Mr. Dann felt Mr. Thomson did not lie about the Laal memorandum.

Mr. Dann concluded the jurisprudence put forward by the employer for the most part all dealt with issues of theft, but there is no suggestion before me at all that Mr. Thomson stole anything. He asked me therefore to uphold the grievance.

In rebuttal argument, Mr. Snyder argued that the supporting letters by the militia personnel (Exhibit E-38) where a reference is made to 'goodbye' in one of the letters, one cannot be sure who was actually leaving. He argued the letters were only entered to show that they were written, not to verify all of their contents. He also argued that the ASI report sent at 0006 hours could have been sent by the grievor if he came back to work after his shift was over. He argued the phone ringing debate was never put before any of his witnesses and must therefore stand as uncontroverted evidence. He reminded me Mr. Sendey said he did not think the wires under the carpet applied to phone 0341, and that the loose wire would not have been a factor either, since Captain Moseley never got an operator message saying that the line was not available.

He said it was not true that management concluded the grievor's guilt early on, but their suspicions grew as the investigation lengthen.

With respect to the termination letter referring to the fact that the grievor was away from his designated post, it is true there are no eye witnesses to this but there is a lot of circumstantial evidence to say he was not present. With respect to Mr. Thomson admitting he was away on only a total of three occasions from his work place, Mr. Snyder wondered how much reliance I would put on the grievor's testimony regarding this. He reminded me of the three day sick leave and the one day sick leave

that was granted, but in spite of that, Mr. Thomson managed to sign in for militia duty. Regarding stress in July 1995, Mr. Snyder argued there is no medical evidence before me regarding this. Mr. Snyder argued it is not an issue as to who typed the Captain Laal memorandum (Exhibit E-5), but what is at issue is that Mr. Thomson said that he did not know who prepared it, but later said it was Mr. Milburn. The issue is that Mr. Thomson was not forthcoming at all regarding this evidence.

Mr. Snyder argued the delay in dismissal is addressed in the letter of termination near the end of page 2. Mr. McSeveney and Mr. McKee wanted to be fair regarding a suspension or a shift change before acting with discipline of the grievor. Mr. Snyder argued the *Da Cunha* case (supra) is very different from the one before me, and that the *Sample* case (supra) does not come close to the facts before me. He argued *Sample* (supra) came forward to clarify his situation, but Mr. Thomson only admitted what had really happened when Mr. Rodrigue said he was lying. He argued in the *McGoldrick* decision (supra), Mr. McGoldrick was very green whereas Mr. Thomson was not, and that he actually did gain monetarily unlike *McGoldrick* (supra).

With respect to rehabilitation, Mr. Snyder argued the bargaining agent failed to demonstrate that Mr. Thomson was able to rehabilitate himself. Regarding the *Scott* decision (supra), Mr. Snyder argued it is not my responsibility to agree or disagree with management's decision, but only to conclude that the decision was reasonable or unreasonable.

Finally, Mr. Snyder argued in relation to the reference to 50 or 60 occasions where the grievor may have allegedly caused concern for his employer, that Mr. Dann cannot now provide evidence on this, since it was not challenged in testimony, nor can he interpret it now since it was never addressed by Mr. Thomson.

Decision

In summary, after reviewing the grievor's letter of termination, I find that the employer terminated Mr. Thomson's employment effective January 23, 1996, after a lengthy investigation for being absent from duty without permission while attending to CSR militia business and for amending and shredding original militia attendance

registers (895's) in an attempt to satisfy management because he feared losing his employment.

The employer concluded in its investigation that the grievor's gross 'misrepresentation of the truth' and 'the dishonest manner' in which he conducted himself, on more than one occasion, seriously damaged the bond of trust that must exist between a Customs Inspector and management. The employer's conclusion was compounded by lack of remorse by Mr. Thomson and his failure to 'admit any culpability' for his actions.

After a thorough and careful analysis of all the testimony and evidence, I have concluded that the employer's decision was a reasonable one.

Although considerable evidence and testimony was presented in relation to the militia attendance registers (895's) and the impact of Mr. Thomson's amending and shredding some of them, the 895's were not Revenue Canada's pay records. Although I accepted the 895's as evidence during the hearing, I have only used in my determination those that relate to January 26, 1995 (Exhibit E-58). I have not considered the allegation of shredding 895's. I note as well that they are somewhat unreliable since work times signed in for were not necessarily always the actual times worked, especially for leaders such as Mr. Thomson.

I also note here that since the letter of termination did not refer to any breaches of the *Code of Conduct* (Exhibit E-52), I have not referred to the *Code* in my determination.

I have concluded however that Mr. Thomson was absent from duty on the evening of January 26, 1995 and that this absence amounts to fraud, an activity that is given very little sympathy by adjudicators appointed under the *Public Service Staff Relations Act*. Fraud as defined in Black's Law Dictionary, sixth edition, (1990) reads:

Fraud. An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive,

whether by a single act or combination, or by suppression of truth, or suggestion of what is false, whether it be by direct falsehood or innuendo, by speech or silence, word of mouth, or look or gesture.

I will now deal with the events of the evening of Thursday, January 26, 1995. Was the grievor absent from duty without permission? Yes he was, as evidenced by his own admission when he was confronted by Chief Bradfield after she learned there had been a parade on Thursday, January 26 (Exhibit E-17). When initially asked to explain his whereabouts on the 26th as a result of boat Captain Moseley's complaint on Friday, January 27, 1995 to SCI DeGrace (Exhibit E-9), Mr. Thomson responded on February 2, 1995 with Exhibit E-16 that only mentions he was out of the office for dinner at 2000 hours. He did not volunteer that he had combined his dinner and coffee breaks to go to the Nanaimo militia establishment. If indeed Mr. Thomson had been forthcoming with Chief Bradfield from the very beginning, this entire matter may have been resolved quite easily and quite quickly.

The grievor's falsehood and silence in this matter as defined in the word "fraud" contributed to his demise, even though the grievor is not obligated to admit any guilt. His employer must prove guilt. I believe that it has. Mr. Thomson would have me believe that he returned to his shift on the 26th after spending some time at the militia establishment. I do not believe him. I do believe that he returned to the office to send the ASI report (Exhibit G-16) at 0006 hours on January 27, first introduced during this hearing and not during the investigation. I do not understand why this report was never shown to the employer during the investigation.

However, the main reason I do not believe Mr. Thomson returned to his shift, is because of testimony regarding the office telephones. I have absolutely no reason not to believe boat Captain Moseley when he said he called the Customs office numerous times during the evening of January 26 and that the phone rang and rang without being answered. On the balance of probabilities, I believe that Mr. Thomson was simply not in the office when Captain Moseley was calling. There is no testimony or evidence from Customs staff or from public complaints, to indicate that the phones were not working properly. Mr. Sendey said there were no customer complaints about the phones. Chief Bradfield could not recall any either. In fact, according to Mr. Thomson, Private Long telephoned him during the evening of the 26th to ask him to come up to the militia establishment to help a new recruit. SCI DeGrace testified

that even if the phone lines were on call forward to the cell phone and the cell phone was turned off, line 0341 would ring once, or if the answering machine was on, line 0341 would ring once. At worst, there would be an operator message saying the number cannot be connected. If Mr. Thomson had been in the office, he would have heard at least one ring, even if he had been in the washroom during one phone call attempt. Captain Moseley said he called often and never had problems with the phones in the past. I simply do not believe the grievor's explanation regarding phone problems on the night of January 26, 1995. The phones worked well on January 27, 1995.

Mr. Thomson testified that he could not see how the phone could have rung on January 26, when the phones were on call forward to the cell phone which was turned off. I believe SCI DeGrace who said line 0341 would ring once in the office, or an operator would inform a caller that the line was unavailable. Captain Moseley did not receive such a message. I believe him. It was never made clear to me what accuracy or importance should be attached to the reference in Exhibit E-16 that Mr. Ed Reid had phoned the Nanaimo office after Captain Moseley called him, and Mr. Reid said the phone line went dead.

The events surrounding January 26 in themselves would not have been sufficient in my mind to warrant termination. However it cannot be looked at in isolation, but in light of subsequent actions by Mr. Thomson as the investigation evolved.

Chief Bradfield's testimony was particularly revealing, and I believe her to be very credible. She testified there was an office policy regarding not combining lunch and coffee breaks (Exhibit E-14) that Mr. Thomson knew about. He admitted combining lunch and coffee breaks on January 26, only after being confronted by Chief Bradfield regarding the militia parade on January 26. Mr. Thomson knew there was a policy regarding military leave (Exhibit E-15) since he had applied for military leave in the past (Exhibits E-64 and E-66). He did not apply for military leave for January 26, since he felt, if he had to do so every time he wanted to do some militia work, this would overburden Revenue Canada's personnel administration. If he had restricted his militia activities to non-Revenue Canada shift periods, he would not

have overburdened the administration since there would not have been a requirement to request military leave. Unfortunately, he did not do this, by his own admission.

I believe it is important, if not essential to address Chief Bradfield's efforts to obtain military information to assist her in the employer's determination of what to do with Mr. Thomson.

Chief Bradfield asked Lt. Col. Egan for militia attendance records as early as February 16, 1995 (Exhibit E-2), but it took until late fall of 1995 before Mr. Rodrigue ever saw any 895's. Considerable correspondence was entered as evidence regarding the tracking down of dates where the grievor's Revenue Canada work schedules allegedly overlapped with income from the militia. I believe the militia was exceedingly slow to cooperate in this matter, even though one could argue the militia was not under any obligation to provide attendance information. This slowness was caused through administrative inefficiency or a circle the wagon mindset to protect one of their own, or both. I believe Chief Bradfield when she said she wanted the investigation over quickly and that she found the accounting of 895's "unbelievable". In any event, a long, costly and nerve wracking investigation for Mr. Thomson could probably have been shortened if the militia had been more cooperative early on. Suffice it to say the militia was partly to blame for the length of time the employer took before finally disciplining Mr. Thomson. By June 6, 1995 when Ms. Bradfield produced as far as she knew at the time, thirty-nine overlap dates where the grievor's work schedule could have conflicted with the militia between April 1993 and April 1995 (Exhibit E-46), she was by then not believing Mr. Thomson's claim that he was at fault only for January 26, 1995, especially after she confirmed with former Chief Ruttan that Mr. Ruttan never said if work was caught up, staff could do what they wanted as Mr. Thomson claimed Chief Ruttan once told him.

In the end, Chief Bradfield concluded Mr. Thomson failed the test of integrity; that he was not forthcoming unless confronted; that he lied about what former Chief Ruttan told him; that he expressed no wrongdoing and never showed that he misunderstood any policies, rules or regulations for Customs employees. I have not been led to believe otherwise.

Mr. Thomson was not at work on January 26, 1995 when Captain Moseley called in, nor did he arrange for military leave while absent from duty on January 26.

Mr. Rodrigue's testimony is as crucial or more so than Chief Bradfield's, especially in light of the fact that he served in the Military Police for twenty years and is now a Senior Investigator with Revenue Canada. I found Mr. Rodrigue to be very credible.

Regarding Exhibit E-5, the Laal memorandum, Mr. Rodrigue testified that Captain Laal told him Mr. Thomson prepared it, then Mr. Thomson told Mr. Rodrigue that someone prepared it, then later on said that a clerk prepared it; Mr. Rodrigue concluded that the only clerk could have been Private Ereault. Private Ereault denied this. Mr. Rodrigue ultimately became frustrated with Mr. Thomson's inconsistencies and contradictions and concluded the grievor was lying. Mr. Rodrigue pointed out that the 895 for Thursday, January 26, 1995 had been changed to read 0900-1400 for Mr. Thomson's work time and the authorized training was also changed to 0900-1400, whereas all other soldiers were at the militia establishment from 1900-2200. He noted as well that there were now three 895's for January 26 in Exhibit E-58, pages 18, 19, 20. The grievor changed these times for January 26 but had previously admitted he went up to the establishment in the evening after Private Long called about a new recruit.

I believe that Lt. Col. Egan, Captain Jamieson, Captain Laal and Private Ereault all made it clear to Mr. Thomson that he was not to amend or alter any 895's, but he altered the one for 26 January 1995 (Exhibit E-58, page 18). In fact, there are three 895's for January 26, 1995, something that was also never made clear to me.

The altering of 895's for January 26, 1995 that Mr. Thomson admitted to Mr. Rodrigue was done to reflect the actual times he worked for the militia was the wrong thing to do, and the grievor should have known that it was wrong.

Mr. Thomson could not explain to Mr. Rodrigue how he remembered the exact times he worked, but he told Mr. Snyder he did it "from memory" since he had no notes or diaries to work from, nor could he support claims for the use of his personal or military vehicles. Mr. Rodrigue concluded the grievor showed no remorse, blamed the militia for his problems, and lied to Mr. Rodrigue all the way through his investigation. I have reached a similar conclusion starting with the grievor not being forthcoming in Exhibit E-16 regarding his actual whereabouts on January 26, to what Mr. Ruttan allegedly said to him, to the military personnel who told him not to amend

or alter 895's, to how he remembered actual dates worked. In fact, I have found Mr. Thomson to be in denial throughout the investigation based on the evidence I have seen, and his testimony during the hearing.

Mr. McKee testified that the employer took a long time to discipline the grievor because it wanted to be fair. I believe the employer was fair, especially Chief Bradfield who gave Mr. Thomson every opportunity to explain himself during her investigation, and in light of the military's slowness. Mr. McKee warned the grievor on Saturday, June 24, 1995 that termination was being discussed. Paragraph three of Exhibit E-60 reads:

The session with Thomson went very well. I left feeling that progress had been made. I made it clear to Thomson that termination was being discussed; the difference between "reasonable and probable grounds" and "balance of probabilities"; the issue of combining coffee and lunch breaks, in that coffee breaks are not his own time, they are provided by management on the basis of operational requirements; our lack of trust in him based on the information we have on hand, his lack of cooperation, his lack of remorse; his ongoing attitude towards the issues.

Mr. Thomson's eleventh hour claim, that he spoke to a Col. Johnson, a lawyer, and an unnamed JAG lawyer, both of whom allegedly told him the original 895's were invalid, is an unbelievable effort on Mr. Thomson's part to legitimize his action to amend 895's for January 26, 1995 because they were invalid. Why the grievor never told Ms. Bradfield about this, or Mr. Rodrigue, or the Military Police is also unexplained. Why Col. Johnson or the JAG lawyer were not called to testify also adds to the mystery and mystique of Mr. Thomson's defence. I do not believe this ever happened, just as I do not believe Mr. Thomson's version of what he alleges he was told to do in Victoria by Lt. Col. Egan, Captain Jamieson, Captain Laal, and Private Ereault.

The fact that Mr. Thomson altered militia attendance register documents for January 26 is as Mr. Snyder said "unfathomable", and contributes greatly to a breach of trust, particularly since the grievor did it over an extended period of time during visits to Victoria and not as a one time act of desperation. The fact that he was not forthcoming throughout the investigation, was doing militia duty on January 26, 1995 when Captain Moseley tried to check in, and that he lied to Ms. Bradfield and to

Mr. Rodrigue, particularly regarding the Captain Laal memorandum (Exhibit E-5), all add up to a not so pretty picture of distrust, dishonesty and lack of integrity.

I can understand Mr. Thomson's attempting to blame the military for its flexible signing in approach to 895's for leaders, a practice that was inexplicable in my opinion, but I cannot allow Mr. Thomson to blame the militia, or Mr. Ruttan for that matter, for his own actions of dishonesty, of deceit, of amending a militia document. This was his own undoing and no one else's. As a long serving, experienced militia member he should have known better. Whether he was on stress leave or not in July 1995, a fact that was never proven by medical evidence, Mr. Thomson consciously disobeyed senior militia officers and amended a document. I do not agree with Mr. Dann's assessment that the department began to build its case against Mr. Thomson early on. Chief Bradfield was, in my opinion, fair and patient with Mr. Thomson, especially on July 28, 1995 when she first saw the Laal memorandum slipped under her door and subsequently asked the grievor for an explanation of dates she compared on Exhibit E-47. Mr. McKee was also fair, patient and understanding with the grievor during a meeting with him on June 24, 1995 (Exhibit E-60). I also believe Mr. Rodrigue gave Mr. Thomson every opportunity to explain himself openly and honestly. The fact that Mr. Dann argued the employer took a long time in finally disciplining the grievor seems to contradict his argument that the employer made up its mind early on that the grievor was guilty.

Another point regarding the Laal memorandum (Exhibit E-5), if Mr. Milburn prepared it as Mr. Milburn told Mr. Rodrigue in December 1995 in Exhibit G-7, why did Mr. Thomson tell Chief Bradfield in October 1995 (Exhibit E-50) that Captain Laal prepared it? The conflicts regarding who produced Exhibit E-5 make no sense on its own, but as part of the larger picture, is another negative reflection on the integrity of Mr. Thomson.

Regarding remorse, Mr. Dann is correct. The grievor did say in Exhibit E-17 on February 6, 1995 "he was sorry about the incident", that is the Captain Moseley incident; on May 9, 1995 in Exhibit E-35 he again said he was "embarrassed and sorry" for shutting off the cellular phone on January 26, 1995; and on June 24, 1995 in a meeting with Mr. McKee (Exhibit E-60) Mr. Thomson said he was "very sorry" that he had left work on three occasions to attend militia activity and that if discipline was to

be applied, "so be it", he would accept it, and that he would not do it again. This being said, I ask myself why Mr. Thomson continued to behave in a dishonest fashion after June 1995 by doing the things that he did. My answer is that he began to realize he was in deep trouble and, by trying to cover his tracks so to speak, put himself in deeper trouble.

Regarding the argument by Mr. Dann with respect to mitigation, I refer to the *Scott* decision (supra), page 4 and the ten points Mr. Dann asked me to review. Mr. Thomson had fully satisfactory performance reviews over his twelve and one-half years with the Department; his offence was not an isolated incident but by his own admission at least three times he did militia work when he should have been doing Customs work; Mr. Thomson felt provoked by his employer to provide the 895 information; his offence of amending 895's for January 26, 1995 was premeditated, even though Mr. Dann argued the grievor did this due to strong emotional impulses; the grievor has undergone economic hardship as a result of being terminated but he has managed to find new sources of income; I do not believe Mr. Thomson was discriminated against, nor did he claim he was; it was never demonstrated that Mr. Thomson did not understand the nature or intent of an order given to him, but he contradicted witnesses Ruttan and Jamieson as to what they said to him; his offence was a very serious breach of trust; and lastly, although Mr. Thomson said he was sorry, he continued to act in an improper manner.

In conclusion, I believe that the employer had proper cause to dismiss the grievor. Its decision was not excessive, and I will not interfere with it. What Mr. Thomson did as a Peace Officer was very serious and how he conducted himself during the investigation was even more serious. He has undercut the bond of trust that his employer must have in him, especially since during a lot of his work schedule he is alone or unsupervised. Revenue Canada could no longer trust him.

In reaching this conclusion, I have also considered the grievor's rehabilitative potential within Mr. Dann's argument of the need for progressive discipline. If from the outset on February 2, 1995 in Exhibit E-16 Mr. Thomson had been right up front with Chief Bradfield, and if he had not for months afterward contradicted himself and disobeyed militia superiors, I would say he possessed the rehabilitative potential needed to return to Revenue Canada. However, even though he said he was sorry, he

demonstrated just the opposite by blaming others for his problems, by not accepting responsibility for his own actions, and by not being forthright even during the hearing. Mr. Thomson was warned during the investigation by Mr. McKee on Saturday, June 24, 1995 (Exhibit E-60) that termination was a distinct possibility. His state of denial, even throughout the hearing, demonstrated to me that his previous employment relationship was not redeemable. The grievor's behaviour substantially distinguishes this case before me from *Green v. Canada (Treasury Board)* (1998), 134 F.T.R. 108 (Federal Court of Canada, Trial Division) where Cullen J. agreed with the reasoning in the Ontario Court of Appeal in *College of Physicians and Surgeons of Ontario v. Gillen* (1993), 13 O.R. (3d) 385 that found, under no circumstances should denial serve to increase what would otherwise be an appropriate penalty. Also unlike *Green* (supra), where it would have been difficult for Mr. Green who was an air traffic controller for 23 years to find new work elsewhere, Mr. Thomson has already found new employment opportunities. The grievor's initial conduct regarding January 26 combined with his subsequent dishonesty during the investigation is just cause for his termination, notwithstanding his twelve and one-half years of service with a fully satisfactory work record. His actions to alter attendance registers was not a case of a momentary aberration, but a premeditated act of fraud.

For all these reasons, this grievance is denied.

**J. Barry Turner,
Board Member.**

OTTAWA, April 2, 1998.