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File: 166-32-31152

Citation: 2003 PSSRB 24



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

JEROME KATCHIN

Grievor

and

CANADIAN FOOD INSPECTION AGENCY

Employer

**Before:** Evelyne Henry, Deputy Chairperson

**For the Grievor:** Steve Eadie and Denise Balfe,  
The Professional Institute of the Public Service of Canada

**For the Employer:** Robert Jaworski, Counsel



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Heard at Toronto, Ontario,  
July 25, December 2, 4 to 6, 2002.  
Written arguments: December 20, 2002,  
and January 10, 2003.



## DECISION

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[1] Dr. Jerome Katchin, a Veterinarian employed by the Canadian Food Inspection Agency, grieves a three-day suspension without pay imposed for making comments of a violent or threatening nature.

[2] The letter of suspension reads:

*I am writing further to a meeting that was held with you on June 14, 2001 regarding comments which you were alleged to have made regarding Canadian Food Inspection Agency's Guelph office and staff that work at that location on or about 10 May 2001 and 4 June 2001. The investigation into this matter has been concluded.*

*While you have admitted that you made comments in which you refer to the Guelph office as a "free fire zone", you have denied stating that this means "shoot everyone on sight" and have denied making that comment in relation to specific individuals. You have also denied making a comment about "fantasizing about killing people at the Guelph office". However, on the basis of the evidence before me, I have concluded, on the balance of probability, that you did make the above noted comments. Your explanation that whenever you make the comment "free fire zone", you mean that there are no "friendly forces" at that location is not supported by the investigation.*

*Your behaviour with respect to making the above noted comments is unacceptable and will not be tolerated. In the future, you are expected to refrain from making comments of a violent or threatening nature. Any repetition of threatening or violent comments may result in more severe disciplinary action.*

*In light of the above, you are hereby suspended from duty for 3 days (without pay). You will serve this suspension on July 25 - 27, 2001. During the period of this suspension you are not to appear on work premises without the permission of your supervisor, Dr. Dennis Barran or your Inspection Manager, Mr. Jim Crawford.*

*If you have any questions regarding this matter, you may contact me at (519) 837-5807.*

[3] The hearing was started on July 25, 2002, and continued the week of December 2 to 6, 2002. At the resumption of the hearing on Monday, December 2, 2002, the employer requested that another case, Board file 166-32-31465, be consolidated with the present case. It concerned a five-day suspension involving the same parties. The grievor opposed the consolidation.

[4] The employer quoted case law under the Federal Court jurisdiction to support its position that consolidation was appropriate since the parties were the same; there were common legal and factual issues and parallel evidence.

[5] The grievor submitted that consolidation was not workable, as he had had no notice. He had only heard on the previous Friday of the employer's intention. The two cases were developed independently; they involved two distinct incidents; they required different witnesses for the grievor and additional ones for the employer. The grievor was prepared to proceed with the present case but would need an adjournment to deal with the second case.

[6] The motion for consolidation was denied on the ground that it would be more efficient to complete one case within the time allotted rather than have two files outstanding, since it was obvious all the evidence could not be heard within the week. On December 6, 2002, all the evidence was heard and the parties were asked to submit written arguments.

[7] At the onset of the hearing, Dr. Katchin indicated he was prepared to withdraw some of the redress requested in his grievance, specifically those numbered 3, 4, 11, 12, 13, 14, 15 and 1 and 2 if these don't exist. Those that remain are numbered 5, 6, 7, 8, 9 and 10.

[8] A number of documents were tendered by the grievor with the consent of the employer: the Veterinary Medicine (VM) Group collective agreement (Exhibit G-1); Chapter 6 of the Treasury Board Manual on Personnel Management dealing with Discipline (Exhibit G-2); the letter of suspension from Mr. Anthony Sangster dated July 23, 2001 (Exhibit G-3); grievance replies (Exhibits G-4 and G-6) and a report entitled "Investigation into comments alleged to have been made by Jerome Katchin" (Exhibit G-5).

[9] The employer called three witnesses. The first two testified on July 25, 2002, and the last one on December 2 and 4, 2002.

[10] Dr. Wendy Powell has been a Veterinarian since 1988; she acquired a Master's degree in Epidemiology from the University of Guelph in 2001.

[11] Dr. Powell was originally hired by Agriculture Canada as an inspector in 1992. She worked at various slaughter plants until her maternity leave in 1993, from which

she returned at the end of 1993. She received a cash-out in February 1994. Dr. Powell worked on some contracts doing meat inspection between 1994 and 2001.

[12] In March 2001, Dr. Powell was hired as a veterinarian (VM-01) at Establishment 285, Maple Lodge Farm. Dr. Powell stated that she worked twelve weeks at Maple Lodge Farm. She also worked at Establishment 196, as well as at the Regional District Office in Guelph. Currently, she is a VM-03, Animal Health Disease Control Specialist, as of February 25, 2002.

[13] Dr. Powell indicated that she met Dr. Katchin at Maple Lodge Farm where they worked together for a short time. Dr. Katchin was not really involved in Dr. Powell's training at Maple Lodge Farm. Veterinarians at slaughter establishments usually work alone, taking turns going onto the kill floor. Dr. Katchin had few conversations with Dr. Powell.

[14] Dr. Powell stated that Dr. Katchin told her he was fantasizing about going into the Regional Office in Guelph and treating it as a free fire zone. This took place in offices set aside for CFIA staff in Maple Lodge Farm, in the hallway outside the veterinary office. Dr. Powell stated that she was sitting at the computer in the open space beside the hallway. It was her time to go to the kill floor. Veterinarians took shifts of half an hour looking at carcasses on the kill floor, half an hour in the office doing something like computer work. It was her time to go down and, as she was walking past the veterinary office, Dr. Katchin was standing in the hallway and started telling her about his thoughts.

[15] Dr. Powell does not remember Dr. Katchin's exact words. He thought Guelph Regional Office was a free fire zone or he wanted it to be. Dr. Powell said that she asked: "What is a free fire zone?" Dr. Katchin answered "to shoot everyone that you see" and he mentioned three people's names, Mary Rathlou, Sue Lajeunesse and a third name which Dr. Powell forgot. Dr. Powell does not remember how she responded. The encounter took less than five minutes, maybe two or three. Dr. Powell and Dr. Katchin were about three to five feet apart when he made the remarks. Then she went down to the kill floor.

[16] Dr. Powell said she was shocked; she was stunned and did not know what to do. Dr. Powell is not sure the word "fantasizing" was the right word Dr. Katchin was using. He was eager to tell her about this; it delighted him thinking about this.

[17] Dr. Powell does not recall the date off-hand; it was a year ago in the Spring, not long after she started working. Dr. Powell went to the kill floor and did her shift. She does not remember the rest of the day; nothing significant happened. Dr. Powell thought about how to respond; she spoke to friends and family members about what to do.

[18] Dr. Powell decided she was not willing to take responsibility if something happened. She wasn't certain Dr. Katchin wouldn't do this. What gave rise to her uncertainty was her experience with Dr. Katchin. He was not completely normal and he had the means; he had guns. Dr. Powell knew Dr. Katchin was a hunter; he had told her.

[19] Dr. Powell told Dr. Rathlou, because her name was mentioned as one of the people, and she wanted her opinion on how to go ahead with this.

[20] Dr. Powell told Dr. Rathlou about one month after the incident happened. She waited a month because she knew she "might end up here". "Here" meant entering into a system that deals with Human Resources. It took Dr. Powell that long to decide how she should act and finally come to the conclusion she didn't want to be responsible if something did happen.

[21] Dr. Powell stated that nothing happened in the period between the conversation with Dr. Katchin and her talking to Dr. Rathlou. After Dr. Powell spoke to her, Dr. Rathlou immediately called Anthony Sangster and an investigation began. Involved in the investigation were Mr. Sangster, two different women from Human Resources and Jim Crawford.

[22] There was an interview with Mr. Sangster and one woman, and a second interview with Mr. Crawford and the other woman. She does not remember the women's names.

[23] At the first interview, she was asked what happened and what was said. At the second meeting, she was asked questions similar to the first. Dr. Powell made no notes. She never wrote down what had happened. She is not a 100% sure, but she thinks she did not sign a statement.

[24] Dr. Powell reported the incident to the area police after talking to Dr. Rathlou. The police officer took her statement of what had happened and details about

Dr. Katchin. The decision to go to the police was made by Mr. Sangster and Mr. Crawford or one of the women. Dr. Powell went to the police with Mr. Crawford. It was felt that going to the police had a different level of implication. Dr. Powell does not know what happened as a result of going to the police.

[25] Dr. Powell thinks that what Dr. Katchin said was inappropriate and it was even less appropriate to be happy about it.

[26] When she was at the Regional Office, Dr. Powell worked with Sue Lajeunesse in Human Resources. Dr. Powell does not know the reasons Dr. Katchin mentioned Sue Lajeunesse or Dr. Mary Rathlou. Dr. Rathlou worked at Maple Lodge Farm at a time prior to Dr. Powell working there.

[27] Dr. Powell stated that nobody else was present when Dr. Katchin made his remarks.

[28] In cross-examination, Dr. Powell stated that she had worked in abattoirs, "in and out", before March 2001. Dr. Powell had no intention of working at Maple Lodge Farm longer than one year. She was applying for jobs outside the government. Dr. Powell said she liked people in abattoirs generally. She neither liked nor disliked Dr. Katchin. She wouldn't go out of her way to talk to him.

[29] Dr. Powell had a maximum of five conversations with Dr. Katchin. He definitely told military type stories. Dr. Powell does not remember who told her, but she knew that Dr. Katchin was a "military buff".

[30] Asked why and in what ways Dr. Katchin was not normal, Dr. Powell recognized how subjective that was. She recalled that one of the first things he talked to her about was his concern that when she put her shoes under the locker, her shoes hit his boots or shoes; he had come down to the kill floor to tell her. That is not what most people would do. He was not normal; he was different.

[31] Dr. Powell does not work in a plant anymore; she went from VM-01 to VM-03 on February 25, 2002. Dr. Powell agrees she has ambitions and is where she wants to be. She is happier where she is. At Maple Lodge Farm, the people are different and express themselves differently.

[32] In June 2001, Dr. Powell started to work two days a week at the Regional Office. Dr. Powell stated that Dr. Katchin did not disagree openly about the opportunity given to her, and the mention of staff shortage everywhere at the time sounds like new information to her.

[33] Asked about problems between her and Dr. Katchin, Dr. Powell knew he disliked other veterinarians signing export certificates, but she would not say this was a disagreement. For instance, they never argued about it, but they discussed it. It would not be fair to say Dr. Powell and Dr. Katchin had diametrically opposed views on export certificates. Dr. Powell thought it right, proper and good to read the documents and, if they appeared right, she signed them. Dr. Katchin, she believed, would not sign. Dr. Katchin did not think they were accurate; he disagreed with the wording.

[34] Dr. Powell had discussions about overtime with Dr. Katchin but does not know if they agreed or not. With regard to staffing shifts, she remembers there was a discussion with Mr. Eadie about starting at 6:00 a.m. Dr. Katchin had told her he had been speaking to Mr. Eadie who said that he could start at 6:00 a.m. if the other veterinarians at Maple Lodge Farm agreed. She had called Mr. Eadie because she disagreed with what Dr. Katchin wanted to do.

[35] Asked about Dr. Katchin's remarks about the Guelph Regional Office and its being a free fire zone and, when asked to clarify, he stated "shoot everyone on sight", Dr. Powell stated the words may not be accurate. She believed that what she was saying is true to the best of her memory. She never heard Dr. Katchin say: "There are no friendly forces there."

[36] Dr. Powell stated there could have been two or three sentences; there was no other context. She doesn't know what was said after the remarks. She does not remember Dr. Katchin saying anything else. She remembers going to the kill floor. She did not caution Dr. Katchin about his statement. She does not remember how she related to it. She was shocked; she does not remember what she said.

[37] Dr. Powell may have had other conversations with Dr. Katchin where she told him: "You have to let things go", but she honestly does not remember.

[38] Dr. Powell did not see anyone to report the remarks before she spoke to Dr. Rathlou because she did not know how to. She was not scared; she was worried. It



is "pretty serious to accuse someone of doing this". The first time she talked about it was on the same day to her family and to her husband. The first time she reported to management was when she spoke to Dr. Rathlou.

[39] Dr. Powell made no notes of the incident. The only notes Dr. Powell kept related to her shifts. She is not in the habit of making notes even of extraordinary conversations.

[40] Dr. Powell talked to Dr. Barran, the VM-02 in charge of Maple Lodge Farm, after talking to Dr. Rathlou. Dr. Barran was her and Dr. Katchin's supervisor at Maple Lodge Farm. Dr. Powell disagreed that she would report any untoward situation to Dr. Barran. The situation with Dr. Katchin occurred at Maple Lodge Farm, but it concerned the Regional Office, and Mary Rathlou directly.

[41] When told that there was a report of not only one incident but two, Dr. Powell stated that she remembers it as one conversation. The witness had not read Exhibit G-5 before her testimony. After looking at Exhibit G-5, Dr. Powell stated that Exhibit G-5 is not about how she remembers it.

[42] Dr. Powell agrees with the second column statement on Exhibit G-5. Dr. Katchin "did not say" he would shoot/kill the three people but the names were mentioned in the context of the comments regarding "shoot everyone in sight"; the third name was not Faisal Bedwei.

[43] Dr. Powell does not remember what she said to Dr. Rathlou; she described what happened to the best of her memory. Asked about "on a rant", Dr. Powell said Dr. Katchin was expressing frustration that he did not like people in the Regional Office. He was passionate about what he was saying but he was not yelling at her. Dr. Powell never heard Dr. Katchin swear. Dr. Katchin did not threaten or harass Dr. Powell. Asked again, "on a rant?" Dr. Powell replied, "passionate".

[44] Asked if she was frightened, Dr. Powell stated that she did not feel he was threatening her. She was concerned.

[45] Asked if she told Dr. Katchin that she had a problem with what he was saying, Dr. Powell replied: "I don't recall; I often told him to let things go."

[46] Dr. Powell told Dr. Barran what had happened after the investigation had started. Dr. Barran had heard of an investigation.

[47] It took Dr. Powell that long, one month, to decide she was not going to live with the responsibility of not talking.

[48] About the words "fantasizing about killing", Dr. Powell is unsure whether Dr. Katchin used the words or whether she got the impression from how he talked about it. Dr. Powell maintained it was her impression. Dr. Powell does not remember the exact words. Dr. Powell is not sure whether there was a progression or just one conversation.

[49] Dr. Powell said Dr. Katchin had the means to carry out his threats because he had at least one gun and ammunition because he was a hunter.

[50] Dr. Powell was unable to recollect if there was one or two conversations because it happened over a year ago; she did not take notes and she was working from 4:00 a.m. till noon.

[51] Asked if she was concerned she might end up here and why she did not make notes, Dr. Powell said she is not in the habit of taking notes; she never considered making notes, and she was thinking of what to do.

[52] Dr. Mary Rathlou is an Inspection Manager at CFIA. Dr. Rathlou has worked at the Guelph Regional Office for approximately five years. She started with Agriculture Canada in 1990.

[53] Dr. Rathlou was the poultry specialist for condemnation; through her work she met Dr. Katchin, who works at the largest poultry slaughter establishment or plant in Canada. From time to time, issues about condemnation arose. Dr. Rathlou would visit the plant and meet with whomever was involved to perform investigations. The veterinary community is not large and it is common to know one another.

[54] The closest relationship Dr. Rathlou had with Dr. Katchin was in 1997 when she was acting as Veterinarian in charge at Maple Farm Lodge. She was Dr. Katchin's direct supervisor at the time. In 1999, this plant was one that she supervised as Inspection Manager.

[55] Dr. Rathlou had a very professional, somewhat pleasant relationship with Dr. Katchin even when she conducted investigations, which could be very trying. She enjoyed working with the staff and appreciated her time as Veterinarian in Charge. It was challenging but rewarding.

[56] This relationship is not the same now because last year on June 11, 2002, Dr. Wendy Powell came to her telling her something she heard and that she felt Dr. Rathlou should know. Dr. Powell told her that Dr. Katchin has said that the "Regional Office is a free fire zone"; when asked what he meant, he said: "Just go into the office and take out anybody you can" and he especially named Dr. Rathlou and a couple of other people.

[57] Dr. Rathlou is certain those were the words mentioned by Dr. Powell, as those words were "seared" in her memory because of the shock of the actual content of what Dr. Katchin said. Dr. Rathlou went through all the stages of grief in a very short period of time: shock, disbelief, questions "why me" and then anger.

[58] When this occurred, Dr. Rathlou had not had a relationship with Dr. Katchin for about one year as Maple Lodge Farm was supervised by another manager. She had nothing to do with Dr. Katchin. She felt total disbelief and shock, then recognition of its happening because she had no reason to doubt Dr. Powell, a very professional, intelligent woman, with no reason to bring this up.

[59] Dr. Rathlou, as a supervisor, is aware of CFIA policy that forbids racist jokes or actions of disrespect; Dr. Katchin's statement threatened her life. As far as she was concerned, no one should have to work with this kind of threat; this is criminal.

[60] In Dr. Rathlou's opinion, Dr. Katchin "looked a very unhappy man, the only time he looked happy was when he talked about hunting. He was unhappy and had the means." Looking at what had happened in Quebec at the Polytechnique, in the United States in various schools, in the United Kingdom and in Europe, Dr. Rathlou felt the employer could not ignore the statement, as it related to the safety of all employees.

[61] Dr. Katchin never expressed any regrets to her or any apologies.

[62] In cross-examination, Dr. Rathlou explained she learned of Dr. Katchin's hobby when she supervised him for approximately one year. Hunting was one thing he liked to do. Dr. Rathlou was not saying he was unhappy then.

[63] Dr. Rathlou had only a vague memory of Dr. Katchin telling her of someone calling him "dick head". Maple Lodge Farm is a large group and people do joke. She does not accept that kind of language.

[64] Dr. Rathlou knew of Dr. Katchin's hunting but not of his interest in the military.

[65] Asked if, after the shock settled, Dr. Rathlou had tried to check the facts, she stated: "No, the shock never settled down." Dr. Rathlou has no reason to doubt the truthfulness of Dr. Powell's statement. She left the investigation to the people whose job it is to do that. Dr. Rathlou was leaving for a month to work in the United Kingdom so she turned the whole matter over to Human Resources.

[66] Dr. Rathlou repeated the statement given to her: "Regional Office is a free fire zone" and when Dr. Katchin was asked for clarification, he said "go in and take out anybody you can, especially myself and a couple of others." He said "take out" or "shoot".

[67] Asked if Dr. Katchin had threatened to shoot her, Dr. Rathlou stated it was her understanding that he had. It was a threat and there was no context. This is all Dr. Rathlou needed. She does not believe that an articulate professional can make an unfounded accusation of that nature because professional people are "careful of what they say".

[68] Dr. Powell was not one of Dr. Rathlou's staff; she came to her especially to tell her of the statement. Dr. Powell worked part-time at the District Office on Mondays and Tuesdays. Dr. Powell now works in Dr. Rathlou's office; she received a promotion earlier in 2002.

[69] James Douglas Crawford is an Inspection Manager at CFIA. He has a B.Sc. in Applied Microbiology from the University of Guelph. Mr. Crawford started with the Department of Fisheries and Oceans (DFO) on January 28, 1991, as a Technical Officer inspecting fish, fish products and fish processing facilities. The Fish Inspection Branch of DFO was integrated into CFIA on April 1, 1997. Mr. Crawford was acting as Inspection Manager from the Fall of 1999 and officially appointed to the position around June 2000.

[70] Mr. Crawford described the responsibilities of Inspection Manager in Meat Hygiene, Fish Inspection and Animal Health. Mr. Crawford is responsible for Maple

Lodge Farm, where 45 to 50 inspectors and veterinarians report to him through a Veterinarian in charge, Dr. Dennis Barran.

[71] On June 12, 2001, at the end of the day, Mr. Crawford was informed by Regional Director Anthony Sangster of Dr. Katchin's comment and was asked to attend a meeting the next morning at 08:30 a.m.

[72] The next morning, he met with Dona Holmes, who was acting for Donna Gammon that day, and Mr. Sangster. They apprised Mr. Crawford of what they were told by Dr. Powell. They instructed Mr. Crawford to contact Dr. Katchin to arrange for a meeting that day if possible.

[73] Dr. Katchin was not in; he had called in sick that day. Mr. Crawford called him at home. Mr. Crawford told Dr. Katchin he would like to meet with him on that date due to the seriousness of the information received and remarks he had made. Dr. Katchin wanted to speak with Maureen Harper or Mr. Eadie prior to meeting. The meeting was set for the next day at 10:00 a.m.

[74] Both the Regional Director and Dona Holmes felt Dr. Powell should file a police report.

[75] The information Mr. Crawford received from Mr. Sangster and Ms. Holmes was that Dr. Powell thought she heard Dr. Katchin say, on May 10, 2001, that the Regional Office was a free fire zone. When Dr. Powell asked what Dr. Katchin meant, he said "shoot everyone on sight", and in the course of the conversation he went on to mention three names, one being Dr. Rathlou, one Sue Lajeunesse and the third unknown or not clear to Dr. Powell.

[76] Mr. Crawford was selected to conduct the investigation because he was responsible for the facilities where Dr. Katchin worked.

[77] Mr. Crawford contacted Dr. Powell in the morning of June 13, 2001, to make arrangements to take her to the police station. She agreed to file a report. At a quarter to eleven, Mr. Crawford picked Dr. Powell up and proceeded to the 22 Division Peel Region Police station.

[78] Dr. Powell explained the details to Constable Champagne who took the report. The Constable obtained "tombstone" information on Dr. Powell and Mr. Crawford; who they were, where they worked, and he asked for a description of Dr. Katchin.

[79] After taking their statements, Constable Champagne left the room and returned later indicating she was going to file the report but would not be laying charges against Dr. Katchin.

[80] On June 14, 2001, Mr. Crawford met with Dr. Katchin and Mr. Eadie in the company of Donna Gammon. Mr. Crawford stated that Ms. Gammon opened the meeting stating they were there to discuss allegations that Dr. Katchin had said the Regional Office was a free fire zone, etc. Dr. Katchin did admit to saying, on more than one occasion, that the Regional Office was a free fire zone but said that at no time did he go on to say that it meant "shoot everyone in sight". He said the expression was used as a metaphor, that he always explained by saying that it meant there were no friendly forces there.

[81] Dr. Katchin also denied saying that he fantasized about shooting people. Mr. Crawford stated that, according to Dr. Powell, the comment was made on or about June 4, 2001. The earlier comments were made around May 10, 2001.

[82] In terms of the names cited by Dr. Powell, Dr. Katchin indicated that she may have heard him say those names in the context of other conversations with someone else. He thought the third name was Dr. Faisal Bedwei, the Manager of Foods of Animal Origin for the Ontario area.

[83] There was a recess early in the meeting when Mr. Eadie and Dr. Katchin asked for some time. Dr. Katchin made his statements after the recess.

[84] After the meeting, Mr. Eadie met alone with Ms. Gammon and Mr. Crawford and said that he does not support the use of military terms in the workplace and that he would instruct Dr. Katchin not to use those terms. Mr. Eadie suggested Dr. Katchin had issues around export certification and that it was in that context he made these statements.

[85] It was agreed that Dr. Katchin said: "Regional Office was a free fire zone."

[86] Mr. Crawford made notes of that meeting. The report (Exhibit G-5) was made by Donna Gammon sometime after July 3 and before July 13, 2001.

[87] Mr. Crawford explained what export certificates are, how they are designed and their purpose. The veterinarian is the official party responsible and required to sign these documents. In many cases, CFIA relies on the inspection system as a whole as the basis to meet the intent of export certificates. Depending on how one reads them, depending on his or her knowledge and comfort with the supporting inspection system, a veterinarian may or may not choose to sign a particular export document. There are many countries and many different documents.

[88] Veterinarians are regulated by their professional code of ethics, also by an international code that is produced and governed by the Office international des Epizooties (OIE). To Mr. Crawford's knowledge, no CFIA veterinarians have ever been disciplined by their professional organizations.

[89] After interviewing Dr. Katchin, Mr. Crawford interviewed Dr. Powell again, on June 18, 2001, to be clear on what she had told them or reported to Mr. Sangster and Ms. Gammon.

[90] To the investigators, Dr. Powell indicated that she heard Dr. Katchin say Regional Office was a free fire zone on or about May 10 and that she had heard that comment once before. Dr. Powell indicated then that at no time did Dr. Katchin go on to explain that it meant no friendly forces and that in fact what he told her was that it meant, "shoot everyone in sight".

[91] Dr. Powell restated that the name of Sue Lajeunesse and Dr. Mary Rathlou followed in the conversation, but the third name was not Dr. Bedwei. Dr. Powell indicated to the investigators that on or about June 4, 2001, the conversation took place somewhere in the hallway between the supervisor desk and the lunch area, which is on the way out of the inspection office to the kill floor and that Dr. Katchin was speaking about fantasizing of shooting people. Dr. Powell did indicate that Dr. Katchin had initiated the conversation and that she did not feel that it was as a result of an issue of export certification.

[92] Mr. Crawford indicated that the first page of Exhibit G-5 represents an accurate account of his conversation with Dr. Powell.

[93] Mr. Crawford met on June 20, 2001, with Mr. Mohamed Sadik, one of the supervisors of the inspection staff at Establishment 285. Mr. Sadik had never heard Dr. Katchin make the comments reported by Dr. Powell. Mr. Sadik heard Dr. Katchin speak more of the organization in a negative tone and in a demeaning sense, complaining about the organization.

[94] Mr. Crawford introduced his own notes of the meetings as Exhibit G-7.

[95] On June 25, 2001, Mr. Crawford met with Dr. Barran. This meeting is related on page 8 of his notes.

[96] Dr. Barran indicated to Mr. Crawford that Dr. Powell had come to him, he is not sure when, and indicated that Dr. Katchin had said Regional Office is a free fire zone and when asked what that means, Dr. Powell said "shoot everyone on sight." Dr. Powell also told Dr. Barran that Dr. Katchin was fantasizing about shooting Sue Lajeunesse and Mary Rathlou. Dr. Barran asked Dr. Powell if she wanted him to intervene and she asked him not to intervene.

[97] Dr. Barran related a number of incidents of verbal violence by Dr. Katchin to Mr. Crawford but indicated he did not take these concerns seriously.

[98] Dr. Barran indicated to Mr. Crawford that recently Dr. Katchin was spending a lot of time on the phone with a PIPSC issue. Dr. Barran and Dr. Katchin have opposing views relating to under staffing, export certification and a pilot project discussed at the time, and Dr. Katchin was frustrated. Dr. Barran did not recall ever hearing Dr. Katchin say he was fantasizing about shooting anyone, nor did he hear any names mentioned in a similar context.

[99] Mr. Crawford also interviewed Mr. Gerald Martyniuk of the Inspection staff at Establishment 285, on June 25, 2001. Mr. Martyniuk said he never heard Dr. Katchin refer to Regional Office as a free fire zone nor use the term "no friendly forces". When frustrated or angry, he heard Dr. Katchin say: "get rid of them all." Dr. Katchin's anger is at the organization, not one person in particular. Mr. Crawford was told that Mr. Martyniuk heard statements from Dr. Katchin that CFIA should be done away with, as well as the Government of Canada.

[100] On July 3, 2001, Mr. Crawford interviewed Vince Weber and Berkan Eftal, inspectors at Establishment 285. Vince Weber's interview is reported in Exhibit G-5.



Mr. Crawford indicated, from his notes (Exhibit G-7), that Mr. Weber also stated that Dr. Powell had told him there are two things she wanted: an office job and a morning shift. This was about two weeks prior to July 3, 2001.

[101] According to Mr. Crawford, Mr. Berkan Eftal had heard Dr. Katchin use the expression the Regional Office is a free fire zone and when asked to explain, Dr. Katchin said it meant management is not out for his or "our" best interests, that it is not friendly. Mr. Eftal has heard Dr. Katchin use military terms often but did not think much of it. He has not heard Dr. Katchin single anyone out. When asked to explain his statement, Dr. Katchin explained it meant unfriendly people, not on his or their side, "anyone not in your unit or on your side".

[102] Mr. Eftal never heard Dr. Katchin say he was going to shoot people generally or specifically. He has never heard Dr. Katchin say he was fantasizing about killing anyone.

[103] Mr. Crawford concluded the interviews on July 3, 2001, then met with Ms. Gammon and Mr. Ken Graham to discuss disciplinary action. Ms. Gammon checked the jurisprudence. They provided Mr. Sangster with a copy of the report, Exhibit G-5 and a recommendation that a three-day suspension without pay be served by Dr. Katchin.

[104] Dr. Katchin was sanctioned for what Dr. Powell has indicated he had said to her, not things said about him relating to incidents which occurred 20 years ago. Dr. Katchin was not sanctioned because he refuses to sign export certificates.

[105] To Mr. Crawford's knowledge, Dr. Katchin has not apologized to anyone for the statements he made.

[106] In cross-examination, Mr. Crawford indicated he had been in his job of Inspection Manager for one year at the time of the investigation. Mr. Crawford was co-chair of the investigation with Ms. Gammon and they reported to Mr. Sangster.

[107] Mr. Crawford is not familiar with the Treasury Board Manual and the discipline standard. He does not know if a CFIA document exists on discipline. It is not within his authority to administer discipline in the form of a suspension. This authority lies with Mr. Sangster. Mr. Crawford would not be surprised if CFIA had no discipline policy and used the Treasury Board policy.

[108] Mr. Crawford discussed Dr. Katchin's comment with Dr. Powell and was present when she filed an oral report with the police. No written statement from Dr. Powell was given or requested. Mr. Crawford confirmed that Dr. Powell never put her allegations in writing. Her report was given orally to the Regional Director and to the police and to him when interviewed on June 18, 2001.

[109] Mr. Crawford did not indicate to Dr. Katchin on June 13, 2001, what he was alleged to have said, only that there were serious allegations about things he said. He did not indicate they were serious enough that the police were involved.

[110] The police constable said the report would be filed but no charges laid because of the time frame from when the comments were made on or about May 10, 2001, and the time of the report. She felt there was no imminent threat due to the time lag.

[111] Mr. Crawford did not go to the Guelph Regional Police, he believes Dona Holmes went. Mr. Crawford gained knowledge of this after the fact, and has no personal knowledge.

[112] According to Mr. Crawford, Dr. Barran had knowledge because Dr. Powell told him. Dr. Barran did not mention a specific date, but it was before everything got reported in Regional Office. Dr. Barran is Dr. Katchin's supervisor and has worked with him for over twenty years. Dr. Barran explained to Mr. Crawford that he chose not to intervene, because Dr. Powell asked him not to, and because of how she had handled a recent issue with Dr. Katchin regarding a compressed work week, in that she took the initiative to contact PIPSC to clarify for herself and Dr. Katchin that it was not allowed for in the PIPSC's VM collective agreement. Based on that, Dr. Barran respected Dr. Powell's wish not to investigate this further.

[113] Mr. Crawford agreed that it was fair to say that Dr. Barran saw no particular urgency in Dr. Powell's allegations.

[114] Mr. Crawford stated that it was Dave Graydon, then Regional Director, who brought in a consultant named Dave Dycke to improve the work place environment at Establishment 285. The consultant was hired in 1999 to deal with some issues of a cultural nature between inspectors, that were causing concern and disruption in the work place. Mr. Dycke provided his services over a two-year period. Mr. Crawford became involved in the program just towards the end.

[115] Mr. Dycke held a separate session with the staff of Establishment 285 on May 25, 2002, at Durfall. It was called "celebrating our differences". Mr. Crawford attended and so did Dr. Katchin. Mr. Crawford does not recall an incident where the entire work shop broke into laughter during Dr. Katchin's presentation.

[116] Mr. Crawford was not aware of the military terms being used at Establishment 285 prior to the investigation.

[117] Mr. Crawford felt that Dr. Powell was telling the truth. It was known that Dr. Katchin was saying, and he has admitted to saying, that the Regional Office is a free fire zone. Where the story differs is what that meant. Dr. Powell said she had no previous relation with Dr. Katchin; therefore she had no reason to attack Dr. Katchin.

[118] Mr. Crawford did not feel at the time of the investigation that he needed to investigate the contradiction in Dr. Powell's statement, where she stated Dr. Katchin was "on a rant" and later saying "his tone and demeanor were no different than normal". He was more concerned by what was said.

[119] Mr. Crawford did not discuss with Dr. Powell what Dr. Barran had said about the compressed work week issue between Dr. Powell and Dr. Katchin. Mr. Crawford did not ask Dr. Katchin to comment or rebut the statements collected after his interview and which were part of the report to Mr. Sangster.

[120] Mr. Crawford confirmed that Dr. Powell, when interviewed, said there were two occasions when Dr. Katchin made violent statements. Mr. Crawford was not present when Dr. Powell testified.

[121] Mr. Crawford recollects that when he interviewed Dr. Katchin, the grievor asked for a recess and when he came back he explained his side of the story. When he understood the allegations, Dr. Katchin stated he would apologize if his references had scared Wendy Powell.

[122] Dr. Jerome Alan Katchin started his college education at the University of Montreal and completed his B.Sc at the University of Guelph. He graduated in May 1975 and was accepted by the Ontario Veterinary College (OVC). He was in clinical practice from 1975 until he joined Agriculture Canada on October 4, 1976. He continued until it changed to CFIA in April 1997. He has been with the government as a VM-01 for 26 years. He has been at Maple Lodge Farm since mid-February 1978.

Dr. Katchin acted as Veterinarian in charge at Maple Lodge Farm from the end of July 1992 to mid-January 1993.

[123] Dr. Katchin gave a detailed description of functions and the work performed at Maple Lodge Farm by veterinarians and inspectors.

[124] Dr. Katchin went into a detailed description of his interests in the Second World War, and in hunting. Dr. Katchin has taken a firearm safety course, and a hunter's safety course. He follows the rules for safekeeping and storage of his hunting guns. His five guns are registered and he is in the process of registering a sixth one. Dr. Katchin has his possession licence for firearms and he is a stickler for gun safety. Dr. Katchin is a member of a hunting club, of a target shooting club, and several organizations like Ducks Unlimited, the Delta Water Fowl Foundation, the Federation of Anglers and Hunters and the National Wild Turkey Federation. Dr. Katchin was distraught as a result of the allegations that he could be using his guns for something other than hunting. Dr. Katchin approaches problem-solving through debate, grievances or letter writing. Dr. Katchin accepts that when an issue is unresolved, he may have a difference of opinion. He also accepts the outcome of adjudication procedure; sometimes he wins, sometimes he loses. When things don't go his way, he discusses it with colleagues; he is disappointed but he accepts that he has to comply. He may mumble; he is a "grumbler" and he may just write another letter. He has written letters all the way up to the Minister of Agriculture. He has written over 60 (close to 70) letters about what he considers misleading, inaccurate, unsubstantiated or fraudulent export documents.

[125] Dr. Katchin describes himself as a man who is detail oriented, "principled perhaps hard-nosed with principle, honest, straightforward and dependable". On occasion, he gets frustrated because he is basically a man of integrity, "a detail man, visually oriented".

[126] Dr. Katchin worked with six or seven persons prior to the Dave Dycke sessions. There have been excessive staff changes since that time. Dr. Katchin is not outgoing to meet people; he gets to know them gradually. The older staff know that he is basically good-natured.

[127] Dr. Katchin went to Maple Lodge Farm on a volunteer basis. It was located in farmland, in the "middle of nowhere". The language used in this environment is vulgar

and abusive. It is a predominantly male environment; until the mid 80s it was all male. Dr. Katchin described language used in the workplace until one or two weeks prior to his conversation with Dr. Powell. He gave as an example an instance when he was just leaving the washroom; he heard another veterinarian speaking with five or six inspectors say: "They would like to see him dead." "They" was referring to CFIA management and "him" was referring to Dr. Katchin. Dr. Katchin knows this because of the overall nature of the conversation. When Dr. Katchin asked what exactly they had said, the reply he got was "nobody would cry if you died."

[128] Dr. Katchin has been subjected to verbal abuse being called a "moron", "dickhead". The author of the name-calling was counselled and changed his expression. The process with consultant Dave Dycke was initiated in the fall of 1999. Dr. Katchin has participated in all of the sessions; he may have missed one day. The last session was on May 25, 2002. It dealt with cultural differences. There are many races and cultures in the workforce. Dr. Katchin described the session and how, when his turn for presentation came, he was the subject of a joke; a card was placed on his back; in large felt pen was written "Where's the sauna.". Everyone laughed because of rumours that started in 1995 throughout Maple Lodge Farm that Dr. Katchin was a homosexual. Members of management were present, Mr. Crawford and Dr. Barran, Sue Lajeunesse and Dave Dycke. Dr. Katchin looked Mr. Crawford straight in the eyes but nothing was said or done. It was a joke and Dr. Katchin was not going to make an issue of it.

[129] Dr. Katchin uses metaphors to describe something at work; so do others, as well. Dr. Katchin referred to "loose canon", "gung ho", which are used by Dr. Barran and his colleagues and which are false military expressions that refer to killing or potential death but which are used as metaphors with other meanings.

[130] Dr. Katchin was called sometime around 08:30 to 09:30 on June 13, 2001, by Mr. Crawford, who related he had been hearing strange things about him. Mr. Crawford would not tell Dr. Katchin what type of strange things these were and wanted to discuss this, but not on the phone. Dr. Katchin told him he was on annual leave. Mr. Crawford suggested he might want union representation.

[131] The meeting took place on June 14, 2001. At the beginning, Donna Gammon stated that on or about May 10, Dr. Katchin referred to the Regional Office as a free fire zone and when asked what it meant, he had allegedly replied "shoot everybody on

sight". Donna Gammon mentioned that on June 4, Dr. Katchin had elaborated on how he was going to carry out his activities at the Regional Office.

[132] Dr. Katchin's response was that he had referred to the Guelph Regional Office as a free fire zone insofar as there were no friendly forces there. The statement was made as one sentence, not as an explanation. Asked about shooting everybody on sight, Dr. Katchin stated that he had never said that.

[133] As for elaborating on how he was going to do that, Dr. Katchin stated he never said that and that he never elaborated on how he was going to do that.

[134] Dr. Katchin asked for clarification of what he was alleged to have said and Mr. Crawford replied that Dr. Powell had told them he was fantasizing.

[135] Dr. Katchin explained that a free fire zone is a military term that refers to an area, a designated area, where personnel are considered hostile unless identified otherwise. Dr. Katchin used that metaphor because, after 24 ½ years, he felt there was a certain level of distrust and disrespect between the people in the field and people in management at the Regional Office. He did not want to kill them, "absolutely not".

[136] In May 2001, there was a dispute on the claiming of overtime at Establishment 285 where veterinarians and inspectors were to charge overtime between 04:00 hours and 06:00 hours pursuant to both collective agreements. The veterinarians and inspectors were being paid until then. Grievances had been submitted by both inspectors and veterinarians. Dr. Harper had requested that Dr. Katchin notify all veterinarians at Maple Lodge Farm that, should they go to Establishment 196 for relief, they should charge overtime from 04:00 hours to 06:00 hours. This did not affect Dr. Katchin because he was not going over there. It affected Dr. Powell and Dr. Iwasaki. Establishment 285 had been running short-staffed since the previous November.

[137] The issue he was discussing with Dr. Powell was that issue of overtime and to the best of his knowledge it occurred on May 10, 2001. On that day, Dr. Katchin did initiate a conversation with Dr. Powell. He stood in the doorway while she sat at the desk. There had been a conversation a week or two earlier about this claiming of overtime from 04:00 to 06:00 hours. On May 10, Dr. Katchin asked Dr. Powell if she had given it further consideration. Again, after consultation with Dr. Harper,

Dr. Powell was reluctant to claim overtime. Dr. Harper had told Dr. Katchin to talk to Dr. Powell again, to suggest that she put in a claim, and let it be rejected, then to put in a grievance.

[138] Dr. Powell said she had talked to someone in the Regional Office about this, and that person had said she was not entitled to overtime. Dr. Katchin asked whom she had talked to. She said Sue Lajeunesse. At that, Dr. Katchin said Sue is a representative of management and suggested she talk to Dr. Harper. Dr. Katchin was not a union steward then, just a helper.

[139] Dr. Powell said that she was not going to talk to Dr. Harper, that she had made up her mind, that if Regional Office did not want to pay her, she was not going to pursue it.

[140] Dr. Katchin mentioned to her that management had been paying the overtime for six months, and that he had heard that Dr. Mary Rathlou and Sue Lajeunesse had put the "kybosh" on it or basically put an end to the payments. The general conversation went on about how employees get short-changed. Dr. Katchin was basically "grumbling" for another minute or two. At the end, he made the comment: "Do whatever you want, I came to the conclusion that Guelph Regional Office is a free fire zone insofar as there are no friendly forces there." Dr. Powell smiled and asked what is a free fire zone. Dr. Katchin told her "it's a military term describing a designated area where personnel is considered hostile unless identified otherwise."

[141] Dr. Powell shrugged her shoulders; she did not say anything. Dr. Katchin did not tell her he was using a metaphor. Dr. Powell never discussed this conversation with Dr. Katchin again. Dr. Katchin first learned that Dr. Powell had an issue with the conversation on June 14, 2001.

[142] Dr. Katchin told Donna Gammon and Jim Crawford that he was sorry for any misunderstanding or for any concerns that may have been raised and for the trouble it caused for both of them. Dr. Katchin realized his statement had been butchered and only half of it presented to management. A false explanation of that statement was presented to management and the statement about fantasizing added insult to injury.

[143] Dr. Katchin indicated that it was imprudent of him to make such a statement given the circumstances he had with management regarding the export certificates.

Dr. Katchin agrees the statement was inappropriate because it can be used the wrong way and someone did take it the wrong way or somebody could misinterpret it.

[144] Dr. Katchin does not believe Dr. Powell misinterpreted his statement; he does not believe there was any confusion. Dr. Powell did not give him a verbal sign that what he said was "way out of whack". She basically said "OK". Dr. Katchin was not expecting this from Dr. Powell.

[145] Dr. Katchin was shocked; he felt confused, betrayed, but also confident that at some point, on June 14, 2001, the truth would prevail. Nobody had suggested that either Sue Lajeunesse or Mary Rathlou had been notified of these allegations.

[146] Dr. Katchin knows Mary Rathlou. He worked with her off and on for over ten years. Dr. Iwasaki and Dr. Katchin trained her in poultry in her first year. Dr. Rathlou also went to Maple Lodge Farm to relieve Dr. Barran for three or four months in the mid-90s. He was basically her "aide-de-camp". He had briefed her at the time that the inspection staff had planned to run her out of Maple Lodge Farm by flooding her with grievances. Dr. Katchin and Dr. Iwasaki defused the situation before she came.

[147] In 1999, Dr. Katchin worked on a staff selection committee with Dr. Rathlou. He had a good rapport with her, an excellent rapport with her. Dr. Rathlou is used to the slaughter house environment, especially Maple Lodge Farm. Dr. Katchin was confident that when Donna Gammon and Jim Crawford went to Mary Rathlou after the June 14 meeting, on what he anticipated would be her first notification of these comments, she would basically say, "don't be ridiculous".

[148] As for Sue Lajeunesse, he never had problems with her. She was the management grievance adviser. Following an adjudication in 93/94, he was authorized to negotiate the settlement between the veterinarians and management, with Sue Lajeunesse and Normand Genest. They resolved the issue.

[149] Dr. Katchin obtained, through Access to Information, a report from Constable Champagne (Exhibit G-3). Dr. Katchin met with Constable Champagne and told her everything. He mentioned to Constable Champagne that there was a shortage of veterinarians from the fall of 2000 until when Dr. Powell came on staff and was trained. Dr. Iwasaki and he were working double shifts every other day. Dr. Powell was their first relief in that situation. Dr. Gromolka started at the end of April 2001;



he was just breaking in when on Wednesday, June 6, there was a staff meeting. It is indicated in the June 6 staff meeting record of the morning meeting that Dr. Powell was going to work at the Guelph Office two days a week. At the afternoon meeting, Dr. Katchin questioned the wisdom of transferring Dr. Powell out so soon. Another veterinarian was anticipated for the end of June.

[150] Dr. Barran was not available for double shift. Dr. Iwasaki and Dr. Katchin would have to continue to fill in on overtime. Dr. Katchin was questioning putting Dr. Powell out of Maple Lodge Farm; he was not questioning her credentials.

[151] Dr. Katchin indicated to Constable Champagne he never intended to threaten anyone with his comment. Dr. Katchin regrets the statement he made. He does not have an issue with Donna Gammon, Jim Crawford, Wendy Powell, Mary Rathlou or Sue Lajeunesse.

[152] On June 14, 2001, Dr. Katchin apologized as he had stated before. He made two attempts on July 17, 2001, to contact Dr. Rathlou by phone. In the morning, he spoke to her assistant or a young female person; he identified himself and asked to speak to Dr. Rathlou. The person said she would pass the message on to Dr. Rathlou. He phoned again in the afternoon and was told Dr. Rathlou was in a meeting or tied up and that she would be given the message and that she would call back that day. He phoned again but they had closed at 4:30. He left a message on the voice-mail stating he would like to clear something up with Dr. Rathlou.

[153] The next morning, Dr. Katchin received a call from Mr. Eadie around 08:45 hours asking if he had been calling Mary Rathlou. He acknowledged that he had and was told Mr. Eadie had received a call from Anthony Sangster advising him that Mary Rathlou had complained to him that Dr. Katchin was attempting to reach her on the phone. Mr. Eadie made it clear to Dr. Katchin that he was not to phone her.

[154] Dr. Katchin admitted to using the expression "Regional Office is a free fire zone", but he stated that at no time had he said it meant "shoot everybody on sight". He referred to "Regional Office as a free fire zone insofar as there is no friendly forces there".

[155] In cross-examination, Dr. Katchin indicated that he had worked with Dr. Powell only a few months. Dr. Katchin agrees he may have had five to six conversations with

Dr. Powell which could have lasted 15 to 30 minutes but he may have had to talk to her otherwise on a daily basis. Dr. Katchin recalls the nature of five or six conversations with Dr. Powell.

[156] Dr. Katchin got along very well with Dr. Powell; he had no quarrels or grievances with her during that time, but there were differences of opinion.

[157] Dr. Katchin confirmed what Dr. Powell had said, namely that he had started the conversation on May 10 and that there were only the two of them. Dr. Katchin agreed that he used the term "free fire zone" but indicated that it was only one part of his statement.

[158] Dr. Katchin takes issue with the location described by Dr. Powell. According to Dr. Katchin, she was sitting in the veterinarians' room adjacent to the location she was speaking of. Dr. Katchin was in a semi hallway or doorway to the veterinarians' room. He drew a sketch to describe the general layout (Exhibit G-8). On the sketch he marked "J" for Jerome Katchin and "W" for Wendy Powell as the location where they were. According to Dr. Katchin, she was not in the computer work area.

[159] Dr. Katchin agrees that Dr. Powell asked what a free fire zone meant. He agrees that Sue Lajeunesse came up in the conversation that day. Her name came up twice and he said she represented management. Dr. Katchin agrees that the name of Dr. Rathlou also came up along with that of Sue Lajeunesse. Dr. Katchin repeated his testimony on the conversation and stated he was trying to convince Dr. Powell she should claim the overtime.

[160] Dr. Katchin agreed that "free fire zone" is not just a military term but a wartime term, as well. Dr. Katchin said the term is used on military bases in the United States in those areas that surround highly sensitive areas. Dr. Katchin picked up the term through readings, in current affairs and watching "Tour of Duty" every week when it was on. "A bunch of us watched "Tour of Duty" when it was on and we discussed it extensively at the workplace the following day." Dr. Katchin stated that he also watches "JAG" and that in one episode there was a free fire zone on a military base. Dr. Katchin said he did not have a field manual on the rules of engagement for the Canadian, or American, or any other forces and that he was not qualified to interpret military terms.

[161] Dr. Katchin agrees that "free fire zone" could mean "aggressively defending their positions". Dr. Katchin reiterated that he used the term as a metaphor as others use the term "loose cannon".

[162] Dr. Katchin has no hard evidence that Dr. Powell reported him to Dr. Rathlou and management to influence or protect her position at the Regional Office or was retaliating because of the position he took on June 6. Dr. Katchin stated he has nothing other than the close approximation of the dates June 6 and June 8. June 8 was the date Donna Gammon had mentioned to him and Mr. Eadie as the date management was first made aware of the allegation.

[163] Dr. Katchin confirmed that he made no written apology. Dr. Katchin identified his letter of August 8, 2001; it was introduced by the employer as Exhibit G-9. Dr. Katchin denied he was "mocking" Mr. Sangster in his grievance.

[164] In re-examination, Dr. Katchin indicated that with regard to export certificates, Dr. Powell basically and technically agreed that they were misleading, or inaccurate or unsubstantiated or fraudulent but she signed them anyway unless she noted something obviously wrong in the way they were filled out. Dr. Powell had told Dr. Katchin she had not planned to be there very long or words to that effect. Dr. Katchin discussed the issue with Dr. Powell who agreed in principle but shrugged or smiled, stating she was not worried because they were all doing it. Dr. Katchin and Dr. Powell had a substantive disagreement about signing export certificates but never any heated debate on the issue. Dr. Katchin is not aware if Dr. Powell did specifically have a concern about his not signing export certificates.

[165] Dr. Katchin indicated that in the spring of 2001, the negotiations were on for the VM group collective agreement. There had been a breakdown of trust and communications between the union and management.

[166] Vince Weber is a meat inspector working at CFIA since 1992. Mr. Weber works on the kill floor pulling out the chickens he thinks should be condemned. The veterinarians do the actual condemnation.

[167] Mr. Weber first met Wendy Powell in 1992; they trained together for six weeks at the time. He heard she had quit and then she returned and he met her again at Maple

Lodge Farm. He had a friendly relationship with Dr. Powell; they went for coffee together and engaged in some "chit chat".

[168] Mr. Weber's outside interest is hunting. Dr. Katchin is a friend of Mr. Weber. Mr. Weber has known Dr. Katchin for 10 years; he describes him as having a few idiosyncrasies such as being outspoken and being a neatness freak, loving everything nice and clean and tidy. Dr. Katchin is a very detailed man with whom "you have to dot the i and really be correct."

[169] Mr. Weber describes Maple Lodge Farm as a slaughter facility where slaughter language or profanities are used, by some people more than others. Mr. Weber indicated that "gutter talk" or profanities are used all the time downstairs; it's the nature of the business. If heard downstairs on the slaughter floor, it naturally comes up into the office.

[170] Mr. Weber identified a memo he wrote on July 30, 2001, (Exhibit U-1) which reads:

*Memo to: Mr. S. Eadie*

*Dr. Jerome Katchin has asked me to write a letter to you regarding the problem he is having with Dr. Wendy Powell.*

*First, I would like to say a few words about Dr. Katchin, I know his position on export documents and that is that he thinks they are fraudulent, I may not agree with this but I respect his opinion on this issue. I also know that Jerome has guns at home and that he abides by the law in the storage and handling of them, I also can say that I have known Jerome for about nine years and that there is no possible threat from him.*

*I had a meeting with Donna Gammon and Jim Crawford and most of the questions that were asked of me were directed toward violence and if I thought that Jerome was capable of any or had he spoke[n] of violence and my answer to these questions was in his favor.*

*I also told them of a couple of talks that Wendy and I had before this transpired and listed below are the topics of our conversations. (These conversations were a couple of weeks before June 17)*

*1) Wendy pulled me aside to ask me if I thought that Jerome would harm anybody with his guns, my answer to*

*her was that he would verbally attack somebody but not with guns.*

*2) During another conversation Wendy informed that she had two goals while at Maple Lodge and they were not to work night shifts (which she found somebody to take) and the second item was to be behind a desk, she was at R/O for two days a week.*

*If you have any questions regarding this memo, please contact me.*

[171] Regarding his second paragraph, Mr. Weber stated "Jerome verbally abuses you, he will let you know what he thinks." He has never seen him get physical or come at anyone physically. He has never threatened to hurt anyone.

[172] At the investigation, Mr. Weber was asked if he thought Dr. Katchin capable of physical violence and he had said no. Most of the questions were about violence and dealing with violence. He answered them. At the end, Mr. Weber asked if the investigators wanted his opinion and they did not want to hear much of that. Mr. Weber came to that conclusion because of all the questions about Jerome and violence, but they did not want to know what sort of a person he was.

[173] Some weeks before July 30, 2001, Dr. Powell pulled Mr. Weber aside and asked him if he thought that Jerome would harm anybody with his guns. In the memo he stated it was a couple of weeks prior to June 17, 2001. Mr. Weber stated to Dr. Powell that Dr. Katchin would never use his guns for anything other than what they were intended for.

[174] Dr. Powell informed Mr. Weber that she had two goals while at Maple Lodge Farm. The first one was to get out of the night shift or evening shift; she had found someone to take care of her night shift. The second was to work behind a desk, at which time she worked two days a week at the Regional Office in Guelph.

[175] Mr. Weber has heard Dr. Katchin many times express frustration with the job or policies. Asked, "how many times have you heard talks of hurting anyone?", Mr. Weber said "many times". Asked, "have you ever heard him threaten to hurt or kill management?", Mr. Weber answered "never".

[176] In cross-examination, Mr. Weber stated he never heard Dr. Katchin use the expression "free fire zone".

[177] Mr. Weber considers Wendy Powell a friend of his because they were still talking before she left Maple Lodge Farm. Asked if he considers her a trustworthy person, he stated it was a difficult question to answer after all that had happened but, as far as he knew, she was.

[178] Mr. Weber trusts both Dr. Powell and Dr. Katchin but he has known Dr. Katchin longer. Mr. Weber does not know if he has a cause to doubt Dr. Powell. Mr. Weber was in training for six weeks with Dr. Powell and has known her recently for one year. He does not think she is a person to make up stories, to misunderstand people or ambitious to the point of stooping to anything.

[179] Berkan Eftal works at CFIA at Establishment 285, Maple Lodge Farm. He has worked as an inspector with Dr. Katchin for 13 years.

[180] Mr. Eftal identified Exhibit U-2 which he signed and which reads:

*Dear Mr. S. Eadie:*

*On June 17, 2001 Dr. J. Katchin contacted me at home regarding a complaint that was filed against him with the Peel Regional Police and the CFIA management concerning a phrase that he had used in the office of Establishment 285. The phrase used was "free fire zone" to describe the environment at the Guelph Regional Office. I acknowledge that when he first used the phrase "free fire zone" with reference to the Guelph Regional Office in my presence, he specifically qualified the phrase by adding "in so far as there are no friendly forces there".*

*I have heard Dr. Katchin use this phrase on a second occasion in the same context with numerous staff members present in the inspection office. He once again clarified to everyone that he did not intend this choice of words as any reference to any act of violence.*

*Dr. Katchin asked me if I would permit him to submit my name to the CFIA management as a witness to the above mentioned incidents. I agreed. CFIA management interviewed me regarding these incidents and I stated to them what I know - specifically that he was referring to a lack of "friendly forces" at Regional Office. I was approached with specific questions as to whether I had ever heard Dr. Katchin discuss hurting anyone at regional office. I replied "never". I also expressed my opinion regarding Dr. Katchin's character and idiosyncracies. Our opinions may not have always converged, but in the twelve years that I have known Dr. Katchin, I have always found him to be an*

*honest, reliable, trustworthy individual with no hidden malicious intent.*

*Feel free to contact me anytime for more information.*

[181] Mr. Eftal described an occasion when Dr. Katchin used the expression "regional office is a free fire zone". When asked what it meant, Dr. Katchin said "insofar as there is no friendly forces there". When asked "you mean that you go and shoot people", Dr. Katchin said no; he said something to the effect that there are no friends there.

[182] Mr. Eftal recounted the statements noted on the page with his name on Exhibit G-5. Mr. Eftal indicated that Dr. Katchin used military expressions and analogy as others use sports analogy.

[183] Mr. Eftal described language used in the work environment as colourful, profane, vulgar, and at times abusive but not taken seriously such as "you should get your head blown up" or "take your head off or your hand" or "be stoned for". No discipline is meted out to people who speak like that.

[184] In cross-examination, Mr. Eftal stated that he has worked briefly with Dr. Powell, and they get along well; he never had any conflict with her. Given the brief period of encounter, he has no reason to believe her not to be trustworthy.

[185] Mr. Eftal looked at Exhibit G-5 and stated that the record "sounds accurate". He explained that "they" referred to management. Dr. Barran and Jim Crawford were the people who told Mr. Eftal that Jerome would be in hot water for using the term "free fire zone". Dr. Barran had spoken with Mr. Eftal and indicated that in an office such language could get anyone including Jerome in trouble. Colleagues would be offended by such language. This was not the case when Mr. Eftal first started; the work environment has changed over time.

[186] Asked if people would be scared or frightened, Mr. Eftal indicated that up to the point when Dr. Powell raised the issue, no one ever mentioned being afraid or scared by these comments. In the group, the day he heard Dr. Katchin use the term "free fire zone", no one was afraid; no one gave it a second thought or was taken aback.

[187] Mr. Eftal mentioned that the tension between management and the employees was increasing. It did not affect him personally because he always had a good

relationship with management but there were conflicts going on, a number of grievances being filed, and something was different.

[188] In re-examination, Mr. Eftal stated that Dr. Barran spoke with him about the time when the complaint was put in. It was more of an enquiry about what was going on.

[189] When the term "free fire zone" came up in the group, people were not offended; most laughed, if anything.

[190] Submission for the employer

1. *This is a case where the Grievor, Dr. Jerome Katchin, was suspended without pay for three days for uttering words of a violent or threatening nature (please see Exhibit G3 - Anthony Sangster's letter to Dr. Katchin of July 13, 20001 (sic) for particulars).*
2. *The Employer, the Canadian Food Inspection Agency, has met its burden and tendered cogent and compelling evidence of misconduct on the balance of probabilities.<sup>1</sup> It has proved that a suspension was warranted.*
3. *The following submissions are meant to review a few of the highlights of the evidence and the law from the Employer's perspective.<sup>2</sup>*

**Dr. Wendy Powell's Testimony:**

4. *Dr. Powell, a very well-educated professional, testified before this Board better than a year after the fact of Dr. Katchin's misconduct. She testified without the aid of notes (as she was not in the habit of making the same). Her testimony was genuine. It was largely consistent with the notes compiled by Mr. Crawford and Donna Gammon (see Exhibit G-5). These facts militate in favour of accepting her evidence.*
5. *Dr. Powell had no reason to lie or embellish her story, nor did she do so. (Indeed, Dr. Katchin had no hard evidence against her.) Her evidence stood up well to*

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<sup>1</sup> *Alexander Jaworski v. Canada (Attorney General)*, [1998] 4 F.C. 154 at par. 16 (F.C.T.D); appeal dismissed by the F.C.A., [2000] F.C.J. No. 643; leave denied to the Supreme Court of Canada.

<sup>2</sup> N.B. Where the facts recounted herein differ from Madam Henry's notes of the testimony, we will defer to her own.



cross-examination. These facts militate in favour of accepting her evidence.

6. Dr. Powell is well regarded by Dr. Rathlou, Vince Weber and Berkan Eftal. This militates in favour of accepting her evidence.
7. Indeed, Dr. Powell only had a brief working relationship with Dr. Katchin before the event in issue. It was not acrimonious (a point with which Dr. Katchin agrees), and she "neither liked nor disliked" him.
8. Dr. Powell testified that Dr. Katchin approached her and referred to the regional office in Guelph as a "free fire zone". When she asked him what that meant, she heard Dr. Katchin utter "shoot everyone you see". She also heard him utter the names of three people. She remembered two of the names being Sue Lajeunesse and Dr. Mary Rathlou. This is compelling evidence of misconduct.
9. Dr. Powell admitted that she hesitated before coming forward with this information for about a month. However, she still did so because she was worried for her colleagues. She knew Dr. Katchin owned guns and ammunition and that he was a hunter. That hesitation is not fatal to the Employer's case. If anything, a witness who contemplates matters and their consequences before acting is very compelling. Her explanation in this regard is sound.

**Dr. Mary Rathlou's Testimony:**

10. Dr. Rathlou testified that she had learned of Dr. Katchin's threat from Dr. Powell, a person whom she trusts as a fellow professional. She gave compelling, forthright evidence without much prompting of its dramatic effect upon her. This effect warrants discipline against Dr. Katchin.

**James Crawford's Testimony:**

11. Without minimizing the same by the brevity of this submission, James Crawford's evidence is important insofar as it demonstrates that management took the complaint seriously and acted upon it swiftly. It does not condone such behaviour in the workplace and meted out an appropriate penalty.
12. It is submitted that the way the investigation was conducted is immaterial. Instead, attention should be directed to the fact that the principals testified before this Board and that their evidence must be judged.

**Vince Weber's Evidence:**

13. Mr. Vince Weber described Dr. Katchin as confrontational and frustrated with management's policies. He admitted under cross-examination that he was, and still is, a friend of Dr. Powell. He saw nothing nefarious in her desire to work a day shift and in an office environment.
14. Most importantly, Mr. Weber, to his credit, was not prepared to slight Dr. Powell's integrity.

**Berkan Eftal's Evidence:**

15. Similarly, Mr. Berkan Eftal did not impugn Dr. Powell in any way.
16. If anything, Mr. Eftal's evidence was valuable because he confirmed that management had warned Dr. Katchin that using military terms could land him in hot water.

**Dr. Katchin's Evidence:**

17. Dr. Katchin is a hunter. This is a fact he is open about. Similarly, Dr. Katchin is critical of CFIA management. Again, this is a fact he is open about. He admits to frustration with management - a fact confirmed by Vince Weber. We submit that this evidence militates in favour of a finding that Dr. Katchin uttered the phrases in question, and/or forms a basis to reject his defence as untrue.
18. Dr. Katchin gave evasive, argumentative and hesitant evidence under-cross-examination, particularly surrounding the elements of "free fire zone". He only begrudgingly admitted that he had no hard evidence against Dr. Powell or that the employer acted out of spite for his stand on export certificates. Instead, he only offered supposition.
19. Furthermore, Dr. Katchin confirmed the date and basic locale of the encounter with Dr. Powell. He confirmed that it involved just the two of them, that she was correct in hearing him say "free fire zone", that she asked a question as what that meant of him; when Sue Lajeunesse's name came up he said "she represents management"; that Dr. Rathlou's name was raised; and that he had said "as one last try, I explained to her that management was paying the overtime for 6 months and that I had heard that Dr. Mary Rathlou and Ms. Sue Lajeunesse had put the kibosh on it." There is a tremendous overlap in their stories to this point. These

*facts militate in favour of accepting Dr. Powell's evidence.*

20. *Indeed, there is agreement until the evidence gets particularly bad for Dr. Katchin. Dr. Katchin's explanation that he used the stilted qualifier "insofar as there are no friendly forces there" in these circumstances is patently unbelievable. Dr. Powell did not hear it because he did not utter it.*
21. *Although Dr. Katchin would not readily admit as much, even if believed, such a qualifier would still attract discipline since one surely must shoot unfriendly forces in a free fire zone.*
22. *Dr. Katchin's evidence that he was contrite is at odds with Jim Crawford's notes of an offer of an apology. Indeed, Dr. Katchin's letter of, is far from contrite and incredibly opens by insulting Mr. Sangster. Thereafter, he seeks damages when he brought this entire affair upon himself.*
23. *Dr. Katchin's evidence surrounding export certificates and the propriety of executing the same, particularly in re-examination, is immaterial. Indeed, it is a naked attempt to misdirect the direction of this proceeding and to lay blame on others where it should not lie.*
24. *Dr. Katchin's evidence of a toxic work environment, if any, is in no way an excuse for his behaviour. Indeed, his statements can only worsen the workplace and he must accept responsibility for that fact because he has contributed to it by his own words.*

**Summation:**

25. *In Alexander Jaworski v. Canada, supra, the Federal Court of Canada affirmed that an employer bears a civil burden of proof in a discipline matters, and that in a serious case with grave consequences, the evidence should be clear and cogent.*
26. *It is trite law that where there is evidence of a threat, discipline is warranted.<sup>3</sup>*
27. *This fundamentally a contest between Drs. Powell and Katchin. There is no reason to doubt Dr. Powell's*

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<sup>3</sup>

Please see *Lefebvre and Treasury Board (Solicitor General of Canada)*, [1985] C.P.S.S.R.B. No. 8 and *Mohamed v. Treasury Board (Revenue Canada) - Taxation*, [1998] C.P.S.S.R.B. No. 139

*honesty. There is good reason to doubt Dr. Katchin, for the reasons stated above.*

- 28. Dr. Powell is an honest and highly regarded individual. She presented herself before this Board under oath, with nothing to gain. She is well-educated and it is unlikely that she was mistaken about what she had heard and what it meant. There is no evidence she bore any malice against Dr. Katchin. She should be believed.*
- 29. The lack of a signed statement from Dr. Powell and some minor uncertainty on the issue of "fantasized about killing" do not provide a basis to doubt or dismiss her evidence. Indeed, Dr. Powell willingly presented herself before this Board more than a year after the fact and without the aid of any notes. She heard Dr. Katchin's statements in the early morning hours, which meant she may have been tired. She was "stunned" by the same.*
- 30. Furthermore, there is no requirement at law that a person must make notes to be believed. Witnesses frequently come before the courts without notes, and they are well-received.*
- 31. Similarly, the fact that a witness may have given slightly inconsistent evidence on a peripheral point does not mean that they are to be disbelieved. In Alexander Jaworski v. Canada, supra, a police officer was discharged from the Force for having exposed himself in public. The reviewing bodies were not prepared to dismiss the victim's testimony, nor that of the supporting witnesses, even in the face of discrepancies. This is important because there was an arguably more serious accusation levied against the former Member. Indeed, it cost him his job.*
- 32. We commend the Board to read this decision in its entirety, as it is indicative of the proper approach to take when reviewing evidence. An analysis of the evidence as a whole and a tolerance of minor discrepancies is warranted. Microscopic examinations should be avoided.*
- 33. A threat and/or violent language was uttered by Dr. Katchin. The elements are well-established by the term "free fire zone" and Dr. Katchin's "shoot everyone you see" explanation. This is clear and compelling. It warrants discipline.*
- 34. Threats and/or violent language cannot be condoned by any responsible employer in this day and age, or lightly dismissed by this Board.*

35. This grievance should be denied, and the suspension maintained.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

*Executed at Guelph, Ontario, this 20<sup>th</sup> day of December, 2002.*

[191] Submission for the grievor

**Dr. J. Katchin Argument**

**ISSUES**

*We respectfully submit that the issue for you, Madame Chair, to consider is : did Dr. Katchin do what he is accused of doing? In this case the employee would have to demonstrate that Dr. Katchin knowingly and consciously threatened someone. As the burden of proof is on the employer, we will discuss whether through the evidence submitted, they met the proper standard of establishing guilt.*

*AND a second issue arises only if the above question were to be proven to your satisfaction. That is: was the appropriate penalty meted out given all the circumstances and mitigating factors?*

*We also respectfully submit that in this case credibility is a major issue and we will spend some time in showing why the testimony of the employee's main witness; Dr. Powell, can not be relied upon, whereas Dr. Katchin's testimony is credible and consistent.*

**Issue #1**

***Is Dr. Katchin guilty of the allegations made against him?***

*In order to discuss this we must first agree on the standard of proof which should be used to decide proof of guilt or innocence in this case.*

*In our view the standard here should be the presentation of "clear, cogent and convincing evidence", because in this case Dr. Katchin has been accused of behaviour "which might seriously harm an employees professional reputation."*

*I have submitted a copy of a discussion from "Leading cases on Labour Arbitration" compiled by Mitchnick and Etherington where several cases are cited. Particularly of interest are Arbitrator McPhillips comments at the bottom fo the second page regarding Kensington Private Hospital and H.E.U., Local 180[(1987,29L.A.C.(3d)390(McPhillips)]. As at the bottom of page three, it is our view that the case before*

you Madame Chair can be characterized as a case in which you could consider "clear and convincing", "substantial and reliable", and "clear, strong and cogent" as "signal posts" against which to measure the evidence.

Why should the employer be held to this intermediate standard of proof in this case? Because they have accused the grievor of threatening an immoral and illegal act. Because they have said his act was so serious that they went to both the Peel and Guelph police. Because the personal and professional reputation of the grievor is at stake here. And because nobody should be able to cry foul without being made to provide substantial proof which will bear up under close scrutiny.

If this standard is used the employers case would certainly fail. Even on "the balance of probabilities" which Mr. Sangster has quoted in his letter setting out Dr. Katchin's suspension the evidence supporting the employer's case is too weak to meet the standard for the following reasons.

#### **Dr. Powell's Testimony**

There are major and substantive contradictions between her statements at the investigation and her testimony at adjudication. Aside from the obvious fact that one would expect consistency between her reporting to the investigator and her testimony under oath, there is a qualitative distinction to be made between the two stories.

In her testimony, there was only one incident where all the discussion that concerns us took place. This is in direct contradiction of what she told the investigators where she stated there were two meetings and she saw this as a progression. **This, it would seem, is important.** There either was a progression or there wasn't. A progression might go some distance to explaining why she waited longer to report, but her testimony is not that there was only one 2-3 minute discussion where he expressed all the phrases - free fire zone, shoot everyone onsite, fantasizing (although she's unsure of this one). If there's no progression, then what explains her long delay in reporting? The only logical conclusion is that she didn't take it seriously.

Contrary to the quote in the suspension letter of July 13, 2001 - "fantasizing about killing people at the Guelph office"- which could only have been placed there because Dr. Powell attributed it to Dr. Katchin, she now says in her testimony that she is unsure if he used this word or if this is just the "impression" she got. She also says she is "pretty sure" that he said "shoot everyone on sight". Considering the seriousness of the allegations and what is at stake for the accused, one would question whether "pretty sure" meets the standard of

evidence necessary to even establish a preponderance of probabilities or a balance of probabilities. Further, given the seriousness of the allegations, can this sort of testimony, in any light, be seen as a "clear, cogent or compelling"?

Dr. Powell, particularly to the investigators, but also in her testimony doesn't seem clear about the demeanour of Dr. Katchin during her discussion with him that day, about May 10th.. In one part of the report she says he was on a rant and another that his demeanour was normal.

She cannot recollect what the conversation that day was about. She gives it no context. She knows however it wasn't about export documents.

Dr. Powell only spoke to her supervisor over a month after the concerning conversation and that was after talking to a potentially impacted employee - Dr. Mary Rathlou. Even though she admitted she would usually report problems to Dr. Barran, she didn't in this case. She's "not sure" even if she let Dr. Katchin know there was a problem with what he had said. This would be the first thing one would expect Dr. Powell to do. It's surely what is expected in CFIA harassment policy.

Dr. Powell stated in her testimony that she never took notes - even of such a serious conversation.

Not even before or after going to the police. She was concerned enough to talk to friends and family but not concerned enough to make sure that she got the exact words down so there could be no mistake about what Dr. Katchin had said. She also stated that she suspected the case may end up at adjudication, yet she still did not feel it was necessary to make notes. As a result of this mistake in common judgement, her claims as to what was said and when it was said continue to shift.

In her testimony she said she didn't consider him completely normal. This was after only a couple of months being on the job at Est.285 and on the basis that he exhibited signs of being excessively orderly about the way he kept his clothing.

It took her a long time to decide how to respond to what she thought may have been threatening comments. She finally came to the conclusion she didn't want to be responsible if anything should happen. Which is fair, except that that type of thought out response would indicate that there was considerable uncertainty as to the meaning of Dr. Katchin's words - they would have been ambiguous words - would this level of agonizing and indecision really have been possible if as alleged - on one conversation Dr. Katchin was "eager to tell and delighted with thinking about" shooting everyone

onsite at Guelph Regional Office ? It doesn't seem likely. At the very least it would suggest that she saw no urgency to the remarks.

How urgent and concerning a matter could it have truly been for her? She never says that there were timelines attached to Dr. Katchin's alleged sinister plot. If what she says is true he could have acted at any moment. Wouldn't she logically be concerned about him acting while she kept his horrific secret? In our view, she wasn't concerned about it or she would have reported it.

Her testimony is there was only one 2-3 minute conversation. This conversation happened with an individual whom she considered not to be normal. This conversation took place without any context. He only talked about killing people, nothing else. And she reported it to nobody for five weeks. She took no notes, never sought further information from the accused, and saw no urgency in divulging this information. She relates that individuals were named in that conversation. But adds that he never threatened to shoot them individually. She saw the comment immediately as inappropriate, but is unsure as to whether she mentioned that fact to Dr. Katchin. Given that Dr. Powell is an intelligent, well educated person, capable of making judgements, this testimony does not make a whole lot of sense. Somebody comes up to you and using outrageous expressions talks about nothing but killing people, and then not only do you fail to report it, but fail to note down what the exact expressions were?

And what did she tell Mary Rathlou? Dr. Powell testified that she didn't remember what she told Dr. Rathlou. Did Mary Rathlou hear that there had been a progression? Or did she hear what we heard: that this had all happened in May, around May 10<sup>th</sup>. Which version of the story impacted Mary Rathlou so deeply?

Whatever the reason Mary Rathlou says the words a little differently from Wendy Powell. She says "just go into the office and take out anyone you can," instead of "shoot everyone onsite". Now this is basically the same, but where her testimony differs from Powell's is in saying that she was especially named to be shot. This is contrary to Powell's testimony where she says he never said he would shoot these people, but rather just that Rathlou's name was mentioned in the conversation.

All of the above considered, it is fair to say that Dr. Powell was not a credible witness and her confusion over key elements named above can not establish Dr. Katchin's guilt even if the balance of probabilities standard were used.



### **Dr. Katchin's Testimony**

Dr. Katchin has been consistent from the beginning about what he did and did not say in his conversation with Wendy Powell. He admitted openly to the fact when first asked to saying that he had compared the Guelph Regional Office to a "free fire zone". And that he had qualified it "insofar as there are no friendly forces there". He apologized in the same meeting for his poor judgment in making what was clearly an offensive and imprudent figure of speech. He recognized that it was wrong and that he should not have spoken so. Over a year and a half later he continues to deny the rest of the allegations, just as he did in that first meeting.

He recounted in some detail the conversation he had with Dr. Powell. It was about an issue - overtime claims at Est. 196 Dr. Katchin was clear about how the names of Lajeunesse and Rathlou came up. Powell was reluctant to claim overtime if regional office didn't want to pay it. Katchin suggested that management had been paying the overtime for 6 months until, he'd heard Rathlou and LaJuenesse had put the "kibosh" to it. There was a general grumbling conversation over how we get shortchange, takes forever to get a contract..." It was one-two minutes later in the context of this conversation that Katchin made the comment - "I have come to the conclusion that the Guelph Regional Office is a free fire zone, in so far as there was no friendly forces there." Dr. Powell asked what a free fire was. Dr. Katchin responded - "...it's a military term, describing a designated area where personnel are considered hostile unless considered otherwise." This telling of what happened had a natural and persuasive ring to it. As it was displayed in the hearing Dr. Katchin is a detail person. It is clear that his memory for detail is good. He recognized that people might see him as a "nit-picker". The use of phrases - such as "kibosh" and the sue of "in so far as" to introduce the qualifier might sound hollow or wooden coming from another individual. Here they make sense.

When asked why he would use a phrase like that (free fire zone) Dr. Katchin stated: "because in my experience, 24 years, I felt a certain level of distrust, disrespect between the people in the field and people in management at Regional Office." This displays an understanding of why he had chosen that metaphor.

As far as the use of the qualifier for the term 'free fire zone', Mr. Eftal confirmed both in the investigation and under oath that Dr. Katchin had on another occasion when asked, qualified the use of that term and in exactly the way Dr. Katchin had expressed.

Dr. Katchin testified to the type of language used in his workplace. Particularly he referred to "swearing, foul language, racial comments, - somewhat subsided, vulgar language, verbal abuse, threatening and intimidating comments to a lesser extent, predominantly males... He outlined a number of incidents in which he was the subject of abuse. He explained that oral counselling had been the preferred method of dealing with these problems. This was uncontradicted evidence.

#### **Prejudicial Investigation**

The employer failed to remain objective in its investigation. This investigation as we understand it from Mr. Crawford's testimony was used as the basis for his and Ms. Gammon's recommendation to discipline.

They had arrived at their decision that Dr. Katchin was guilty even before the investigation began. The investigation was just a tool being used to support their decision to discipline. Support for that argument is found in the way they chose; as managers, human resource personnel, and investigators to conduct themselves in the course of their investigation.

In terms of procedure, they first failed to get any written complaint from Dr. Powell. Mr. Crawford stated in testimony that he had conducted several investigations in the past. One would think that a proper signed complaint either written by Dr. Powell or a signed statement of what actually occurred would be the first logical step in such a process, particularly when the allegations surround a conversation that occurred between two individuals without witnesses. The result of not getting a signed statement have led to changes in what was allegedly said in the original conversation, what was reported to other employees and even the sequence of events that occurred.

Management also failed to put all the information they had collected in their final report - they excluded witnessing Dr. Katchin's apology. Whatever weight they gave it at the time, a record of the apology should have been included in the report. Its exclusion throws doubt on whether the decision taken by Mr. Sangster was taken with all the information in front of him. Also maintaining contradictory information in the report does not indicate a real attempt to get to the bottom of what happened. Dr. Powell's statement that Dr. Katchin was on 'a rant' and at another time that his demeanour 'was normal' is an example of this.

Finally, keeping hearsay information from years ago in the report prejudiced Dr. Katchin because it was unsubstantiated and no opportunity was given for reply or rebuttal.

*These procedural failures all prejudice the investigation against Dr. Katchin, taint management's investigation and beg the question -was this an impartial attempt to find out facts?*

*An objective examination of the content of the investigative report (exhibit G-5) shows it is not compelling evidence that Dr. Katchin made the alleged comments. And when questioned as to "Did you feel you had evidence?" Mr. Crawford states: "We felt Dr. Powell was telling the truth. This is faith not evidence. When asked "what did you base that on?" Mr. Crawford responded "because she had only started working at Est. 285 in March 2001, she didn't know Dr. Katchin prior to that, therefore they didn't believe what she was saying was inaccurate." When asked how does that lead to establishing he used the words "shooting everyone on site". Mr. Crawford replied: "It's what Dr. Powell told us he said, and there was no one else to say he did or didn't say this."*

*There is little point in referencing more from Mr. Crawford's testimony regarding the methods used to decide what really happened. I believe that it would be a fair assessment of the whole investigation to say that the investigators took Dr. Powell at her word and at a minimum turned a blind eye to questions and contradictions staring them in the face.*

## **Issue #2**

### ***Is the Penalty appropriate?***

*Should you find, contrary to our argument, that the employer has met the burden of proof and convinced you that Dr. Katchin did say the things attributed to him in the letter of suspension dated July 13, 2001, it is then our request that you take up the second issue which is: was the three day suspension a proper penalty given all of the circumstances and mitigating factors? The considerations we believe should be taken in to effect follow.*

### ***Discipline and Treasury Board Standards***

*Exhibit G-2 is the Treasury Board Manual on Staff Relations, Discipline. This was an exhibit agreed upon by the parties.*

*Mr. Crawford in cross examination stated that he wasn't aware of the CFIA having any agency standards of discipline or discipline policy. He also said he referred to no manual or policy during the investigation. In light of there being no internal policy he could refer to it is fair to assume that the standard used is Treasury Board standard.*

*In general the theme is a time honoured one in labour relations (refer to Brown and Beatty, 3<sup>rd</sup> edition) that sanctions are to be corrective and progressive. Several*

sections of this manual are pertinent in the case before you. I refer you to the 'PURPOSE' which states; "The purpose of corrective disciplinary action is to motivate employees to accept those rules and standards of conduct which are desirable or necessary in achieving the goals and objectives of the organization." In this document the meanings of various penalties are set out, including financial penalty, oral reprimand, suspension, and written reprimand. At the conclusion of the written reprimand section on page 3 the manual states: "if more severe disciplinary action should later become necessary the record of the reprimands in the personnel file would demonstrate that the employee was made aware of the consequences of further misconduct (reprimand écrite).

In my view the penalty imposed on Dr. Katchin was neither progressive (he had a clean personnel record. This was not disputed by the employer), nor was it corrective (an oral reprimand would have served just as well to get the employee to change behaviour particularly since the penalty was meted out over two months after the date of the incident referred to by Dr. Powell. Dr. Katchin was clearly not seen as a danger as he had been working all of those two months in the same capacity and in the same location as before the incident. With no prior warnings on file, no verbal reprimands, and not being a danger it is important to ask why did Dr. Katchin receive a suspension at all? And why three days? My answer to that question is that the penalty was punitive. On page 6 of Exhibit G2, point 7 'Assessment of Misconduct' the manual states: "Failure of an employee to adhere to required standards of conduct must be considered on individual merits. Managerial reaction to such conduct should be constructive in that it is intended to correct rather than punish. Disciplinary action must not be an act of retribution, but rather a considered positive response indicating that an employee's actions are unacceptable, while at the same time motivating and encouraging the employee to develop better attitudes and performance... In the consideration of misconduct, consideration must be given to such factors as the employee's length of service, past record, the seriousness of the offence and any other pertinent facts."

The employer failed in our view to take any mitigating factors into account including the two mentioned above. And in terms of the serious nature of the offence: there were no threats made to Dr. Powell, she felt no physical danger from Dr. Katchin, there was no assault, no threatening gestures, nothing compelled Dr. Powell to speak to anyone about this incident until a month after it occurred. Dr. Barran left the decision to Dr. Powell as to where she wanted to pursue the matter. He, as Dr. Katchin's supervisor, must have had the surest idea as to the seriousness of Dr. Katchin's threats. At

worse (and only if you accept the employer has met the burden of proof) Dr. Katchin is guilty of making an offensive comment that he never intended to follow up on. If the employer had taken this incident seriously and were concerned with more than punishment surely they would have followed up with more than calling the police. What but counselling for the two named individuals? In all the testimony no one thought to mention that Dr. Katchin might be sick or need counselling. It seems that the employer took Dr. Powell's claim seriously only in regard to punishment of Dr. Katchin.

#### **Other Mitigating Factors**

Brown and Beatty (3<sup>rd</sup> edition) on page 7-238 lists the mitigating factors an arbitrator summarized in the decision of the Steel Equipment Company (1964), 14 L.A.C.356 (Reville) at page 356-8. These are submitted here. I have above dealt with the first two. The third factor; 'isolated incident' also applies to this case. The accusation of threatening behaviour is an isolated incident in Dr. Katchin's employment with the CFIA. Factor seven; 'Company rules not uniformly enforced constituting a form of discrimination,' in the list of mitigating factors is also important here because he is being treated differently than others in his workplace. He is singled out and made an example of. Instead of being counselled or reprimanded with the clear warning of more severe discipline if necessary he is punished with a suspension. Something unheard of in the rough and tumble world of Establishment 285.

If the plan at Est. 285 was to clean up the environment, then this effort should be done progressively with warnings to the staff, then reprimands and then more severe penalties. The employer should not decide to make a point by targeting one employee and subjecting him to severe, unjust discipline.

There was no physical assault or even threatening behaviour directed at Dr. Powell. Because this penalty is administered over two months after the fact, it can not be anything but punitive. This penalty is a special penalty for Dr. Katchin.

Connected to the theory of corrective discipline is the question of rehabilitative potential. As stated in Brown and Beatty 7:4422 (3<sup>rd</sup> edition) 'Rehabilitative Potential' on page 7-250 (midpage): "Similarly, some arbitrators, by implicitly assuming that an employee who immediately admits his wrongdoing and/or tenders an apology following his misconduct thereby recognizes the impropriety of his behaviour and thus would more likely be capable of conforming to the expected norms, have relied on that fact as a basis on which to ameliorate the discipline imposed."

In his testimony Dr. Katchin made reference to the fact that he had apologized to the employer at the initial meeting where he learned of the allegations against him. His apology was limited by the fact that he would not apologize for saying things he hadn't said. He forthrightly admitted to the use of an imprudent metaphor and apologized for the problems that he had caused. He understood the problem and took responsibility for his use of the term - "Free Fire Zone". As far as an apology to Dr. Rathlou, he did call and try to reach her to explain. Dr. Rathlou chose not to speak to Dr. Katchin. Dr. Katchin was then advised not to attempt to contact Dr. Rathlou again.

Some other factors (all of which were mentioned in Dr. Katchin's testimony) which should be taken into consideration when assessing an appropriate penalty are:

- The coarse and violent nature of the environment in which Dr. Katchin has worked daily for the last 28 years. Although this environment is not an excuse for the comments that were made, it does explain the atmosphere and what kind of language and comments are accepted at the workplace. It would not be uncommon for someone to make these comments at Maple Lodge and for no disciplinary action to be taken.

- The ongoing staff shortages and the protracted discussions for a new collective agreement. This caused tension and a lack of trust and frustration with management from employees.

- The breakdown of trust between labour and management. This explains the context of Dr. Katchin's comment. He was stating that he did not feel that management at Guelph Regional Office were looking out for the employee's best interest.

- The pressures associated with that the continuing debate over the legitimacy of continuing to sign export documents and Dr. Katchin's leadership in this area. This area of contention could have motivated management to discipline Dr. Katchin more harshly than other employees.

### **Conclusion and Remedy**

You have heard Jerome Katchin in his evidence talk openly about this frustration with management, his continued abuse at the hands of fellow employees and what he meant when he used the language in question. You heard him talk about how he attempts to deal with problems in the workplace.

We have heard from two long serving members of the inspection station of Maple Lodge about Dr. Katchin and how he is quirky but honest and reliable and in all their years he has expressed his views and his frustrations but he has never been prone to violence. Because Dr. Katchin expresses disdain for the policies and actions of his employer in certain

areas does not mean he is either violent or has criminal intent.

We have heard no consistent and reliable evidence from Dr. Powell as far as what Dr. Katchin said beyond his affirmation that he used the term "free fire zone" with a qualifier. We have heard Dr. Powell shift her position and be resolutely uncertain in many areas. We have heard that there was no written statement which would have pinned Dr. Powell and the employer down to one story. We have heard about the length of time it took for Dr. Powell to report her story and that she kept no notes to refer back to. She is discredited as a reliable witness.

We have heard of a compromised investigation. Essentially what the administration of this penalty was based upon is certain peoples' beliefs of what Dr. Katchin's thoughts are and in their mind what he is capable of doing. This penalty was administered despite a lack of evidence of wrong doing and on the employer's unshakeable belief that Dr. Powell is intelligent and professional and therefore must be telling the truth. What was it that led the employer to believe that Dr. Katchin was any less professional or intelligent and therefore could be telling the truth?

In closing, should he have used the metaphor he did in the workplace - no. Referring to the Guelph area office as a "free fire zone" even when qualified is not appropriate and Dr. Katchin realizes this. Dr. Katchin made an error in judgement and is guilty of "shooting off his mouth". The nature of his expression has been exaggerated into the realm of threatening and he is not guilty of misconduct.

Given all of the above we respectfully request that the 3 day suspension be rescinded, that all record of the suspension be removed from the file and all monies and benefits lost as a result of the suspension be reimbursed to Dr. Katchin.

[192] Rebuttal for the grievor

#### Reply to Employer's Submissions

We respectfully submit that the employer has failed to establish clear, cogent and compelling evidence to tip the balance of probabilities and establish just cause for the discipline imposed. It is agreed, as stated in *Alexander Jaworski v. Canada (Attorney General)* [1998], that the employer bears the civil burden of proof in a discipline matter and that in a serious case with grave consequences,

the evidence should be clear and cogent. We submit that the case before you is just such a serious case.

The reply to the Employer's detailed argument is below. The numbers on the employer's argument are referenced and portions of the paragraph are highlighted below. Beneath the quoted portions is our reply.

The case law cited by the employer is addressed further below. However, it is our opinion that both the *Alexander Jaworski v. Canada* (Attorney General) [1998] and [2000] cases, that the standard of proof is not under contest. It is notable that the cases are outside the PSSRA and that they have very distinct factual differences than the case before you.

#### Wendy Powell's Testimony

4. .... "Her testimony was genuine. It was largely consistent with the notes compiled by Mr. Crawford and Ms. Gammon (see Exhibit G-5). These facts militate in favour of accepting her evidence."

If the evidence is reviewed, it becomes apparent that Dr. Powell's evidence is not "largely consistent" with the notes compiled by Mr. Crawford and Ms. Gammon. There are major discrepancies that cannot be ignored. For example, Dr. Powell stated in testimony that she recalled only one conversation with Dr. Katchin where all of the alleged events took place. However, in the notes (G-5), there is a record of two meetings where Dr. Katchin allegedly had a progression of his plan.

This does not militate in favour of accepting her evidence, it actually reduces her credibility in that she cannot recall the exact events that took place and her recollection of the events has changed since discussions with Mr. Crawford and Ms. Gammon.

5. "Dr. Powell had no reason to lie or embellish her story, nor did she do so. (Indeed, Dr. Katchin had no hard evidence against her.) ..."

The question of whether Dr. Powell had reason to lie or embellish her story is not the issue before you Madam Chair. The employer has the burden of proof to submit clear, cogent and convincing evidence of incidents justifying disciplinary action against the grievor. This was not done. There is no need for Dr. Katchin to provide any hard evidence against Dr. Powell for any of her actions.

8. ".....This is compelling evidence of misconduct."



Perhaps, if this evidence were uncontradicted, misconduct could be considered. However, this evidence is contradicted by Dr. Katchin. Without notes or a signed statement, Dr. Powell's evidence hinges on her memory, which, as we know from her testimony is not reliable. Her testimony cannot provide 'compelling evidence of misconduct' because she has related differing versions of events.

9. .... "She knew Dr. Katchin owned guns and ammunition and that he was a hunter. That hesitation is not fatal to the Employer's case...."

The fact that Dr. Katchin owned guns and was a hunter is not relevant to the fact that the complaint was withheld for weeks. It would be more logical to conclude that the fact that he did own guns would have prompted Ms. Powell to report the alleged incident immediately or at least earlier than weeks after it occurred. This hesitation does lead us to believe that she could have considered the alleged conversation not to be a threat at the time she says it occurred.

#### Dr. Mary Rathlou's Testimony

10. "Dr. Rathlou testified that she had learned of Dr. Katchin's threat from Dr. Powell, a person whom she trusts as a fellow professional. She gave compelling, forthright evidence without much prompting of its dramatic effect upon her. This effect warrants discipline against Dr. Katchin."

The fact that Dr. Rathlou was upset over what she was told by Dr. Powell does not prove that Dr. Katchin made the alleged comments. Just because the alleged comments had an effect on Dr. Rathlou, does not mean Dr. Katchin should be disciplined. There has to be proof that he actually caused the reaction. The employer did not establish that Dr. Katchin made the comments that caused the affect and therefore the discipline is not warranted.

#### James Crawford's Testimony

11. "....., James Crawford's evidence is important insofar as it demonstrates that management took the complaint seriously and acted upon it swiftly. It does not condone such behaviour in the workplace....."

The evidence shows that the first manager; Dr. Dennis Barran (VM-2 Manager) to be made aware of the alleged comments made, did not act on this information at all. The testimonies of Dr. Katchin, Mr. Efftal and Mr. Birken show that the behaviour (profanity, cultural slurs, military metaphors etc.) displayed by employees at Maple Lodge Farms has not attracted discipline in the past and that it has

been going on for some time. In any case, the reaction of the employer to the alleged comments does not provide any evidence that the comments were made or that the disciplinary action taken against Dr. Katchin was justified.

#### Vince Weber's and Berkin Eftal's Testimonies

Mr. Jaworski states that neither of these witnesses were prepared to slight Dr. Powell's integrity or impugn her in any way. Dr. Powell's integrity is not under review. It is the employer's duty to present compelling evidence for the discipline imposed. They have the burden of proof.

#### Dr. Kathin's Evidence

19. ".....There is a tremendous overlap in their stories to this point. These facts militate in favour of accepting Dr. Powell's evidence."

It is unclear why counsel for the CFIA believes that because of the overlap we should accept Dr. Powell's testimony over Dr. Katchin's. In any case, if the two versions of events were the same, it is not likely that the case would be at adjudication. The fact that they diverge does not mean that one should be believed over the other.

20. "Dr. Katchin's explanation that he used the stilted qualifier 'insofar as there are no friendly forces there' in these circumstances is patently unbelievable. Dr. Powell did not hear it because he did not utter it."

Counsel for the CFIA gives their opinion that it is 'patently unbelievable' and that 'he did not utter it', but fails to offer legitimate reasons or evidence to support these assertions.

22. "Dr. Katchin's evidence that he was contrite is at odds with Jim Crawford's notes of an offer of an apology. Indeed, Dr. Katchin's letter of, is far from contrite and incredibly opens by insulting Mr. Sangster."

Mr. Crawford testified that he could not remember if Dr. Katchin gave an apology, whereas Dr. Katchin's evidence clearly shows that he did provide one. With regards to the letter sent by Dr. Kathin, this letter was sent after he was disciplined and further, the letter does not retract the apology that was previously given.

#### Summation

28. "Dr. Powell is an honest and highly regarded individual...She is well-educated and it is unlikely that she was mistaken about what she had heard and what it meant."

*There is no evidence that she bore any malice against Dr. Katchin. She should be believed."*

*Similar to Dr. Powell's credentials, Dr. Katchin is honest and highly regarded. He is also well-educated. However, level of education does not determine whether one may be mistaken about things heard or understood.*

*In terms of malice, this is not a proof that the grievor must establish. It is the employer's duty to establish clear evidence of an incident warranting disciplinary action.*

29. *"The lack of a signed statement from Dr. Powell and some minor uncertainty on the issue of 'fantasized about killing' do not provide a basis to doubt or dismiss her evidence."*

*The combination of a lack of a signed statement and Dr. Powell's determination not to take notes forces us to rely on her memory. It is difficult to see how Dr. Powell's revisions could be seen as "minor uncertainties".*

29. *"She heard Dr. Katchin's statements in the early morning hours, which meant she may have been tired. She was 'stunned' by the same."*

*One would think that if Dr. Powell was so 'stunned' and scared by the alleged comment that surely she would have remembered it. If she wasn't sure about what was said, why would she not clarify this with Dr. Katchin?*

31. *"Similarly, the fact that a witness may have given slightly inconsistent evidence on a peripheral point does not mean that they are to be disbelieved."*

*Surely accusing someone of 'fantasizing about killing' people is not a peripheral point and it should be taken very seriously by the accuser and by opposing counsel.*

32. *....."An analysis of the evidence as a whole and a tolerance of minor discrepancies is warranted. Microscopic examinations should be avoided."*

*In AlexanderJaworski v. Canada (Attorney General) [1998] and [2000], the discrepancies in evidence are descriptive in nature. The particular colour of a person's clothing, height, and hair colour goes well beyond the physical details provided in the case before you. Dr. Powell's testimony is much different- she is not being asked to identify anybody through the recollection of detail, she is being asked to remember an incident which she says occurred. It is a serious point that her testimony is not consistent on the central question of whether there were one or two meetings and whether that would lead to as she first alluded to in the*

investigation to a "progression". We submit that the question of whether there was a "progression" and whether things were said in a second meeting or not are important pieces of testimony, not "minor discrepancies". It would be difficult to characterize looking at the credibility of Dr. Powell's testimony as microscopic examination. Since there is no hard evidence other than two opposing testimonies, close scrutiny is necessary.

**Lefebvre and Treasury Board (Solicitor General of Canada)**

**[1985] C.P.S.S.R.B. No.8**

**Significant Differences:**

- The threats made in this case are clear threats made directly to another employee and much more severe threats are made. In the case before us, even if it is believed that the alleged comments were made, it is not totally clear what they imply.
- The remarks were made to a superior. In the case before us, the alleged comments were not made to a superior.
- The day after the comments were made, the witness prepared a written report of the incidents. In the case before us, there is no written report, signed statement or notes to support the allegations.
- There is also a logical sequence of events that led to the comments. In the case before you, Dr. Powell states that Dr. Katchin approached her out of no where with no prior conversation and made threatening comments. There is no logical sense to this.
- Most importantly, the grievor in this case had a previous disciplinary record consisting of a two-day suspension, a written reprimand and a verbal reprimand. Dr. Katchin has no previous disciplinary record.

**Mohamed and Treasury Board (Revenue Canada - Taxation)**

**[1988] C.P.S.S.R.B. No. 139**

**Significant Differences:**

- The remarks were made to the grievor's immediate supervisor. In the case before us, the alleged comments were not made to a supervisor

- In addition to the threatening comments made, the grievor was also breaking a rule which he was aware of and had agreed to abide by.
- The arbitrator found that a 2 day suspension was appropriate. In this case, we are dealing with an even greater penalty.
- The threats made in this case are clear threats made referring to 'ending in bloodshed' and 'things could get bloody, messy'. In the case before us, even if it is believed that the alleged comments were made, it is not totally clear what they imply.
- Most importantly, the grievor in this case "did not deny using these words; it is only the context which he now claims was non-threatening and innocent." In the case before you, Dr. Katchin outright denies ever using the alleged words or making any threats.

All of which is respectfully submitted.

January 10<sup>th</sup>, 2003.

Steve Eadie  
Employment Relations Officer  
P.I.P.S.C.

[193] Rebuttal for the employer

**Introduction:**

1. The Employer, the Canadian Food Inspection Agency, has met its burden and tendered cogent and compelling evidence of misconduct on the balance of probabilities. It has proved that a suspension was warranted. The following is meant to supplement our earlier submissions.

**Dr. Wendy Powell's Testimony:**

2. Dr. Powell's testimony was honest and compelling. She had no reason to lie or embellish her story, nor did she do so (and Dr. Katchin had no hard evidence against her). Indeed, Dr. Powell only had a brief working relationship with Dr. Katchin before the event in issue. It was not acrimonious, and she "neither liked nor disliked" him. There is no evidence she bore any malice

against Dr. Katchin. These facts all militate in favour of accepting her evidence. She should be believed.

3. The lack of a signed statement from Dr. Powell and some minor uncertainty on the issue of "fantasized about killing" do not provide a basis to doubt or dismiss her evidence. Again, Dr. Powell willingly presented herself before this Board more than a year after the fact and without the aid of any notes. She heard Dr. Katchin's statements in the early morning hours, when she may have been tired, and was "stunned" by them. No one should expect a perfect memory in such circumstances, nor does the law demand it - particularly on a civil matter.
4. There is simply no requirement at law that a person must make notes to be believed. My friend has not offered any authorities in that regard.
5. If the Board has concerns about the "fantasizing" comments (and it should not for the reasons stated above), discipline is still warranted for the balance of the statements attributed to Dr. Katchin - the first part of which he admits saying!
6. Furthermore, Dr. Powell admitted that she hesitated before coming forward with this information for about a month. Despite my friend's submissions of how one should act the circumstances (which are purely his own subjective set of expectations), that hesitation is not fatal to the Employer's case. If anything, a witness who thinks before acting is very compelling.

**Dr. Katchin's Evidence:**

7. Dr. Katchin gave evasive, argumentative and hesitant evidence. He only grudgingly admitted that he had no hard evidence against Dr. Powell or that the employer acted out of spite against him.
8. Instead, he only offered supposition. His evidence should not be accepted.

**The Investigation**

9. "Prejudicial failures" during the investigation conducted by James Crawford and Donna Gammon, if any, which is not admitted, but denied, are not relevant. Management was perfectly within its rights by preferring Dr. Powell over Dr. Katchin.
10. In any case, the Board had the two central players before it, and it is at liberty to reach its own conclusions.

*Criticism of the investigation is nothing more than a veiled attempt to misdirect this Board from the true issues.*

**Is the Penalty Appropriate?**

11. *Discipline is warranted in this case. Threats and/or violent language are unacceptable. The case-law cited earlier confirms as much.*
12. *Management took the complaint seriously and acted upon it swiftly. It does not condone such behaviour in the workplace and meted out an appropriate penalty.*
13. *The fact that Dr. Powell was not the object of Dr. Katchin's statements does not make them any less offensive.*
14. *Dr. Katchin is far from contrite. He has attempted to lay blame on others. The suggestion that his words were merely metaphorical is repugnant to anyone seeking a civil working environment. There is no reason to lessen the penalty. The three day suspension is apropos.*

**Order Sought**

*This grievance should be denied, and the suspension maintained.*

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

*Executed at Guelph, Ontario, this 10<sup>th</sup> day of January, 2003.*

**Reasons for Decision**

[194] In a disciplinary case such as this one, the burden of proving misconduct lies with the employer. The misconduct that needs to be proven is that relied upon in the letter of suspension (Exhibit G-3).

[195] It is clear that Dr. Jerome Katchin was suspended for three days without pay for comments made on two occasions May 10, 2001, and June 4, 2001. The comments alleged are referring to the Guelph office as a "free fire zone", meaning to "shoot everyone on sight" and "fantasizing about killing people at the Guelph office".

[196] The employer's case depends entirely on the complaint of Dr. Wendy Powell, who allegedly heard the comments.

[197] Dr. Katchin readily admits to using the term "free fire zone" in reference to the regional office but denies the additional comments that it meant "shoot everyone on sight" or that he was "fantasizing about killing people at the Guelph office". I find that the context in which Dr. Katchin describes the use of the term "free fire zone", while unflattering towards management and somewhat ambiguous, does not by itself constitute a threatening or violent comment.

[198] Both Dr. Powell and Dr. Katchin have testified at the hearing. No one else was present during the conversation between Dr. Powell and Dr. Katchin.

[199] The employer has failed to prove that comments were made on June 4, 2001, regarding "fantasizing about killing people at the Guelph office". Dr. Powell was quite clear in her testimony that only one conversation took place and she stated it was one month prior to her speaking to Dr. Mary Rathlou. Dr. Powell is not sure the word "fantasizing" was the right word Dr. Katchin was using.

[200] This leaves the allegation that by referring to the Guelph office as being a "free fire zone" Dr. Katchin meant "shoot everyone on sight".

[201] I have to choose between two different versions of a conversation. One version implies violence and a threat against the Guelph office. The other vilifies management which resides at the Guelph office but is not violent or threatening.

[202] Both versions are plausible and possible. Unable to choose between one or the other, I would have to rely on the onus or burden of proof to determine the outcome of this grievance. With both versions equally plausible, I would have to find that the employer has not discharged its onus of proving that the misconduct alleged has occurred.

[203] Dr. Powell's memory of the events at the hearing is quite different from the version she provided to the investigators Jim Crawford and Donna Gammon. It is unfortunate that Dr. Powell is not in the habit of making notes of such extraordinary circumstances. She should have realized, when she was unable to remember the third name that she claimed was specifically mentioned in relation to "shoot everyone on sight" at the regional office, that her memory was not trustworthy.

[204] Hearsay evidence that is contradicted by direct evidence has no probative value and must be disregarded. Dr. Powell's statements to the investigators can only be used



to assess her credibility. They cannot be used to supplement her testimony. I cannot accept that one year could have erased from Dr. Powell's memory the fact that Dr. Katchin stated he was fantasizing about killing people at the Guelph office. Especially when the person doing the fantasizing was considered by Dr. Powell as not being normal, and possessing guns.

[205] Dr. Barran met with the investigators but he did not testify. I cannot make any findings from his statements reported in Exhibit G-5, when those conflict with the direct evidence I heard.

[206] Dr. Powell testified that she spoke to Dr. Barran regarding the comments made by Dr. Katchin after she spoke to Dr. Mary Rathlou. I must accept that and disregard the hearsay evidence attributed to Dr. Barran by Mr. Crawford.

[207] Again, I accept the evidence I heard from Dr. Katchin, Vince Weber and Berkan Eftal that Dr. Katchin never threatened the life of anyone in management or uttered threats to shoot anyone at the regional office.

[208] On the evidence I have heard, I must prefer Dr. Katchin's version. His memory appears to be more complete. The context of the conversation makes sense and was not really contradicted. The evidence reveals that labour relations between the management of CFIA and its employees at Establishment 285 were difficult. The representatives of the parties at the hearing have admitted that proper communications between the bargaining agent and the employer had yet to be restored. It is therefore quite probable that Dr. Katchin would be making disparaging comments about management.

[209] Could these comments have crossed the line and fallen into the realm of violence and implied threats? It is possible, but Dr. Katchin denies it and has consistently denied it.

[210] On the other hand, Dr. Powell did not jot down the comments she heard immediately or shortly after hearing them. She did not report them to her supervisors within a reasonable period of time. Instead she discussed them with friends and family members. Can Dr. Powell's discussions with friends and family have altered the perceptions she had of the comments she actually heard? It is possible. We know now that Dr. Powell has an unreliable memory; she admitted as much in her testimony. It is

possible that what she reported to Dr. Rathlou was the product of a faulty memory supplemented by her conversations with family and friends.

[211] Dr. Rathlou testified having heard from Dr. Powell a version not only different from the version Dr. Powell gave at the adjudication hearing, but also slightly different from that given to the investigators. In failing to report in a timely manner to her supervisor the comments Dr. Powell had perceived from Dr. Katchin, she not only hurt her credibility in the present process but she has caused Dr. Rathlou to experience a distress still felt today.

[212] I cannot understand why Dr. Powell waited so long to make a disclosure. She has repeated that she was not afraid. However, she believed Dr. Katchin to be "not normal". According to Dr. Rathlou, she did not know Dr. Powell much before her revelation of the comments. On a balance of probabilities, I must find that the comments made by Dr. Katchin were more likely to have been as he described them rather than the more serious fantasy of shooting or killing people at the Guelph office reported by Dr. Powell.

[213] What is the probability that the fear of being called as a witness in an investigation and at an adjudication hearing would outweigh, for over one month, the fear that a "not normal" person with guns threatening to shoot people who frustrate him would take such action? I must find that probability very low on the part of a person who was described as very intelligent and professional.

[214] It is clear that Dr. Powell's initial version of the comments was accepted by the investigators without question. This is understandable in the context of the climate that prevailed. Dr. Powell's word was taken at face value without being put to the test that could have made it stronger and more reliable at adjudication. Had she been asked to write her own statement of the events shortly after they took place, her memory might have been clearer and more durable.

[215] Having found that the employer has failed to make its case, I must now turn to the grievance redress sought by Dr. Katchin. The redress requests he has not withdrawn are the following:

- 5) *The reversal of my three day suspension.*

6) *The reversal of my sick leave credits utilized as a result of Dr. W. Powell's deliberately fraudulent complaint and the CFIA's response to it.*

7) *The reversal of my annual leave credits utilized on June 13 and 15, 2001.*

8) *Opportunity to work an additional 16.50 hours of overtime as per grievance: 01 CFIA ONT CEN 249.*

9) *Opportunity to work an additional 7.75 hours of overtime as per grievance: 01 CFIA ONT CEN 266.*

10) *Compensation be awarded to me for all of my off-duty time expended in the preparation and participation in correspondence, grievances, meetings and conversations including any out of pocket expenses.*

[216] Redress number 5 is hereby granted.

[217] Redress number 6 is somewhat more problematic as no evidence was tendered by Dr. Katchin of sick leave taken as a result of Dr. Powell's complaint. He mentioned being distraught as a result of the complaint but gave no specifics. No evidence was provided with regard to June 15, 2001, and as for June 13, 2001, Dr. Katchin was already on leave when Mr. Crawford contacted him that day. It is hard to determine if he was on sick leave or on annual leave as no details were given as to the nature of the leave. Therefore, redresses numbers 6 and 7 are denied.

[218] As for overtime opportunities referred to in redresses numbers 8 and 9, again no specific evidence was submitted. Dr. Katchin is entitled to the benefits and rights he would have enjoyed had the suspension not been served.

[219] Dr. Katchin did testify that Dr. Iwasaki and he worked copious and regular overtime. To the extent that overtime would have been performed by him had he not been suspended, he would be entitled to the compensation for such missed overtime opportunities.

[220] With regard to redress number 10, again no evidence was tendered to show that grievance meetings and preparation for them and the adjudication occurred during Dr. Katchin's off-duty time and that he has requested and was refused reasonable time off during his working hours for such purpose. Accordingly, that redress is denied.

[221] In summary, I find that the employer has failed to prove the misconduct alleged against the grievor and therefore the three-day suspension must be rescinded and all records of it removed from Dr. Katchin's file. I allow the grievance to the extent that Dr. Katchin shall be compensated for his salary, rights and benefits lost due to the three-day suspension. I will remain seized for ninety days from the date of this decision should the parties be unable to agree on the implementation of this decision.

**Evelyne Henry,  
Deputy Chairperson**

OTTAWA, March 13, 2003.