

Lib

Date: 20030131

File: 166-34-31431

Citation: 2003 PSSRB 8



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

JAMES WESLEY COPP

Grievor

and

CANADA CUSTOMS AND REVENUE AGENCY

Employer

Before: D.R. Quigley, Board Member

For the Grievor: Himself

For the Employer: Jennifer Champagne, Counsel



Heard at Kamloops, B.C.,
December 3 to 6, 2002.



DECISION

[1] This grievance concerns the termination of employment and the revocation of the enhanced reliability status (ERS) of James Wesley Copp. At the time of the termination of his employment, Mr. Copp was employed by the Canada Customs and Revenue Agency (CCRA) as a customs superintendent (PM-04).

[2] The reasons for the termination of Mr. Copp's employment and revocation of his ERS are stated in a letter dated July 23, 2001, from G. Blake Delgaty, Regional Director, Customs, Pacific Region, CCRA. It states as follows: (Exhibit E-1):

On June 21, 2001 you were suspended indefinitely without pay until such time as management had an opportunity to thoroughly review all available information gathered during two separate investigations into your conduct. This review is now complete and I have found that you committed numerous acts of misconduct and failed to abide by the CCRA Standards of Conduct on a number of occasions. My conclusions are summarized below.

The August 1997 competition poster for the position of Customs Inspector clearly advertised that all candidates must possess a valid driver's license. You did not have a valid driver's license at the time you submitted your application, at any time during the selection process, or upon commencing work as a Customs Inspector in May 1998. You were clearly aware of the Agency's requirements in this regard.

Your British Columbia driver's license was obtained under false pretenses in September 1997 flowing from your failure to disclose to the B.C. Motor Vehicles Branch and the Insurance Corporation of B.C. that you were subject to a court order, under the name of James Wesley Huett-Copp, prohibiting you from operating a motor vehicle anywhere in Canada for a one year period ending July 2, 1998.

The Agency had a right to be clearly and directly advised by yourself, without further intervention of any other administrative process, that you either did or did not possess a valid driver's license prior to commencing employment. You have stated that you showed a B.C. driver's license under the name of James Wesley Huett to a member of the selection board. I am satisfied that since your picture was on that license the selection board member would have recognized your physical appearance, which resulted in an administrative error in not identifying the difference in family names. Your explanation regarding your driver's license is not reasonable and I have concluded that you knew this was not a valid driver's license.

The CCRA Personnel Screening Request and Authorization form you completed in February 1998 shows that you only disclosed the family name of Copp. You failed to disclose the family names of Huett, and Huett-Copp, under the "Family Name at Birth" and "All Other Names Used" sections on that form. In my view, the explanation you provided to the IAD investigator in regard to not completing these sections of this form is implausible.

Your decision to drive a CCRA vehicle while under a Court order prohibiting you from operating a motor vehicle anywhere in Canada has caused serious concerns. Your conduct in this regard constituted a violation of Section 259 (4) of the Criminal Code of Canada. You acknowledged this fact in writing under a Court order dated July 2, 1997. That document clearly advises you that in taking such action you would be guilty of an indictable offense and liable to imprisonment for a term not exceeding two years. By driving a CCRA vehicle while on duty under these circumstances, and particularly since you are responsible to uphold the laws administered by CCRA (including the Criminal Code of Canada) in your role as Peace Officer, your actions demonstrate to me that you had absolutely no respect for the very essence of your job as a Customs Inspector - to uphold and enforce the law. You have provided no plausible explanation for your conduct in this regard.

On October 13, 2000 you were issued a warning ticket by the RCMP for speeding while driving a CCRA vehicle. Another Customs Inspector subsequently questioned you about the name of James Wesley Huett, which appeared on the ticket found in the vehicle. By your own admission, you invented a cover-up story for the purpose of avoiding the probability that this Inspector or other officers would verify your name in the Canadian Police Information Centre (CPIC) database. Also, on December 12, 2000 another employee determined that the sum of \$80.00 cash was missing from the cash drawer in the Port of Roosville. By your own admission, you removed this cash contrary to Agency policy relating to cash management.

Both of these incidents demonstrate very serious errors in judgment on your part. As a Customs Superintendent and manager one of your responsibilities is to ensure that all employees are following established procedures. Managers are expected to lead by example. However, your conduct clearly sent a very significant and demoralizing message to your staff who were aware of these incidents - that their Superintendent and manager is not concerned with his own conduct on the job. I find your conduct to be very damaging to the effective management of the organization, in addition to being a complete breach of our corporate values.

On August 21, 1998 you were arrested, chartered and cautioned by the RCMP for Assault causing Bodily Harm (File # 98-0005858), relating to an incident at the Elements night club in Penticton on July 12, 1998. You failed to disclose this arrest to the Agency as required by the former CCRA Standards of Conduct. Assault causing Bodily Harm is an offense under the Criminal Code - a federal statute which is directly related to your official duties as a Customs Inspector. I have noted that your arrest record shows you identified yourself to the RCMP under the family name of Huett. You have maintained the position that you were not arrested on this occasion, but a statement provided by the RCMP to the IAD investigator contradicts your position.

Management has discussed all of these issues with you at a disciplinary hearing held on June 21, 2001. In administering discipline, I have taken into consideration that you did not demonstrate complete forthrightness during the investigative process as well as the fact that you clearly have not recognized the critical significance of your behaviour. Although you have made some achievements within the Customs organization during the course of your employment, the seriousness of the numerous issues noted above are of great concern to me.

In addition, you have violated and disregarded numerous principles expressed in the former CCRA Standards of Conduct. As a result of all your actions, I am of the opinion that the relationship of trust between yourself and the Agency has been irreparably breached. I am particularly disturbed by your complete lack of ethical behaviour, and lack of respect for the law and our judicial system. As a former Collections Contact Officer and Customs Inspector, and most particularly in your current position as a Customs Superintendent, you have been responsible to uphold and enforce the law while meeting our corporate values of Integrity, Professionalism, Respect and Co-operation. It is clear to me that you have no interest in conducting yourself in line with the standard of behaviour that your job requires you to do on behalf of the people of Canada. I find all the evidence at hand confirms that your continued employment in any capacity is unacceptable to the Agency. Your behaviour has left me with no choice but to terminate your employment at the close of business on July 24, 2001. This decision is taken in accordance with the authority delegated to me by the Commissioner under Section 51(1)(f) of the Canada Customs and Revenue Agency Act.

If you have not already done so, you must immediately return any CCRA identification and supplies within your possession.

In addition, for all of the reasons noted above, I am revoking your Enhanced Reliability Status in CCRA effective immediately.

You have the right to grieve your termination of employment and revocation of reliability status within a period of 25 days from the date of this letter, as outlined in the PSAC/CCRA collective agreement.

[3] Counsel for the employer filed 31 exhibits and called five witnesses; the grievor filed 33 exhibits but did not call any witnesses, nor did he testify himself.

The Facts

[4] Mr. Copp began his employment with Revenue Canada (as it was then known) on March 21, 1994, in Halifax, Nova Scotia, and worked until September 17, 1994, at Canada's employment centre for students. From April 3, 1995 until March 28, 1996, he worked as a collections officer (PM-01; term position) at Human Resources Development Canada (HRDC), and from May 29, 1996 until June 22, 1997, as a collections contact officer at Revenue Canada. On June 9, 1997, he became an indeterminate employee.

[5] In August of 1997, while working in Halifax, Mr. Copp applied for a customs inspector (PM-02) position in Osoyoos, British Columbia. The poster for the customs inspector position stated (Exhibits E-6 and E-7): "Candidates must possess a valid driver's license and willingness to operate a government vehicle..." On October 15, 1997, Mr. Copp wrote the test for the customs inspector position in Penticton.

[6] Mr. Copp was a successful candidate and subsequently completed 14 successive weeks of formal training at the Revenue Canada College in Rigaud, Quebec.

[7] On February 10, 1998, Mr. Copp filled out a "Personnel Screening Request and Authorization" form (Exhibit E-10). The information on this form was used to conduct a security check to determine eligibility for an enhanced reliability level required for the customs inspector position.

[8] There are five different levels of reliability that CCRA could require, depending on the position: a basic reliability check, an enhanced reliability check, a level I (confidential), a level II (secret) or a level III (top secret).

[9] Part A of the said form (Exhibit E-10) requests the potential employee to complete four boxes that identify the person completing the form: a box where it indicates "Surname"; a box where it indicates "Full given names (no initials)"; a box where it indicates "Family name at birth" and a box where it indicates "All other names used". Part C of the form ("Screening Assessment and Consent") allows the Department to conduct specific security checks, including subsequent updating requirements of the Government Security Policy. This section has 10 columns: (1) Date of birth; (2) Address; (3) Education/ Professional qualifications; (4) Employment history; (5) References/Personal character; (6) Criminal record check; (7) Credit check; (8) Reliability; (9) Loyalty (security assessment only) and (10) Other (specify, see instructions). Alongside each column is a box with the letter Y that the applicant initials and a box with the letter Z that the authorized official initials. Below these columns there is a space in which it is noted: "I, the undersigned, as the authorized official, do hereby certify that the above information has been verified. The requested level of Basic/Enhanced Reliability is granted." The other boxes are for the name and title of the authorized official, the office address, and the telephone and facsimile numbers.

[10] The grievor also completed on February 10, 1998, a "Declaration Regarding Criminal Convictions" (Exhibit E-18). This form is also used by the Department, pursuant to the Government Security Policy, to determine reliability status.

[11] This form (Exhibit E-18) also asks: "Have you ever been convicted of a criminal offence for which you have not been granted a pardon?" and states: "If you wish to comment, please use the space below." As well, there is a caveat on this form that reads: "The existence of such a record, provided it is declared, may not be an impediment to employment and each case will be judged on its own merit."

[12] The grievor was given a letter of offer for the customs inspector position on April 30, 1998, and started working on May 19, 1998, in Osoyoos, British Columbia. He was promoted to superintendent of the Port of Roosville in August 2000.

[13] G. Blake Delgaty is currently the Regional Director, Customs, Pacific Region, CCRA, a position he has held since 1994; he began his career with CCRA in 1977.

[14] Mr. Delgaty testified that it was he, in fact, who made the decision to terminate Mr. Copp's employment and revoke his ERS. The July 23, 2001 letter (Exhibit E-1) was prepared by Vince Boutellier and Susan Atkinson, both staff relations officers, and signed by Gail Stewart on Mr. Delgaty's behalf.

[15] Mr. Delgaty described the grievor's duties as a customs superintendent (PM-04) as follows. The grievor supervised approximately 10 to 12 customs inspectors and was responsible for two offices: one at Roosville, a land port of entry approximately 75 miles from Cranbrook, and the other at the airport in Cranbrook. Mr. Delgaty confirmed, and this is supported by the work description (Exhibit E-8), that the grievor's main duties were to execute customs program delivery by protecting Canada's borders from the entry of illegal goods (contraband, drugs, cigarettes, liquor, pornography, undesirable persons, etc.). In his position as a team leader, he and the customs inspectors under his supervision performed law enforcement activities such as the administration and enforcement of some 70 federal statutes, seizures, arrests, physical searches, traffic flow, as well as staff relations and administrative duties. They are peace officers who work hand-in-hand with sister agencies such as the Royal Canadian Mounted Police (RCMP), Immigration officials, the U.S. Customs Border Patrol and the local police and sheriff offices.

[16] Mr. Delgaty stated that such a relationship with these agencies is critical, particularly in light of September 11, where "we need trust to cooperate and share information to get the bad guys".

[17] It was Amie Doucet, a customs inspector at the Port of Roosville who worked for the grievor, who started the chain of events and investigation that uncovered the fact that the employee known to the Department and to his co-workers as James Wesley Copp also used the surname Huett and Huett-Copp.

[18] Ms. Doucet testified that on or around October 13, 2000, she used the Port of Roosville CCRA vehicle to attend the Canadian Police Information Centre (CPIC) training in Kingsgate. She traded vehicles with Mr. Copp in Cranbrook, as they were both in town. It was some time later that day that she found a warning ticket for speeding issued by the Cranbrook RCMP at 11:40 hours on October 13, 2000; it was issued to "James Huett" (B.C. driver licence 6874319 (Exhibit G-31). Confused by the name on the warning ticket, Ms. Doucet showed it to a co-worker, Inspector Larter, who was confused as well as to the identity of the said person.

[19] Ms. Doucet stated that when she confronted Mr. Copp about the name on the warning ticket, he replied: "I was stupid and lent the customs vehicle to my friend and he received the ticket." In response, Ms. Doucet asked: "Where is your friend now?", and Mr. Copp stated: "Oh, I left him at the mall."

[20] In cross-examination, when asked by the grievor whether other customs inspectors accessed the cash drawer, Ms. Doucet replied in the affirmative and that other customs inspectors have made change in the past.

[21] On November 20, 2000, Stu Pigot, Regional Intelligence Officer, Penticton Field Office, met with an anonymous person, who at this hearing was identified as Blake Webb, a subordinate of the grievor. Mr. Webb alleged that James Wesley Copp had been convicted some time in 1996 or 1997 of assault causing bodily harm and possession of a prohibited weapon while residing in Halifax and while employed at Revenue Canada. Mr. Webb advised that at that time Mr. Copp used an alias of Huett on his B.C. driver's licence. Mr. Webb was unclear if Mr. Copp had disclosed his criminal convictions at the time he was hired as a customs officer or when promoted to customs superintendent. It was information that was retrieved illegally from the CPIC by Mr. Webb, who was subsequently disciplined for this infraction.

[22] Mr. Pigot sent a letter dated November 20, 2000 (Exhibit E-3), to Ken Macpherson, Chief of Security and Intelligence, Pacific Region, CCRA, outlining the allegations made by Mr. Webb.

[23] On January 5, 2001, Mr. Delgaty sent a letter (Exhibit E-2) to Mr. Copp indicating that allegations of a serious nature against Mr. Copp had been brought to his attention and he had asked internal affairs to launch an investigation into the matter as well as other allegations relating to Mr. Copp while he was working in the Port of Roosville. Mr. Delgaty further advised Mr. Copp that he was reassigning him to the Penticton office effective immediately and until further notice.

[24] The investigation into the allegations was assigned to Larry Kozak who since 1997 has been the Security Chief of the Surrey Tax Centre. Before that, Mr. Kozak was a police officer for 20 years.

[25] Mr. Kozak testified that the mandate given to him by Assistant Director André St-Laurent was to determine if Mr. Copp had a criminal record and if he disclosed it at the time he was hired or at any other time during his employment. He was also asked to determine if Mr. Copp used an alias to obtain the B.C. driver's licence.

[26] The investigation started in mid to late December 2000, and Mr. Kozak concluded his report on April 3, 2001. He submitted the report to Mr. St-Laurent, who forwarded it to Ottawa and then to Mr. Delgaty.

[27] Mr. Kozak met with the grievor and his lawyer at the time, Rick Covell, to explain the purpose of the investigation and to interview the grievor with respect to the allegations raised against him. The grievor signed a form entitled "Information to Employee Prior to Interview" (Exhibit E-28). A number of questions were asked by Mr. Kozak and Mr. Copp's responses were duly recorded by Mr. Kozak, as well as by the other interviewer, Dave Harvey. The answers to the questions were to be included in the investigation report and could be used at a disciplinary hearing.

[28] Mr. Kozak interviewed CCRA personnel in Cranbrook, Roosville, Penticton and Osoyoos; the RCMP in Penticton and Halifax; vital statistics employees in several provinces; provincial court employees; personnel of the B.C. Motor Vehicles Branch, as well as other individuals, in order to ascertain if any of the allegations could be substantiated.

[29] Mr. Kozak further indicated that he used the CPIC, the Police Information Retrieval Systems (PIRS) (Exhibit E-19) as well as valid police reports, Penticton RCMP reports and provincial court documents to assist him in completing his investigation. The results of this exhaustive search confirmed that the grievor had numerous criminal charges, such as:

- (1) assault with a weapon (92-04-03); he received a conditional discharge and was prohibited from possessing firearms, ammunition and explosives for five years;
- (2) assault causing bodily harm (convicted on 96-11-25);
- (3) impaired driving (convicted on 96-08-15);

- (4) impaired driving (convicted on 97-07-02); his licence was suspended for one year;
- (5) possession of a prohibited weapon (convicted on 97-07-02);
- (6) assault causing bodily harm (98-02-21).

[30] Mr. Kozak also confirmed, and Exhibit E-22 supports this, that the grievor was convicted of impaired driving on July 2, 1997, under section 253 of the *Criminal Code of Canada*. The Order prohibiting the operation of a motor vehicle states: "The offender be prohibited from operating a motor vehicle on any street, road, highway or other public place in Canada for a period of 1 year." (Emphasis added)

[31] This Order is subject to subsection 259(4) of the *Criminal Code of Canada*, which states:

Everyone who operates a motor vehicle, vessel, aircraft or any railway equipment in Canada while disqualified from doing so

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction.

[32] Also, an endorsement on the Order states:

I hereby acknowledge receipt of a copy of this Order, that the Order was read by/or to me and I was informed of the provision of Section 259(4) of the CRIMINAL CODE OF CANADA set forth hereon.

Dated at HALIFAX, Province of Nova Scotia, this 2nd day of July A.D. 1997.

[It is signed by Mr. Copp and witnessed by Pearl Kaulbach, Justice of the Peace in and for the Province of Nova Scotia.]

[33] Mr. Kozak stated that Mr. Copp was convicted of impaired driving and prohibited from driving anywhere in Canada from July 2, 1997 to July 2, 1998. However, while in Penticton, Mr. Copp applied for a B.C. learner's permit under the name James Wesley Huett and on September 16, 1997, he received his driver's licence.

[34] Mr. Kozak ascertained through the Reference Daily Vehicle Operating Report that the grievor drove the Port of Roosville vehicle to Chopaka on June 12, 1998, while he was under a court order prohibiting him from driving anywhere in Canada.

[35] Mr. Kozak testified that through the course of his investigation, and in particular in reviewing Exhibit E-10, Part A, he noted that the grievor indicated in the box for "Surname" "Copp" and in the one for "Full given names (no initials)" he wrote "James Wesley". However, in the box for "Family name at birth" and the one for "All other names used", the grievor left these blank. In Part C, he consented to the specified checks including subsequent updating requirement of the Government Security Policy. The grievor also initialled the Y box adjacent to the 10 columns of information, numbers 1 to 7. Mr. Kozak identified that it was Mr. Profili's (who was an interviewer at the time the form was completed) initials in the Z column, numbers 1 to 8. Under the box where it states "I, the undersigned, as the authorized official, do hereby certify that the above information has been verified" is the grievor's signature. The name of the authorized official, the office address and the telephone and facsimile numbers were left blank. Mr. Kozak stated Mr. Profili never verified the information columns, including the criminal record check.

[36] Mr. Kozak testified that on the "Declaration Regarding Criminal Convictions" form (Exhibit E-18), the grievor marked an X in the "Yes" box to signify having been convicted of a criminal offence for which he had not been granted a pardon. It was also noted that the grievor wrote the following in the space indicating "If you wish to comment":

An isolated incident of a domestic assault for which I went through and successfully completed anger management courses. I continue to live with the woman who was the recipient of the abuse and she would no doubt attest to the fact that it was isolated and is not an issue any longer.

[37] Mr. Kozak stated that the grievor filled out Exhibits E-10 and E-18, the security screening package, and had also submitted his fingerprints to HRDC where he had worked prior to joining CCRA. HRDC submitted his fingerprints to the RCMP, who responded on October 2, 1994, that there was no criminal record at the time. As such, the grievor was granted an ERS clearance valid for 10 years.

[38] Mr. Kozak testified that Mr. Copp placed second on the customs inspector competition dated March 3, 1998. He submitted new fingerprints to the RCMP detachment on March 24, 1998, and subsequently on April 30, 1998, a letter of offer for the position was sent to him.

[39] Mr. Kozak's analysis was that the CPIC and PIRS printouts, police photograph and Mr. Copp's own admission confirmed he had a criminal record for which he had not received a pardon. He was convicted of impaired driving and prohibited from driving anywhere in Canada from July 2, 1997 to July 2, 1998. One day after his conviction, Mr. Copp applied for a collections officer position in Penticton. Upon arrival in Penticton, he applied for a B.C. learner's driver permit under his birth name (James Wesley Huett) even though court records (Exhibit E-22) confirm Mr. Copp's acknowledgement of the conviction and prohibition. By using a different name on his application, he effectively avoided detection as a person whose driver's licence had been suspended. From the time Mr. Copp applied for the customs inspector position, up to and including two months after his appointment, he was still prohibited from driving anywhere in Canada. However, it was determined that Mr. Copp did drive the employer's vehicle at the time of prohibition. As a result of obtaining a B.C. driver's licence under false pretences, Mr. Copp presented an invalid document (the driver's licence) when he applied for the customs inspector position. As a valid driver's licence was a mandatory requirement of the position, the lack of a licence would have automatically screened him out from the competition. Unfortunately, at the time of the interview, when Mr. Copp was asked to present his driver's licence, no one picked this up; after all, he was already an employee of CCRA and perhaps not enough attention was given.

[40] Because Mr. Copp did not fill out the boxes for "Family name at birth" and "All other names used" on the "Personnel Screening Request and Authorization" form (Exhibit E-10), internal security officials assumed that Copp was the only surname he used. He did provide fingerprints and an authorization for a criminal record check to the CCRA but, unfortunately, through an administrative error by CCRA, his fingerprints were not submitted to the RCMP and a criminal record check was never done.

[41] In July 1998, two months after becoming a customs inspector, Mr. Copp was involved in an incident at the *Elements* nightclub, which ultimately resulted in his arrest for assault causing bodily harm. In October 2000, after being promoted to superintendent at the Port of Roosville, Mr. Copp lied to Ms. Doucet about a warning ticket because he did not want his co-workers and others to know that he used another name (Huett).

[42] During cross-examination, Mr. Kozak agreed with the grievor that by supplying fingerprints, one could assume that the employer would be fully informed of the identity and criminal history of an employee. Mr. Kozak also agreed that Exhibit E-10 was not properly filled out or verified by Mr. Profili, the interviewer and board member. Mr. Kozak maintained, however, that even though the employer's representative (Mr. Profili) filled out the form incorrectly, it was implausible for the grievor not to have filled out the boxes for "Family name at birth" and "All other names used".

[43] The grievor pointed out to Mr. Kozak that at the top of Exhibit E-10 there is a social insurance number (SIN), which the grievor had entered and it would also have signified, if checked, that the name at birth was Huett. Mr. Kozak stated, however, that the only name entered on Exhibit E-10 was Copp, and at the time it was taken at face value.

[44] Mr. Copp explained that the reason he uses the name Copp as opposed to Huett is that his parents divorced when he was five years old. He used the name Huett for a long period of time but, because of pressure from kids at school, he changed his name to Copp. However, this name change was never changed legally.

[45] Mr. Kozak agreed with the grievor that charges of sexual assault, uttering threats and forcible confinement dated November 25, 1996 (Exhibit E-19; printouts of CPIC and PIRS) were dismissed and not intended for sentencing purposes and do not form part of the grievor's criminal record.

[46] Constable Thomas Grace has been a regular member of the RCMP since September 1977. He has been attached to the Penticton office since August 1997.

[47] Constable Grace testified that he was investigating an assault at the *Elements* nightclub on July 12, 1998 at approximately 01:49 hours. The incident consisted of a disagreement between an individual by the name of Joseph Zaufenberger and an unidentified male. The victim suffered a broken jaw, which needed extensive medical attention. During the subsequent investigation, a witness named Tanya Maloney identified the grievor from a photo line-up. Through a series of inquiries of different employees at nightclubs and cabarets in Penticton, Constable Grace was informed that the possible suspect was Mr. Copp, a part-time bouncer at the *Night Moves* nightclub.

[48] Constable Grace testified that on August 21, 1998, a colleague of his, Constable Taylor, advised him that Mr. Copp was in the presence of another bouncer outside the *Night Moves* nightclub. Constable Grace approached the grievor and informed him that he was investigating an assault and asked Mr. Copp to accompany him to the police detachment. The grievor was placed in the rear seat of the police cruiser and taken to the booking area of the Penticton Detachment; he was not handcuffed. The grievor was asked for identification and he provided a B.C. driver's licence under the name of James Wesley Huett. Constable Grace asked the grievor if he wanted to make a statement, but Mr. Copp refused. He was detained, photographed and fingerprinted. It was not until April 16, 1999, that the RCMP Records Analysis Unit Information and Identification Services advised Constable Grace that the fingerprints submitted under the name of James Wesley Huett were in fact the fingerprints of James Wesley Copp.

[49] When asked by counsel for the employer if the grievor was arrested, Constable Grace responded: "Yes, he was."

[50] Constable Grace identified Exhibit E-20, known to him as C-13, the booking-in sheet, where it is noted under charges: "SEC. 267(1)(B)C.C. - Assault Causing Bodily"; ultimately, charges under the *Criminal Code of Canada* were not laid against the grievor.

[51] Through Constable Grace's testimony and cross-examination by the grievor, much was made of the fact that certain areas of Exhibit E-20 were improperly filled out and that Constable Grace signed his own report (Exhibit E-30) to the Crown Counsel instead of through a non-commissioned officer as required.

[52] The grievor introduced a memorandum to Constable Grace from Debra Pope, Crown Counsel, Penticton (Exhibit G-13), where she decided for numerous reasons not to lay charges against Mr. Copp; Ms. Pope did not believe that there was a substantial likelihood of conviction.

[53] Bill Anderson has been with the Department for 26 years and currently holds the position of Director of Okanagan and Kootenay Pacific Region. He was the grievor's direct supervisor from August 2000 to January 5, 2001.

[54] Mr. Anderson testified that he received a copy of a letter addressed to Mr. Copp from Mr. Delgaty (Exhibit E-2), which directed him to investigate allegations of inappropriate behaviour by the grievor while he was at the Port of Roosville. It was also a notification that the grievor would be assigned to the Penticton office immediately and until the investigation was completed.

[55] Mr. Anderson's task was to remove the grievor from his office at the Port of Roosville and retrieve government property, some of which was at the grievor's residence.

[56] Mr. Anderson stated that he was on the selection board that screened and selected the grievor for the position of customs superintendent. The job as a customs superintendent was offered to the grievor in mid-May 2000 and the reporting date was August 2000.

[57] Mr. Anderson said that he was totally shocked when he heard about the allegations that the grievor had an alias, had a past criminal record and was driving even though he was prohibited by a court order from doing so. Mr. Anderson went on to say that as word spread amongst the staff concerning Mr. Copp, other allegations came to light, such as the sexual harassment of two female customs inspectors (Ms. Sellman and Ms. Kemble), as well as allegations of inappropriate use of government vehicles, attendance concerns and a missing sum of \$80. from the cash drawer at the Port of Roosville.

[58] Mr. Anderson's investigation into the missing \$80. concluded that on December 12, 2000, the grievor had removed the money to make change for the cash drawer but without leaving an IOU for audit purposes. The money was returned four to six days later. Exhibit E-11 is a financial administration directorate bulletin and

guidelines/procedures concerning the management of public money. The grievor was given a copy of Exhibit E-11 to read when he was hired.

[59] Mr. Anderson testified that the issue of money at CCRA is of key importance as that is their *raison d'être*. Managers must be perceived as extraordinarily vigilant with public money. Paragraphs 3 and 4 of section 5 A), "Roles, Responsibility and Accountability" of Exhibit E-11 read as follows:

3) Every departmental employee who handles public money shall be responsible and accountable for the protection and safeguarding of such monies while in their care, and shall therefore adhere to the departmental security guidelines and financial control policies and procedures outlined in this bulletin as well as in the Financial Management Manual (FMM), the Taxation Operations Manual (TOM) and the Administrative Management Manual (AMM).

4) Responsibility and accountability for public money on hand shall be assigned to only one departmental employee at a time.

[60] Mr. Anderson declared that at any port of entry there is only one person on a rotational basis who is responsible for the cash drawer. With respect to the loss of money, paragraph 1 of section F) "*Loss of Money due to Negligence*", (Exhibit E-11) states:

*1) Employees who are assigned responsibility over public money and who lose such monies by not exercising diligence and due care or by non-compliance with the relevant departmental financial control policies, guidelines and procedures shall be required to repay the money if **negligence** is established by senior management at the Revenue Canada office (that is Assistant Deputy Ministers - Regional Operations, Directors and their equivalent), in consultation with the Security Directorate, Audit and Evaluation Services and the Financial Administration Directorate.*

[61] Mr. Anderson stated that the grievor had put one of his employees in an untenable situation for a number of days and lacked the leadership required to protect the Crown's money under his control.

[62] Mr. Anderson also testified that when the grievor was reassigned to the Penticton office while the investigation was being conducted, the grievor followed the travel directive for accommodation rates, meals and incidentals, travel expenses and

wages. After a few days at the Penticton office, rumours became rampant and the female staff, as well as some of the male staff, became concerned for their safety in the grievor's presence. The grievor was asked to stay at a hotel from Monday to Friday and not report to his place of work until the investigation was completed.

[63] Mr. Anderson testified that Mr. Kozak's internal affairs investigation concluded in April. However, because of other allegations that had surfaced, Mr. Anderson was compelled to investigate them as well. Mr. Anderson testified that A.R. Watt, Director, Customs, Okanagan and Kootenay District, sent a letter (Exhibit E-30) to Mr. Copp on June 15, 2001, outlining nine issues that required further clarification.

[64] On June 21, 2001, a meeting was held with Messrs. Copp, Watt, Boutellier and Anderson to try to obtain clarification from the grievor with respect to the concerns CCRA had about these issues (Exhibit E-30). The meeting went on from 9:00 a.m. to 11:45 a.m., where questions were posed to Mr. Copp and his answers duly recorded (Exhibit E-31). The meeting reconvened at 1:00 p.m. and at that time the letter of termination (Exhibit E-1) was presented to the grievor.

[65] Mr. Anderson concluded that the grievor's responses to the questions were not forthright and decisive. The letter of termination was prepared in advance as a precaution; however, it was evident from the interview that termination of employment was justified.

[66] Mr. Delgaty was referred by counsel for the employer to Exhibit E-12, "Standards of Conduct", and he confirmed that the grievor had violated the legal obligations and responsibilities set out therein, which state:

...

You must fully obey all laws and regulations administered by the Department and report to your supervisor, without delay:

- any information regarding a possible contravention of these laws and regulations, or any criminal legislation related to your duties which you become aware of in connection with your duties, whether the offender is a colleague or not;*

- if you are arrested, detained or charged for a contravention of these laws and regulations or of a federal statute related to your official duties, including contraventions of the highway code if you were driving a vehicle belonging to the Department;
- if you are charged with an offence under the Criminal Code.

Please refer to Appendix A to obtain more information on your legal responsibilities related to the Financial Administration Act (FAA) and the Criminal Code.

[67] As well, the grievor violated the "Code of Ethics and Conduct" (Exhibit E-14). Paragraph 3 k) states:

k) Off-Duty Conduct

Your off-duty conduct is usually a private matter. However, please be careful that it does not affect your image and performance as a CCRA employee. For example, many of the services you and your fellow employees provide are governed by laws, e.g. Customs Act, Excise Act and Income Tax Act. Your own compliance with these laws when filling your income tax return, declaring goods purchased when returning to Canada, etc. is essential to preserve your own integrity and the integrity of the CCRA.

Off-duty conduct which may attract disciplinary action includes conduct that:

- is harmful to the employer's reputation (e.g. personal violations of the laws we administer);
- renders you unable to perform your duties in a satisfactory manner;
- is a violation of the Criminal Code and is injurious to the general reputation of the CCRA and its employees; and
- makes it difficult for the employer to manage its operations efficiently and to direct its workforce.

Note: If you are arrested, detained or charged for a violation, related to your official duties, of Canadian laws, regulations or a federal statute, including Highway Code violations if you are driving a CCRA vehicle, or of the Criminal Code, you must report the situation to your manager without delay.

[68] Mr. Delgaty testified that the grievor had confirmed receipt of these policies in May 1998 (Exhibit E-13).

[69] Mr. Delgaty concluded that in making the decision to terminate Mr. Copp's employment, he looked objectively at the evidence in the internal investigation report and the grievor's good work record as a customs inspector and at some of his achievements. However, the grievor misled the employer as to his true identity and the fact he had more than one conviction when he applied for the position of customs inspector. As well, he drove the Department's vehicle while under a court prohibition order. The laws of Canada are equal for all citizens; however, law enforcement officers like the grievor are expected to enforce and uphold the laws, not to break them. Mr. Delgaty withdrew the grievor's ERS as part of the process of terminating his employment; his employment was severed and his badge, federal I.D. and bulletproof vest were all revoked.

[70] Mr. Delgaty stated that Mr. Copp's work performance was not the reason for the termination of his employment. Rather, the behaviour exhibited by the grievor is not conducive to the values of the CCRA and, in Mr. Delgaty's view, the bond of trust has been broken, is irreparable and is forever damaged.

[71] In cross-examination, Mr. Delgaty agreed with the grievor that, in the "Declaration Regarding Criminal Convictions" (Exhibit E-18), the grievor had indeed indicated that he had been convicted of a criminal offence and also that the form did not have a box to be filled out for "Family name at birth" or "All other names", and that he declared his criminal conviction even though this was voluntary.

[72] When asked by the grievor what had happened to the fingerprints he had submitted, as well as his authorization for a criminal record check, Mr. Delgaty responded that he was not sure what had happened. "The usual process was not followed, as this does not come under my direct control. I told them to fix it."

[73] Mr. Delgaty admitted that a reasonable person could assume that the proper authorities would have checked out an individual prior to issuing a letter of offer. He stated, however, that he was unsure of the mechanics of the process. Mr. Delgaty also recognized and agreed that Mr. Profili erred when he filled out Part C of Exhibit E-10.

[74] When asked by the grievor if the internal affairs investigation had caused embarrassment to CCRA sister enforcement agencies, Mr. Delgaty replied: "No, but it had the potential." The grievor also asked: "By getting rid of me, would the situation be resolved?" and Mr. Delgaty replied: "Yes, our sister organizations would expect us to have dealt with it. Our confidence would be maintained and our partners would feel we are meeting our commitments." Mr. Delgaty further stated that had CCRA known about Mr. Copp's past criminal record or his lack of a valid driver's licence, it would not have proceeded with the interview for the customs inspector position.

[75] In reply, Mr. Delgaty testified that the grievor was not terminated for incompetence; in fact, he considered the letter (Exhibit G-1) Mr. Copp sent on February 2, 2001 to Mr. Harvey in which he admitted his mistakes and apologized for his actions or inactions, as well as the grievor's character references (Exhibit G-3, G-6, G-7 and G-8).

[76] In terms of the transfer to the Penticton office, Mr. Delgaty stated it was necessary to remove Mr. Copp, as there were allegations of sexual harassment at the Port of Roosville involving the grievor.

ARGUMENTS

For the Employer

[77] Counsel for the employer argued that Mr. Copp was not terminated for incompetence; in fact, he was seen to be a very good employee at the start of his tenure and it looked as if he had a promising career with CCRA. However, termination of employment was the employer's only option because of the type of work and CCRA's mandate. Customs officers and superintendents must be perceived to be beyond reproach, as they have peace officer enforcement duties. Peace officers are relied upon to protect Canada's borders, enforce the *Criminal Code of Canada*, the *Customs Act* and the *Immigration Act* and other federal statutes. Canadians expect peace officers to be loyal, honest and to show the highest degree of integrity. Counsel further argued that all the allegations were proven without a doubt and the grievor has not rebutted any of these allegations.

[78] At the time of the initial selection process, Mr. Copp did not possess a valid driver's licence and after he was hired he drove the Department's vehicle while under a court prohibition order. He chose to ignore this order and apply for a B.C. driver's licence. This is not the type of conduct that CCRA expects from peace officers; as peace officers, employees are not expected to ignore the laws but rather to enforce them. Mr. Copp was driving the Department's vehicle although he was prohibited by the court order he had signed. This is a violation of the *Criminal Code of Canada*.

[79] Counsel for the employer argued as well that the grievor misled the employer by not disclosing his family name at birth and any or all other names used, and also by only disclosing one of his criminal convictions. Although he was successful in hiding his past for a while, in the end he was discovered.

[80] Counsel stated that the grievor had numerous opportunities to set the record straight. The first time was when questioned by Ms. Doucet with respect to the warning ticket. Mr. Copp, however, chose to hide his true identity and past life. This would have been a good opportunity to meet with his supervisor and come clean. Yet, the grievor chose not to do so.

[81] As well, on January 5, 2001, Mr. Anderson gave the grievor the letter reassigning him to Penticton. Again, he chose not to come clean.

[82] He had another opportunity to come clean with Mr. Anderson during his investigation of June 2001 but when asked to give a complete record of all arrests, charges and convictions, Mr. Copp replied: "I can't rhyme that off to you. I'm sure you have the list. Please read it to me and I can confirm or deny." As well, during Mr. Kozak's investigation the grievor failed to share documents.

[83] Counsel for the employer stated that Mr. Kozak testified that the grievor would not share documents with the employer. A hearing after the fact is a little late in the process for the grievor to come clean.

[84] As for the cash missing from the cash drawer, counsel pointed out that the grievor admitted not only to removing the money and not returning it until days later, but also to having been provided with the cash management policy from Mr. Anderson. However, he had chosen not to read it.

[85] However, more serious than that infraction was the grievor's arrest by Constable Grace. As a customs superintendent, Mr. Copp fully understands what constitutes an arrest; it is part of CCRA's mandate and in the work description. Constable Grace put the grievor in the back seat of the police cruiser, took him to the police detachment, photographed, fingerprinted and detained him. Mr. Copp could not leave the police station; he was under arrest and Constable Grace confirmed that the grievor was arrested when Constable Grace testified.

[86] Counsel for the employer further argued that, although Mr. Copp knew he was under arrest, he never reported this to his employer as required under the "Code of Conduct" policy. He deceived the employer when he ticked off the "Yes" box indicating he had been convicted of a criminal offence and writing only about one isolated incident when in fact he had numerous criminal convictions.

[87] Counsel stated that although she agreed that there were flaws in the process in terms of the proper completion of forms and misplacement of the grievor's fingerprints, this in no way diminishes Mr. Copp's actions. CCRA can no longer trust this employee. He has been very disruptive to the workplace and now that his criminal record has been brought to light, he would not meet the enhanced reliability level, which is mandatory for all positions in this field of work.

[88] As far as any rehabilitative potential, counsel for the employer stated that the grievor has none, as he has consistently lied, covered up, refused to cooperate and continued to do so even at this hearing. CCRA's partners, police agencies and sister agencies are all aware of his convictions and CCRA should not be forced to reintegrate him back into its facilities.

[89] Counsel concluded by stating that the employer decided that termination of employment was for just cause and Mr. Copp should not be reinstated.

[90] Counsel referred me to the following: *Singh* (Board file 166-2-29399); *Leblanc* (Board file 166-2-25267); *Flewelling* (Board file 166-2-14236); *Champagne* (Board file 166-2-25767); *R. v. Huett-Copp*, [1997] N.S.J. No. 16; *Flewelling*, [1985] F.C.J. No. 1129; *Mackenzie* (Board files 166-2-26614 and 26615); *Fleming* (Board files 166-2-13488 and 166-2-13489); *Boisvert* (Board files 166-2-25435 and 166-2-26200) and *Sharma* (Board file 166-2-14588).

For the Grievor

[91] Mr. Copp stated there were numerous improprieties within CCRA that led to the termination of his employment, such as inactions by security officials, management, customs inspectors and staff.

[92] He stated as well that he had disclosed during his interview that he had a criminal conviction. As well, he submitted fingerprints and gave authorization for a security check as required by CCRA. He volunteered this information, and CCRA knew that he had a record, but at no time did it come into question until he was promoted to customs superintendent. By failing to do a criminal record check, CCRA caused him to leave his job at HRDC. The grievor stated that this reinforced his belief that CCRA was not concerned about his criminal record.

[93] The grievor further stated that, as a result of a CCRA employee's (Blake Webb) illegally accessing CPIC and disclosing sensitive data, dissension and fear were fomented among co-workers and subordinates. Mr. Copp stated that he has never violated CPIC or PIRS policies.

[94] The grievor stated that it is his belief that CCRA management became embarrassed by the internal audit report, that its security policies and procedures were not followed and thus began a campaign of character assassination and he was the scapegoat.

[95] Mr. Copp argued that it was established he worked harmoniously with his co-workers and subordinates, received recognition awards, as well as above-average personal appraisals.

[96] The investigation by Mr. Kozak began in December and ended in mid-April and then there was another investigation by Mr. Anderson that concluded in mid-June. The grievor was sent to Penticton for six months, away from his residence, living in a hotel, albeit on travel status, but not allowed to book his hotel room for more than one week at a time as he waited for the investigations to end. This is against CCRA's own disciplinary policy (Exhibit E-17), which states the employer has one of two options:

- assignment to less sensitive duties; or
- indefinite suspension without pay.

[97] The grievor stated that the employer removed him from his duties in Penticton and kept him from reporting to work and assigned him to a hotel room for six months. This was very stressful for him because the employer never advised him when these investigations were expected to be concluded. This took a toll on him psychologically, physically and mentally. In fact, his doctor told him that the effects of such abuse have and will continue to have substantial effects on his health.

[98] Mr. Copp argued that the letter of termination makes no reference to his criminal record.

[99] The grievor also stated that it is his belief that Bill Anderson and Al Watt, who is also an investigator, decided to undertake a sleazy protracted witch-hunt (Exhibit G-18) to support this investigation. They investigated such things as the falsifying of CCRA documents, time theft and acts of misconduct, which were never proven. CCRA's discipline policy states that managers are required to be objective and should be on a fact-finding inquiry. The last sentence of paragraph 4 of Exhibit G-18 states: "It would be a major help if we could establish theft of time of fraud relevant to time reporting." Mr. Copp argued that this was not objective and just, and was an attempt to use any issue to terminate his employment.

[100] The grievor noted as well that he had explained to the investigator that he had taken money from the cash drawer but had not left a note. He agreed that he should have made himself aware of the cash policies, but stated that as he was in a new job without training, in a port with a history of staff problems, he never got around to it. In fact, Ms. Doucet testified that as a customs inspector in the Port of Roosville, she personally let another person access the cash drawer and that many customs inspectors make change.

[101] With respect to the fact that management has said that the grievor lied to Ms. Doucet about a warning ticket, Mr. Copp stated that he did not want staff to become curious about his name at birth and do a CPIC check on him. In both interviews he admitted it was wrong, but explained that it was the lesser of two evils: lie about his last name on the ticket or his conviction for assault against his girlfriend. The grievor further stated that staff does not always follow the rules regarding CPIC usage.

[102] Mr. Copp stated that, as an adjudicator, if I carefully review the exhibits he has submitted, many are stamped and were obtained through the *Privacy Act*. As Exhibit G-23 demonstrates, he requested information from CCRA in August 2001, and it was only on November 16, 2001, 86 days after his request and through the intervention of the Privacy Commissioner, that he received the final documents.

[103] With respect to his arrest by Constable Grace, he was never chartered nor cautioned as alleged in the letter of termination (Exhibit E-1). Constable Grace's evidence shows no mention of arrest. He might have considered the grievor under arrest but at no time did Mr. Copp feel arrested; therefore, he had no obligation to report this incident to his employer.

[104] The grievor concluded his arguments by stating that he does not believe it would be disruptive to reinstate him back into the Department. It is a big department and there are other branches he could be sent to.

[105] The grievor submitted the following case law: *Re Versacold Group and Teamsters, Local 419* (1999), 85 L.A.C. (4th) 366; *Re Teamsters Union, Local 880 & Reimber Expresslines Ltd.* (1958), 8 L.A.C. 341; *Jalal* (Board file 166-2-27992); *Hampton* (Board file 166-2-28445); *Re C & C Lath Ltd. and International Woodworkers - Canada, Local 1-80* (1992), 28 L.A.C. (4th) 111; *Re Air Canada and Canadian Auto Workers, Local 2213 (Desroches)* (1999), 86 L.A.C. (4th) 232; *Ling* (Board files 166-2-27472 and 166-2-17975); *Matthews* (Board file 166-2-27336); *Graves* (Board files 149-2-199 and 166-2-28758); *Fontaine-Ellis* (Board file 166-2-27804); *Laurin* (Board file 166-2-28147); *Taylor* (Board file 166-2-28563); *Lockwood* (Board file 166-2-27701); *Singh* 2000 PSSRB 39 (166-2-29399) and *Re Maritime Telegraph & Telephone Co. Ltd. and Atlantic Communication & Technical Workers' Union* (1991), 24 L.A.C. (4th) 58.

Rebuttal

[106] Counsel for the employer stated that the grievor is still hiding behind procedural irregularities.

[107] In regard to the amount of time it took to do the investigations, it must be noted that the internal investigation was nation-wide. The investigation required intelligence from Halifax RCMP and local police, vital statistics personnel from Ontario,

ICBC officials and security personnel from B.C. One person alone (Mr. Kozak) did this investigation.

[108] Mr. Anderson's investigation as well had a number of allegations of misconduct and many persons were involved.

Reasons for Decision

[109] The burden of proof is on the employer to prove that, as a result of his acts of misconduct and failure to abide by CCRA standards of conduct, its code of ethics and fiscal policies, the termination of Mr. Copp's employment and revocation of his ERS were justified.

[110] Counsel for the employer introduced evidence that clearly proves that the grievor was prohibited from driving anywhere in Canada and his licence was under suspension when he applied for the PM-02 customs inspector position, which required applicants to possess a valid driver's licence.

[111] Exhibit E-22 ("Prohibition to Operate a Motor Vehicle") states: "The offender be prohibited from operating a motor vehicle on any street, road, highway or other public place in Canada for a period of 1 year. Dated at Halifax, Province of Nova Scotia, this 2nd day of July A.D. 1997." The prohibition order quotes subsection 259(4) of the *Criminal Code of Canada*, which states:

Everyone who operates a motor vehicle, vessel, or aircraft or any railway equipment in Canada while disqualified from doing so

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction.

[112] On July 2, 1997, the grievor acknowledged receipt of this order by signing an endorsement which states: "...that the Order was read by/or to me and I was informed of the provisions of Section 259(4) of the CRIMINAL CODE OF CANADA set forth hereon."

[113] Through Mr. Kozak's testimony, the Reference Daily Vehicle Operating Report confirmed that the grievor drove a Revenue Canada vehicle on June 12, 1998, to Chopaka, thereby violating the prohibition order.

[114] I agree with the employer that Mr. Copp did not meet the requirements in the competition poster (Exhibit E-6 and E-7), which stated: "Candidates must possess a valid driver's license..." and that he drove a Revenue Canada vehicle while under a prohibition order, thereby violating subsection 259(4) of the *Criminal Code of Canada*.

[115] In September 1997, the grievor applied for and received a B.C. driver's licence under the surname Huett. On October 15, 1997, the grievor wrote the test for the PM-02 customs inspector position and as a successful candidate thereafter followed 14 weeks of training at Rigaud, Quebec. It was not until February 10, 1998, that he found himself between a rock and a hard place. He had to decide whether or not to enter the surname Huett on the "Personnel Screening Request and Authorization" form (Exhibit E-10), which would have alerted security officials to the fact that he bore more than one surname and no doubt an in-depth security check would have been performed. By leaving the surname Copp on the form, the grievor was taking a chance that no one would check into his background; after all, he was an employee of the Public Service and was known within the Department. He succeeded with this deception until Ms. Doucet discovered the speed warning ticket with the name "James Huett". By lying to Ms. Doucet by stating: "I was stupid and lent the customs vehicle to my friend and he received the ticket" this was, in my opinion, a deception to mask his other identity. A check by CPIC would have uncovered that he did not possess a valid driver's licence and he should not have even been considered for the PM-02 position; as well, his numerous arrests and convictions might have affected his ERS.

[116] The grievor's explanation that he was not cautioned, chartered or arrested on August 21, 1998 is not plausible. Any reasonable person, but especially a peace officer who, as part of his duties, makes arrests, would never believe he was not arrested. Constable Grace testified that the grievor was under arrest. The grievor was taken into the back seat of a police cruiser, asked if he wished to make a statement, if he wanted a lawyer, and he was photographed and fingerprinted. In my opinion, the grievor was indeed arrested. However, even if Mr. Copp believes he was not arrested, at no time did he approach his supervisor or senior management to alert them to the fact that the

police had questioned him. He had an opportunity to inform management, to give them a heads-up, but he chose not to do so in an effort to conceal his background.

[117] The grievor also admitted that he did not read the guidelines and procedures of the *Financial Administration Manual* (Exhibit E-11). By removing \$80. from the cash drawer and not returning the money until four to six days later, the grievor in effect violated these policies.

[118] With these facts in mind, one should turn to the relevant jurisprudence. What is the appropriate penalty for submitting a false application for employment? In this regard, I refer to the decision in *Re Douglas Aircraft Co. of Canada Ltd. and United Automobile Workers, Local 1967* (1973), 2 L.A.C. (2d) 147, where it states (at p. 153):

...there appears to be at least four possible results that may arise whenever an applicant falsifies his employment application form to which a statement is attached signifying that the information which he is giving is the truth. One, is the information which is withheld or wrongly given, is innocently withheld or given. Then, if that information is not material to the job performance, the employee will in all likelihood not be dismissed from employment when this error is subsequently discovered. Secondly, if the information is material to the performance of the job then, notwithstanding the fact that it has been innocently withheld or given, the employee may indeed be dismissed. Thirdly, in instances where the information is deliberately withheld or knowingly falsely given in an attempt to gain employment then, when subsequently discovered, the false misrepresentation will be sufficient grounds to terminate the employment relationship. The fourth and final possible result may involve a waiver of the right in the employer to terminate the employment relationship if his conduct clearly indicates that he condones that which the applicant has done.

[Emphasis added]

[119] In the instant case, the grievor deliberately withheld information that he had two surnames (Huett and Copp) and that at the time he applied for the position of customs inspector (PM-02) he did not possess a valid driver's licence, which was a requirement of Revenue Canada and noted on the poster itself. As well, he contravened subsection 259(4) of the *Criminal Code of Canada* by driving while under a prohibition order. Throughout the hearing, Mr. Copp concentrated his efforts on blaming management for not following its own security policies, incomplete forms by

authorized officials, discrepancies in Constable Grace's report and CCRA's disciplinary policies.

[120] I agree with the grievor that anyone who submits fingerprints, authorizes a security authorization check, indicates that he had a criminal conviction and chooses voluntarily to list any conviction would expect an employer to perform the required security inquiries. Certainly, the employer should have done so. However, its failure to do so does not justify the grievor's acts of misconduct.

[121] The employer also contravened its own disciplinary policy by not regularly advising the grievor on the length of time (six months) the investigation was taking. Although Mr. Copp was confined to a hotel for that period of time under travel status, he did not know when the investigation was to conclude. I am convinced and agree with Mr. Copp that this was a very stressful period for him.

[122] Although I agree with the grievor that there were discrepancies, oversights and ineptness, the clear, strong and cogent evidence counsel for the employer adduced with respect to the allegations against Mr. Copp minimized these.

[123] In any case, it should be noted that the Federal Court of Appeal in *Tipple v. Canada (Treasury Board)*, Federal Court of Appeal file A-66-85, ruled that any such procedural deficiencies are cured by the hearing *de novo* before the adjudicator.

[124] In conclusion, if I were to reinstate Mr. Copp, who should never have been considered for the position of customs inspector because he lacked a valid driver's licence, I would essentially and fundamentally cripple one of the rules that define the integrity of the Public Service. Canadians expect that persons who wish to be hired or promoted in the Public Service be honest, open, professional and appointed on their merit. Integrity to me means avoiding any communication that is deceptive, full of guile or beneath the dignity of people. A lie is any communication with intent to deceive. Whether we communicate with words or behaviour, if we have integrity our intent cannot be to deceive.

[125] Having considered all the evidence submitted as well as the submissions of the parties, I find the employer has proven that the grievor did breach CCRA's standards of conduct, its code of ethics and its financial management policies. These acts of

misconduct are serious and I am satisfied that the employer's decision to terminate the grievor's employment was an appropriate disciplinary response.

[126] As for any rehabilitative potential, I see no possibility. At no time during the hearing did Mr. Copp admit to, confess to or apologize for having applied for the customs inspector position even though he did not have a valid driver's licence, for driving a Revenue Canada vehicle while under a prohibition order thereby contravening the *Criminal Code of Canada* and for having been arrested for the incident at the *Elements* night club. CCRA has the right to expect that its employees, who are protecting our borders, act in a professional manner and respect the laws they are entrusted to enforce.

[127] In light of all of the above, I find no reason to reinstate the grievor or his ERS.

[128] Although counsel for the employer did not adduce evidence that Mr. Copp's ERS could not be reinstated, it is my opinion that should he wish to apply for another position in the Public Service, an ERS investigation will be conducted with the relevant information.

[129] For all the above reasons, this grievance is denied.

**D.R. Quigley,
Board Member**

OTTAWA, January 31, 2003.

