

**Date:** 20180507

**Files:** 566-32-9869 and 11540

**Citation:** 2018 FPSLREB 40

*Federal Public Sector  
Labour Relations and  
Employment Board Act  
and Federal Public Sector  
Labour Relations Act*



Before a panel of the  
Federal Public Sector  
Labour Relations and  
Employment Board

---

BETWEEN

**HOUSSAM EL-MENINI**

Grievor

and

**CANADIAN FOOD INSPECTION AGENCY**

Employer

Indexed as

*El-Menini v. Canadian Food Inspection Agency*

In the matter of individual grievances referred to adjudication

**Before:** John G. Jaworski, a panel of the Federal Public Sector Labour Relations and  
Employment Board

**For the Grievor:** Michael Cooper, counsel

**For the Employer:** Richard Fader, counsel

---

Heard at Toronto, Ontario,  
October 13 to 16 and December 15 to 17, 2015.

## REASONS FOR DECISION

---

### **I. Individual grievances referred to adjudication**

[1] Houssam El-Menini (“the grievor”) was employed with the Canadian Food Inspection Agency (“CFIA” or “the employer”) as a manager, classified in the Biological Sciences group, level 5 (BI-05), in the CFIA’s Greater Toronto Area laboratory (“the GTA lab”) in Toronto, Ontario.

[2] On February 10, 2014, the CFIA engaged Ernst and Young LLP (“Ernst”) to perform an administrative review of the internal control practices at the GTA lab related to procurement activities under \$10,000.00, focusing on contract splitting and a potential conflict of interest with respect to the purchase and installation of a walk-in freezer (“the freezer project”).

[3] On February 20, 2014, the employer suspended the grievor with pay pending the Ernst investigation.

[4] Ernst provided a written report in March of 2014 (“the Ernst report”).

[5] On April 17, 2014, the grievor’s suspension with pay became a suspension without pay, still pending an investigation. On May 27, 2014, he filed a grievance against that decision, stating that the action was disciplinary and that it amounted to a termination of his employment. On June 23, 2014, he referred that grievance (file number 566-32-9869) to the Public Service Labour Relations Board (PSLRB) under s. 209(1)(b) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*).

[6] On August 29, 2014, the CFIA objected to the PSLRB’s jurisdiction to adjudicate the matter.

[7] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the PSLRB as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to s. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *PSLRA* before November 1, 2014, is to be taken up and continue under and in conformity with the *PSLRA* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[8] On January 14, 2015, the CFIA awarded PricewaterhouseCoopers (“PWC”) a contract to conduct an investigation (“the PWC investigation”) into the use and application of procurement, contracting, and hiring policies and processes to determine, based mainly on allegations with respect to employee conduct surrounding the freezer project, if any of the *Values and Ethics Code for the Public Sector* (“the V&E code”), the CFIA’s *Code of Conduct* (“the CFIA code”), or the CFIA’s *Conflict of Interest and Post-Employment Policy* (“the CFIA COI code”) had been breached.

[9] PWC issued its report (“the PWC report”) on May 25, 2015.

[10] On June 23, 2015, the grievor was terminated from his employment for cause. He filed a grievance against his termination on July 7, 2015, which was heard at the final level of the grievance process on July 27, 2015, and on September 28, 2015, was referred to the PSLREB for adjudication under s. 209(1)(b) of the *Act* (file number 566-32-11540).

[11] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the PSLREB and the titles of the *PSLREBA*, the *PSLRA*, and the *Public Service Labour Relations Regulations* to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, the *Federal Public Sector Labour Relations Act* (“the *Act*”), and the *Federal Public Sector Labour Relations Regulations* (“the *Regulations*”).

[12] At the outset of the hearing, the parties requested that in the event I were to determine that the termination of the grievor’s employment had not been warranted, the remedy portion of the hearing be bifurcated, to which I agreed.

## **II. Process issues**

[13] On August 14, 2014, the PSLRB’s registry wrote to the parties about scheduling a hearing for the grievance in file 566-32-9869 and advised them that it was tentatively set for April 28 to May 1, 2015, in Toronto.

[14] On August 29, 2014, the CFIA responded, stating that the dates were not good as its witnesses were not available. No particulars were provided about the witnesses

or why they were not available.

[15] On November 3, 2014, the PSLREB's registry wrote again to the parties and advised them that the hearing was tentatively scheduled for June 16 to 19, 2015, still in Toronto. Both parties confirmed that they were available for those dates. So, on November 17, 2014, they were advised that those dates were final.

[16] Pursuant to my instructions to the registry, a letter was sent to the parties on April 13, 2015, enquiring about the following:

- if the PWC investigation had been completed, and, if so, when;
- if further discipline had been rendered as a result; and,
- if a further grievance had been filed, its status in the grievance process.

[17] On April 13, 2015, in anticipation of the June 2015 hearing of the grievance in file 566-32-9869, counsel for the grievor wrote to the CFIA and requested the production of documents.

[18] On April 15, 2015, in response to the registry's letter of April 13, 2015, counsel for the grievor replied, stating that as of that date, they had not received any communication, oral or written, or any production of any type, with respect to the status of the investigation. They believed that the investigation was still ongoing.

[19] On April 21, 2015, counsel for the grievor wrote to the PSLREB, advising that they had received no response from the CFIA with respect to their request for documents.

[20] On April 22, 2015, I ordered a pre-hearing conference ("PHC"). One was scheduled for April 30, 2015.

[21] At the conclusion of the PHC on April 30, 2015, I issued an order, which included the production of the following:

- the Ernst report and related documents; and
- any documents on the grievor's suspension and on the conduct of the

PWC investigation.

[22] On May 6, 2015, counsel for the CFIA wrote to the PSLREB and made certain inquiries about my order with respect to some of the documents at issue.

[23] On May 12, 2015, counsel for the grievor wrote to the PSLREB and requested the production of the PWC report by May 15, 2015, assuming that the employer would use it at the hearing scheduled for June of 2015. The grievor also requested a further PHC to address process issues involving the CFIA's potential jurisdictional objection.

[24] On May 12, 2015, the PSLREB's registry started the process of arranging a mutually convenient time to hold that PHC.

[25] On May 21, 2015, counsel for the grievor wrote to the PSLREB and advised that they understood that the PWC report was expected to be in the CFIA's hands on Monday, May 25, 2015, and as such, they requested an order by the PSLREB that the CFIA produce an unredacted version of it.

[26] A further PHC was held on June 2, 2015. As of that date, the PWC report had been issued. However, no determination had been made as to what if any discipline would be rendered based on it. Based on the information provided, it was anticipated at that time that there might be discipline rendered and further grievance proceedings. It was determined that the hearing of file 566-32-9869, scheduled for June 16 to 19, 2015, would be postponed and that the parties would confer and advise the PSLREB of their availability for a hearing with respect to it and to any other files that would be before the PSLREB relating to the grievor and the facts arising from his CFIA employment.

[27] By June 12, 2015, the parties had agreed on mutually convenient dates in October of 2015, which the PSLREB reserved, contingent on the parties shepherding a new grievance through the process.

[28] On September 24, 2015, the PSLREB's registry wrote to the parties, enquiring as to the status of the matter. The parties advised in response that on June 23, 2015, the grievor had been terminated from his employment, effective April 17, 2014, which he grieved (file 566-32-11540) on July 7, 2015. The final-level response in the grievance process was made on July 27, 2015. On September 28, 2015, the grievance was referred to the PSLREB for adjudication under s. 209(1)(b) of the *Act*.

### **III. Summary of the evidence**

#### **A. Background**

[29] The GTA lab is co-located in a building with Health Canada (“HC”) on Midland Avenue in Scarborough, Ontario, which is owned by Public Works and Government Services Canada (“PWGSC”) and managed by SNC-Lavalin Operations and Maintenance (“SNC”).

[30] The GTA lab is one of five CFIA laboratories in its Ontario and Atlantic Laboratory Network. It is at the forefront of food contamination investigations in Canada, and the evidence disclosed that it does between 60 and 70% of these investigations for the CFIA.

[31] The grievor has a bachelor of science degree (BSc) in chemistry from the University of Waterloo and a diploma in biotechnology and industrial microbiology from Centennial College. He began his federal public service employment in June of 1997 as a laboratory technician. In September of 2008, he was appointed as the acting manager of the GTA lab until being appointed indeterminately effective September 1, 2009.

[32] The grievor’s offer of appointment set out that as a manager, he was required to do the following:

1. exercise delegated human resources (HR) and financial authority;
2. either have successfully completed appropriate CFIA prerequisite training programs for exercising that authority or register to complete the training upon his acceptance of the appointment offer;
3. work 37.5 hours per week; and
4. be familiar with and observe the CFIA code, the CFIA COI code and conduct himself in a manner that would reflect the overall spirit of those codes and CFIA values; by accepting the offer, he certified that he read and understood the CFIA code, the CFIA COI code and that he recognized that complying with them was a condition of his employment.

[33] The GTA lab manager work description lists the following as the job's duties and responsibilities:

- manages and directs staff responsible for managing and supervising staff including professionals, research scientists, analysts, technicians, administrative and scientific support staff, and a variety of term employees, including conducting and participating in job selection interviews, determining the type and duration of training required, conducting employee appraisals, etc.;
- manages the GTA lab to ensure the effective and optimum use of resources in achieving the Ontario-area laboratories' functions and objectives;
- ensures that the GTA lab is maintained and that it functions per its needs by liaising and negotiating with CFIA facility staff and the PWGSC building manager;
- assesses the requirements and recommends operations and maintenance and capital budgets for the GTA lab;
- assesses and prioritizes the selection and purchase of capital items required by the GTA lab;
- identifies, prioritizes, and recommends expenditures to ensure sufficient supplies and equipment are available to keep the GTA lab operating smoothly and in compliance with the division's quality assurance policy and CFIA policies;
- ensures that the GTA lab's sophisticated capital assets are appropriately managed and maintained to ensure continuous and maximum productivity and service life;
- reassigns resources, negotiates with the area network director for new resources, and reassigns commitments during crisis situations;
- evaluates the GTA lab's recommended major equipment acquisitions and prepares a prioritized list and business cases for major capital

acquisitions that represent the best balanced choice for the directorate to consider;

- evaluates present and anticipated future requirements and negotiates with the directorate management team for resources to meet these needs;
- has knowledge of business practices for HR, budgetary tracking, and accountability; and
- has knowledge of the principles of HR planning, budgetary analysis, and CFIA policies for such issues as HR, informatics, and health and safety.

[34] At the time relevant to the facts related to the grievances, Karen Jessett was Executive Director of the CFIA's Ontario and Atlantic Laboratory Network. The grievor reported directly to her. She in turn reported to Primal Silva, Chief Science Operating Officer, Science Branch, CFIA.

[35] Ms. Jessett has a BSc degree. She started her career in the public service with HC in 1975. In 1996, she moved to the Department of Fisheries and Oceans. Still in 1996, she met the grievor, and was his supervisor. Between 2000 and 2007, she managed the GTA lab. In September of 2011, she became the executive director of the GTA lab and the other two laboratories in Ontario. In 2013, laboratories in Atlantic Canada came under her supervision.

[36] Ms. Jessett testified that as the executive director for the Ontario and Atlantic Laboratory Network, she is responsible for five laboratories: the GTA lab, two in Ottawa, Ontario, one in Nova Scotia, and one in Prince Edward Island. Each laboratory has a director or manager that is responsible for its finances, budget, and everyday operations. She stated that while her office was physically located in the same building as the GTA lab, the grievor had full responsibility for its operations. She confirmed in her testimony that the work description for the GTA lab manager accurately reflects the duties and responsibilities of that position.

[37] Before the events that led to the discipline that are set out in this decision, the grievor had a discipline-free employment record in the public service. Ms. Jessett



testified that from a scientific perspective, he ran an excellent lab. She said that he never said no and that he instilled a sense of pride in his staff about their work.

[38] Copies of the grievor's performance appraisals for fiscal years 2004 through 2007 and 2008 through 2013 were entered into evidence. All were positive, and the following comments were found in no particular order in the appraisals and were often repeated from year to year:

- he was an exceptional worker and extremely productive;
- he was very personable, was well liked, and was a pleasure to work with;
- he exemplified many CFIA values;
- he willingly adjusted his work schedule to adapt to pressure-filled situations;
- he continued to demonstrate a high level of professional, scientific, and personal integrity in all aspects of his duties;
- he maintained excellent working relationships with colleagues both in the GTA lab and with other clients, both internal and external;
- he had exceptional motivational skills that reflected positively on the GTA lab staff's work performance and morale and eventually on the CFIA's reputation;
- he did an extremely good job of managing the GTA lab, which is a very busy and important lab in Canada's food-safety network; and
- he had another very successful year as the manager of the GTA lab, and all the goals for the period under review were either met or exceeded.

[39] At the time material to the matters at issue in the grievances, Tracy Wong was a CFIA employee at the GTA lab as a resource manager classified in the Administrative Services group, level 3 (AS-03), and reported directly to the grievor.

[40] Ms. Wong has a BSc degree with honours from the University of Toronto in molecular biology and genetics, a bachelor's degree in applied science in nutrition, and an HR management certificate from Ryerson University. She began her employment with the CFIA in 2009 as an administrative clerk classified in the Clerical and Regulatory group, level 4 (CR-04). She was appointed to the resource manager position effective October 3, 2011.

[41] The resource manager work description lists among its job duties and responsibilities the following:

- coordinates the process for resource planning and forecasting for a laboratory and provides advice to management on developing plans and budgets;
- develops, prepares, and coordinates documentation to support laboratory resourcing and administrative requirements;
- manages the administration of the laboratory and plans and coordinates the delivery of administrative support activities, such as HR, procurement, finance, administration, and facilities management;
- manages budgets both with and without salaries for the laboratory;
- liaises with senior managers; advises and guides clients on processes, procedures, and requirements; and coordinates the processing of requirements through internal or external service providers;
- participates on project teams and working groups responsible for delivering administrative services;
- compiles and analyzes data and information and prepares different administrative reports on issues such as HR, finance, material management, procurement information management, and facilities management, which managers use to implement decisions in support of program objectives;
- provides input (e.g., historic data and projections) for the preparation of the laboratory budget in accordance with the *Financial*

---

*Administration Act* (R.S.C., 1985, c. F-11; *FAA*) and policies and procedures;

- acquires funds; this involves participating in the negotiating process; consulting with legal staff; and making funding arrangements, cost-sharing agreements, and cost recovery procedures that generate money for research and improved service delivery;
- spends funds, which involves coordinating arrangements for goods and services contracts with external suppliers; verifies and processes claims and invoices for goods and services in accordance with established policies, directives, and procedures; uses government credit cards for procurement purposes within his or her own work unit in accordance with established policies; reconciles expenditures, directives, and procedures; and manages tax credit usage;
- exercises delegated signing and financial authority under ss. 32 and 34 of the *FAA*;
- reviews and monitors administrative transactions (finance, procurement, material management facilities, administration, and HR) to ensure the appropriate application of established regulations, policies, practices, procedures, and information compliance requirements; and notifies clients when transactions require corrections to ensure compliance; and
- ensures that goods and services provided by outside suppliers meet conditions specified in contracts; suppliers that do not meet specified terms and conditions will be advised of required corrections, and if they do not comply, they will be reported to the manager.

## **B. The CFIA's procurement process**

### **1. The FAA**

[42] The *FAA* is the legislative foundation for the financial management and accountability of federal public service organizations. It sets out the principles and procedure for how government departments and agencies can spend budget money

allocated to them. Section 32 stated as follows at the relevant times:

*32 (1) No contract or other arrangement providing for a payment shall be entered into with respect to any program for which there is an appropriation by Parliament or an item included in estimates then before the House of Commons to which the payment will be charged unless there is a sufficient unencumbered balance available out of the appropriation or item to discharge any debt that, under the contract or other arrangement, will be incurred during the fiscal year in which the contract or other arrangement is entered into.*

*(2) The deputy head or other person charged with the administration of a program for which there is an appropriation by Parliament or an item included in estimates then before the House of Commons shall, as the Treasury Board may prescribe, establish procedures and maintain records respecting the control of financial commitments chargeable to each appropriation or item.*

[43] Section 34 of the FAA states as follows:

*34 (1) No payment shall be made in respect of any part of the federal public administration unless, in addition to any other voucher or certificate that is required, the deputy of the appropriate Minister, or another person authorized by that Minister, certifies*

*(a) in the case of a payment for the performance of work, the supply of goods or the rendering of services,*

*(i) that the work has been performed, the goods supplied or the service rendered, as the case may be, and that the price charged is according to the contract, or if not specified by the contract, is reasonable,*

*(ii) where, pursuant to the contract, a payment is to be made before the completion of the work, delivery of the goods or rendering of the service, as the case may be, that the payment is according to the contract, or*

*(iii) where, in accordance with the policies and procedures prescribed under subsection (2), payment is to be made in advance of verification, that the claim for payment is reasonable; or*

*(b) in the case of any other payment, that the payee is eligible for or entitled to the payment.*

*(2) The Treasury Board may prescribe policies and procedures to be followed to give effect to the certification and verification required under subsection (1).*

## 2. The Procurement and Contracting Policy

[44] The CFIA's authority to purchase goods and services is set out in its *Procurement and Contracting Policy* ("the procurement policy"), which states that the CFIA must conduct its procurement and contracting activities in accordance with the Treasury Board's ("TB") *Contracting Policy*, which is referenced at its Appendix B. It states that spending authority is divided into the following four elements (as per TB's *Policy on Delegation of Authorities*):

1. expenditure initiation;
2. commitment authority;
3. contracting authority; and
4. contract performance and price.

[45] "Expenditure Initiation" is set out in both Appendix A and Appendix D of the procurement policy, as follows:

### ***Appendix A***

...

*Expenditure Initiation is exercised when decisions are made to obtain goods or services that will result in the eventual expenditure of funds. The objective of this authority is to give operational managers the primary responsibility for initiating expenditures charged to their budgets.*

...

### ***Appendix D***

...

*Expenditure Initiation: managers remain responsible for expenditure initiation. They must ensure that no contract is entered into unless there is a sufficient unencumbered balance available to discharge any debt that will be incurred. While managers may have delegated spending authority commensurate with their positions, their contracting authority is limited. This limitation has been put in place to protect employees and the CFIA . . . and to properly manage the complexities of the procurement process.*

...

[Emphasis in the original]

[46] “Commitment Authority” is set out in Appendix A as follows:

*Commitment Authority is the authority and responsibility to manage and control commitments of funds designated for the payment of a contract. Commitment authority should be delegated to managers with spending authority, to officers with delegated payment authority, or to subordinates designated by the manager.*

[Emphasis in the original]

[47] “Contracting Authority” is set out in Appendix A and Appendix D as follows:

**Appendix A**

...

*Contracting Authority is the delegated authority to enter into contractual agreements on behalf of the federal government or the CFIA . . . As a subdivision of spending authority, it may be delegated to a purchasing agent. However, such authority must be exercised only when the manager responsible for the budget authorizes it. In some situations, managers who have budgetary responsibility may also have contracting authority.*

...

**Appendix D**

...

*Contracting Authority: means the authority to award contracts, including standing offers, for the CFIA . . . by accepting an offer from a contractor/supplier and signing the contract/agreement if applicable. Awarding of a contract implies the CFIA . . . is obtaining value for money spent as well as confirming that the award of the contract and the agreement itself complies with various Acts such as the Financial Administration Act (FAA), complies with public policy such as Treasury Board Contracting Policy, complies with national and international trade agreements rules, and complies with CFIA . . .’s Procurement and Contracting Policy.*

...

[Emphasis in the original]

[48] “Confirmation of Contract Performance and Price” is set out in Appendix A as follows:

---

*Federal Public Sector Labour Relations and Employment Board Act and Federal Public Sector Labour Relations Act*

*Confirmation of Contract Performance and Price is granted to officers who exercise this authority on behalf of the CFIA . . . and in support of the manager who has budgetary responsibility.*

[Emphasis in the original]

[49] “Post Authority Contracting” is set out in Appendix D as follows:

**Post Authority Contracting:** *CFIA . . . personnel must not make any commitments to contractors or suppliers, either verbally or in writing, until:*

- a. Funds are secured and expenditure initiation is obtained; and*
- b. The officer with contracting authority has awarded the contract (usually by signing the contractual documents except in the cases of an emergency or for purchases using the acquisition card).*

*Staff exercising contracting authority need time to assess requirements. Awarding and signing of a contract may take up to 90 days, depending on the scope and nature of the requirement.*

*The practice of confirming contracts or purchases prior to obtaining expenditure initiation or prior to the award of the contract by the delegated contracting authority will result in post authority contracting. This practice is not permitted.*

*Officers represent the CFIA . . . in a legal and contractual sense. Officers must avoid making agreements that commit the Agency, without firm intentions. CFIA . . . staff must ensure a contract bears no adverse legal and ethical consequences.*

*Restrictions imposed by the FAA . . . may make it impossible to pay the contractor's invoice, if it is impossible to certify contract performance according to the terms and conditions of the contract. It is important not to put valued suppliers in a position where they may feel compelled to work without a contract in order to accommodate the CFIA . . . as their valued client.*

[Emphasis in the original]

[50] “Contract Splitting” is set out in Appendix A and Appendix D as follows:

### **Appendix A**

...

**Contract Splitting** is prohibited and includes the following: dividing an aggregate requirement into a number of smaller contracts, thereby avoiding controls on contract approval authorities. Examples of this practice include:

- i. Issuing multiple call-ups for a single requirement; thus reducing the amount of each call-up enough to be within the call-up limit stipulated in the Standing Offer Agreement. However, while a Standing Offer Agreement is not a contract, a call-up is. Therefore, the issuing of multiple call-ups to meet a single requirement is contract splitting.
- ii. Issuing multiple, sub-threshold contracts to one supplier, when one contract would do. (e.g. (for example), fulfill a \$40,000 requirement with one contractor by issuing two contracts for the same or related deliverables, thereby avoiding the obligation to use the competitive process for contracts over \$25,000.)
- iii. Multiple acquisition card purchases to cover a single requirement. (e.g. (for example), fulfill an approved expenditure of \$20,000 by performing several transactions with the same supplier in a short period of time, thus avoiding the \$10,000 limit on acquisition card purchases.)

...

## Appendix D

...

**Contract Splitting:** CFIA . . . personnel are limited in their authority to spend money or to issue contracts for the purchase of goods or services. When employees are faced with a requirement that exceeds their authority, they may be tempted to split a contract into smaller parts, each of which is within the limits of their authority. Contract splitting is an activity that is not able to stand the test of public scrutiny in matters of prudence and probity, does not facilitate access for other suppliers, does not encourage competition and does not reflect fairness in the spending of public funds. Therefore, contract splitting is not permitted.

...

[Emphasis in the original]

[51] Appendix B contains a subsection titled, “Exceptions to the Competitive Process”, which states as follows:

---

*Federal Public Sector Labour Relations and Employment Board Act and  
Federal Public Sector Labour Relations Act*



---

*Because it is not always possible, practical or cost effective to seek bids for every proposed contract, Section 6 of the Government Contracts Regulations contains four exceptions that permit the contracting authority to set aside the requirement to solicit bids. These exceptions are as follows:*

- i. The need is one of pressing emergency in which delay would be injurious to the public interest (see CFIA . . . Policy on Emergency Contracting);*
- ii. The estimated expenditure does not exceed \$25,000.00 (however, contracting authorities are always expected to call for bids whenever it is cost effective to do so);*
- iii. The nature of the work is such that it would not be in the public interest to solicit bids (for security considerations);*
- iv. Only one person or firm is capable of performing the contract.*

. . .

### **C. The purchasing process**

[52] Purchasing goods and services required completing certain documentation to ensure compliance with legislation and procurement policies. The GTA lab operated on a budget, certain parts of which were earmarked for different costs. It is trite to state that to be able to make a purchase, the GTA lab had to have funds available. When funds were to be committed to purchasing services or materials, a “funds commitment” had to be entered into the accounting system to ensure that funds were available, to earmark them for the purchase, and to track them.

[53] Once that was done, a funds commitment number was issued. Committing funds had to be carried out to satisfy s. 32 of the *FAA*. According to the evidence, Ms. Wong processed the funds commitments in the accounting system. However, for GTA lab purchases of anything other than administrative supplies, the grievor had to approve the commitments.

[54] I was provided with an example of a funds commitment, each of which has a specific number attached to it, the date it is created in the accounting system, its dollar-value amount, and the cost centre associated with the purchase. The funds commitment document provided in evidence also referred to a “purchase order” (“PO”), which is a different document that identifies the party with whom the contract

for goods, services, or both is being entered into.

[55] Also integral to the purchase process is a document identified as a “request for materials” (“RFM”), which was not fully explained in the evidence. It appears to be an internal CFIA request and approval form in which the purchase of goods or materials is recorded and documented with the appropriate information and approvals as required. It is not a PO. It sets out the following information:

- the identity of the person in the organization requesting the purchase;
- the project or purpose of the purchase;
- the specifics of what is being purchased;
- the specifics of the proposed supplier;
- the value of the purchase, including taxes;
- the date required for the goods or service;
- the location to deliver the goods or service;
- a confirmation of the availability of funds for the purchase and the approval of the purchase under s. 32 of the *FAA* by the delegated authority’s signature; and
- the date on which the delegated authority signed off, confirming the funds and approving the purchase.

[56] The CFIA issues a PO to the person or organization that supplies it with goods or services, and it sets out the following information:

- a PO number;
- the date on which the PO is issued;
- the contact person in the organization and his or her contact information;
- the destination of the goods or services in the organization;

- 
- the supplier of the goods or services and its contact information;
  - a description of the goods or services;
  - the value of the purchase, including taxes;
  - the certification that funds are available to meet the commitment as set out in the PO, by the signature of the delegated authority;
  - the date on which the delegated authority signed off, confirming that funds are available to meet the commitment in the PO;
  - the approval of the PO by the delegated authority; and
  - the date on which the delegated authority signed off, approving the PO.

#### **D. The grievor's training**

[57] Ms. Jessett testified that before he could exercise delegated financial or HR authorities, the grievor was required to have completed CFIA training in these areas. She confirmed that he received that training through an in-house course called "Managing For Success" ("MFS"). His training record disclosed that he received the training between April 1 and November 23, 2006, and that he was assessed on the training and material during that same period. Ms. Jessett stated that part of the training was online and that part was in person in a classroom. She stated that currently, the classroom portion takes three days, while when she completed it, it took five days. She could not say how long it was when the grievor took it.

[58] Copies of the MFS materials with respect to the online training received by the grievor were submitted into evidence as follows:

- *Managing for Success*, printable version, May 2006, 102 pages;
- *Managing for Success Financial Management: A Prerequisite Training Program*, lesson participant manual, 22 pages;
- *Managing for Success Procurement & Contracting: A Prerequisite Training Program*, lesson participant manual, 30 pages;
- *Managing for Success Procurement & Contracting*, a presentation; and

- *Managing for Success Delegation of Financial Signing Authorities*, a presentation.

[59] The MFS materials set out in a chart the application of the financial expenditure process and the details of who is responsible for which part. With respect to financial management and contracting and procurement, the MFS materials disclose the following:

- managers have delegated financial authority to spend public funds;
- managers are responsible for knowing their level of authority to properly authorize expenditures within their area of responsibility;
- managers are responsible for knowing policies and procedures and budget limits;
- managers are responsible for respecting their budget limits and for seeking approval for expenditures that exceed their authority;
- managers are responsible for seeking advice;
- managers are responsible for knowing that they cannot further delegate their authority to another person;
- managers are responsible for knowing the government's generic expenditure process and as well ss. 32, 33, and 34 of the *FAA*; and
- managers are responsible for knowing how the expenditure process is specifically applied in the *CFIA*.

[60] The MFS materials identify common concerns in the contracting process, including the following:

- sole sourcing;
- lack of documentation;
- value for money; and
- contract splitting.

[61] The MFS materials have sections specifically dealing with procurements and contracting projects over \$10,000.00, which identify the requirement to process those transactions through the National Procurement and Contracting Service Centre (“the National Procurement Centre”).

[62] The MFS materials set out estimated time frames for approvals, depending on the contract’s value. According to those estimates, contracts of between \$10,000.00 and \$25,000.00 were estimated to take 12 days; between \$25,000.00 and \$32,400.00, up to 40 days; over \$32,400.00 (subject to complexity), up to 90 days; and finally, contracts over \$25,000.00 with a justified sole source, 30 days.

[63] To help to address problems with the contracting and procurement process, the MFS materials identify the National Procurement Centre as a resource to address them, including for the following:

- coordinating activities for contracts over a specific value;
- evaluating and reviewing requests;
- identifying and resolving problem areas;
- obtaining bids;
- identifying special terms and conditions;
- negotiating and preparing contract documents;
- providing contract administration support;
- monitoring compliance policies and regulations;
- identifying potential sources of supply; and
- performing rate and pricing analysis.

[64] The evidence in the MFS materials and from Ms. Jessett identified that there are 6 levels of spending authority within the CFIA, numbered 1 to 6, and that the grievor’s delegated level was 4, which meant that he had spending authority for single-item purchases or contracts of up to \$10,000.00. She confirmed that all purchases over that amount were to be processed through the National Procurement Centre.

[65] The MFS materials have a section on staffing that sets out the CFIA's staffing values and states that staffing should be non-partisan and free from political and bureaucratic influence and other forms of patronage.

[66] Ms. Jessett testified that she had the highest level of trust in the grievor, that 10 directors and managers reported to her, and that she had to trust that they knew what they could and could not do.

[67] In his testimony, the grievor confirmed that he completed the MFS program via both the online training and in a classroom. He stated that he understood that he was to complete the online training first and then move to the classroom; however, he said that his schedule was reversed. He stated that he completed the MFS program as a steward for the Professional Institute of the Public Service as he was a bargaining unit member when he took the course. In cross-examination, he denied being sent on the course as a manager and denied that he ever took the online portion.

**E. The delegated spending authorities of the grievor and Ms. Wong**

[68] As set out in the procurement policy, most managers with delegated spending authority, per a "Specimen Signature Record for Delegated Authorities" ("specimen signature record"), have authority in all instances up to \$10,000.00 (GST included). The record sets out not only the dollar-value level of that delegated authority but also over what areas (which fund or cost centre) it applies to.

[69] The grievor's specimen signature record set out the following information:

1. the areas of authority or cost centres that the grievor had delegated financial authority over, up to \$10,000.00 (inclusive of taxes), were the following:
  - a. the main GTA lab (cost centre no. 734440), including the following:
    - i. administrative (cost centre no. 734441),
    - ii. the microbiological lab (cost centre no. 734442),
    - iii. the research lab (cost centre no. 734444),
    - iv. chemistry (cost centre no. 734445), and

- v. quality assurance (cost centre no. 734446),
  - b. facilities (cost centre no. 715122), and
  - c. capital equipment (cost centre no. 735083);
2. he had expenditure initiation and commitment control under s. 32 of the *FAA*;
  3. he had contracting authority;
  4. he had certification authority under s. 34 of the *FAA*;
  5. on March 23, 2012, he signed an acknowledgment that stated that he agreed that he had been fully trained in the application and use of the delegation of financial signing authorities; that he would fully comply with the requirements prescribed in the *FAA* and related government policies, directives, and guidelines; and that he had read and understood the CFIA code and had agreed to abide by conducting himself in a manner that would reflect the overall spirit of the CFIA code and CFIA values; and
  6. he received mandatory training that was completed on November 23, 2006.

[70] Ms. Wong's specimen signature record set out the following information:

1. the areas of authority or cost centres that she had delegated financial authority over, up to \$10,000.00 (inclusive of taxes), were the following:
  - a. the main GTA lab, with unspecified restrictions, and
  - b. administration (cost centre no. 734441);
2. she had expenditure initiation and commitment control under s. 32 of the *FAA*;
3. she had contracting authority;

4. she had certification authority under s. 34 of the *FAA*;
5. on March 23, 2012, she signed an acknowledgment that stated that she agreed that she had been fully trained in the application and use of the delegation of financial signing authorities; that she would fully comply with the requirements prescribed in the *FAA* and related government policies, directives, and guidelines; and that she had read and understood the *CFIA* code and had agreed to abide by conducting herself in a manner that would reflect the overall spirit of the *CFIA* code and *CFIA* values;
6. the box that set out when she received the mandatory training was not filled out; and
7. the grievor signed off that Ms. Wong had received appropriate training for exercising the financial authority delegated to her.

[71] Ms. Jessett testified that Ms. Wong's financial authority extended to spending only on administrative materials, which she described as largely being office supplies, such as pens and paper.

[72] Ms. Wong testified that as the resource manager, she was responsible for entering purchases into the accounting system and processing the paperwork. With respect to purchases, depending on who needed what, the requests would go through her, and she would bring them to the grievor for his approval.

[73] Ms. Wong said that she did discuss the freezer project with the grievor. She said that he asked her questions and that she gave him answers. When it was put to her that someone had approached the freezer project in different phases, she said that the question the grievor had asked her was if demolishing the walk-in refrigerator that HC owned in the basement of the GTA lab building ("the HC unit") had to be together with the freezer and its installation. She stated that she told him it did not because at the time of their discussion, he told her that he had no idea when the new freezer would be purchased. She stated that the discussion took place at a time when HC was looking to recover the space where the HC unit was located.

[74] Ms. Wong also said that the grievor asked if the company supplying the freezer did not install them. She said that she told him that he could not put two companies



on one invoice and that if the company selling the freezer could not install it, then two different invoices would be needed.

## **F. The applicable codes**

### **1. The CFIA COI code**

[75] The CFIA COI code applies to all CFIA employees. “Conflict of Interest” is defined in it as follows, along with three other related definitions:

#### ***Conflict of Interest:***

*Any situation in which personal assets, interests or activities affect in any way, or have the potential or appear to affect, the honest, impartial performance of an employee’s duties or their judgement to act in the public interest.*

*Such personal assets, interests or activities may include, but are not limited to, an employee’s:*

- *financial investments and debts;*
- *ownership of property or businesses;*
- *employment or business activities outside of the CFIA;*  
*and,*
- *voluntary activities, for example with non-profit associations or political parties.*

*An employee’s duties do not actually have to be affected by personal interests to create a conflict of interest. It is sufficient that an effect is possible, or that it may appear to others that actions are affected. Such a potential or apparent conflict of interest serves to undermine the credibility of the CFIA’s actions and reputation.*

#### ***Real Conflict of Interest:***

*Involves a situation that exists at the present time. It denotes a situation in which an employee has knowledge of a private interest that is sufficient to influence the exercise of his or her public duties and responsibilities.*

#### ***Potential Conflict of Interest:***

*Involves a situation that may develop into a real conflict of interest or could reasonably be foreseen to exist in the future including a situation where an employee can foresee that a private interest may some day be sufficient to influence the exercise of his or her duty but has not yet.*

***Apparent Conflict of Interest:***

*Involves a situation in which there is a reasonable apprehension, which a reasonable, well informed observer could properly have that a conflict of interest exists and that the employee's judgement is likely to be compromised, **whether or not it is the case.***

...

[Emphasis in the original]

[76] Under the CFIA COI code, employees are required to review their obligations under it as well as the V&E code and the CFIA code at least once per year.

[77] Under the CFIA COI code, CFIA employees are required to file a conflict-of-interest report within 60 days of their appointment and upon annual review if a change warrants filing one, if the CFIA requests one, or if they deem one necessary.

[78] Under section 7 of the CFIA COI code, which is titled "Requirements - B) Specific Compliance Measures", is a section with a subheading titled, "Personal Relationships/Preferential Treatment", which states in part as follows:

*Employees must not accord preferential treatment in relation to any official matter to family members or friends or to private entities or other entities in which the employee, family members or friends have an interest. Care must be taken to avoid being placed, or appearing to be placed, under obligation to any person or a private entity or other entity that might profit from special consideration by the employee.*

...

*Although there are no barriers to an employee's family members or friends being hired by the CFIA, it is important that the employee does not use his or her position or status to influence the outcome of competitions or other hiring assignments, the selection of employees, students or contract personnel. To avoid any appearance of special treatment, all hiring should be done "at arm's length", that is, by people who have no personal relationship with the person(s) being considered for employment. Personal/familial relationships must not affect, and must not be seen to affect, the employee's honest and impartial performance of his or her duties for the CFIA, the confidentiality of information the employee obtains through his or her duties at the CFIA, or his or her judgement to act in the public interest.*

...

[79] Also in section 7, under the subheading “Allocation of Contracts” is the following:

*This section should be read in conjunction with the Agency Procurement and Contracting Policy.*

*Employees must not show preferential treatment in choosing the supplier of any goods or services. Contracts must be awarded in an impartial manner.*

...

[Emphasis in the original]

[80] Under section 8, which is titled “Roles and Responsibilities”, and under “Managers”, is the following:

*Managers have a responsibility to remain informed on this Policy, in order to respond correctly to employee queries, to inform employees and the COI Secretariat when a real, potential or apparent conflict of interest situation arises, and to ensure that their own practices exhibit a model of correct behaviour for their subordinates.*

...

[Emphasis in the original]

[81] Section 8, under “Employees”, states as follows:

...

*. . .CFIA employees shall: arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between the private interests of a CFIA employee and the official duties and responsibilities of that employee, the conflict shall be resolved in favour of the public interest; refrain from having private interests, which would be unduly affected by government actions in which they participate, or of which they have knowledge or information; . . . not assist private entities or persons in their dealings with the government where this would result in preferential treatment of the entities or persons . . . .*

[82] Section 10, under “Resolution of Conflict in Interpretation”, states as follows:

*If interpretation of elements of this Policy is required, the President will make a ruling after appropriate consultation with Human Resources, Legal Services and others, including*

---

*other government departments and agencies, as deemed necessary.*

[83] The grievor completed a document entitled “Employee Certification Document”, which was a confirmation that he had read and understood the CFIA COI code that existed at the time that document was signed. In his case, it was signed February 20, 2004. He also completed a “Confidential Conflict of Interest Report” under the CFIA COI code that existed at the time that report was completed. Again, in his case, it was February 20, 2004. The report stated that the grievor disclosed that a Middle Eastern grocery store that sold groceries and fresh meat and that his father owned was registered under the grievor’s name due to a language barrier with his father. Neither the business name and address nor the name of the grievor’s father was listed in the report.

[84] The grievor was shown a copy of the February 20, 2004, “Confidential Conflict of Interest Report”, and it was put to him that he had been aware of the conflict of interest as far back as early 2004. He said that he did not recall the document.

## **2. The CFIA code**

[85] In addition to the CFIA COI code, the CFIA has a code of conduct (the CFIA code) that all its employees are subject to.

[86] The CFIA code has a section titled “Ethical Decision Making and Conduct”, which states as follows:

*When contributing your part to the mission of the CFIA, please keep in mind that the key to ethical decision making and good conduct is to abide by the laws affecting the CFIA (for example . . . Financial Administration Act . . .), the Public Service values, the CFIA values, the Code of Conduct and its related policies.*

. . .

*You also have a duty to report illegal acts or violations of work-related rules to management, whether committed by you or others. You should discuss these issues with your supervisor and you may refer to the CFIA’s policy on Internal Disclosure of Information Concerning Wrongdoing and the Security Management Policy.*

*Your conduct also involves thinking through the possible impact of your actions and decisions on all interested*

*parties—the public and the clients you serve, co-workers, subordinates and others—in terms of what is right or wrong or fair, even when legal and regulatory decisions do not require it.*

...

[87] Under “(B) Terms and conditions of employment” and the subheading “Hours of work” is the following:

*You are expected to report to work on time each day in accordance with your work schedule. Whenever you need to change your regular work schedule, such as to leave work early or change your break or meal periods, you need to obtain your supervisor’s prior approval.*

...

[88] Also, under “(E) Conflict of interest” is the following:

*A conflict of interest arises whenever you, as an employee, allow personal assets, interests or activities to affect in any way, or have the potential or appear to affect, the honest, impartial performance of your duties or your judgement to act in the public interest. You must always act with honesty and integrity and in a way that does not undermine the credibility and reputation of the CFIA.*

*It is your responsibility to examine and review your personal and professional interests and activities to recognize, avoid, report and resolve any situation of real, potential or apparent conflict of interest. To avoid a conflict of interest situation, you should consult the CFIA’s Conflict of Interest and Post-Employment Code, which is available from your Area Human Resources office or on the website. . . .*

*If you have any doubts about your personal assets, interests or activities placing you in a conflict of interest situation, you must submit a confidential report to the Conflict of Interest (COI) Secretariat housed in the Workplace Relations Division, Human Resources Branch. It will then be reviewed and a decision issued by the appropriate delegated authority.*

...

[89] Under “Possible Disciplinary Action if there is Misconduct”, the CFIA code states as follows:

***A great deal of trust is placed in you in the performance of your duties. We expect that you will adhere to the Code of***

Conduct and its related policies.

*If you suspect or discover that you do not comply with this Code and its related policies, consult with your supervisor. . . .*

*. . . If you contravene the Code, you may be subject to disciplinary action up to and including termination of employment. . . .*

. . .

[Emphasis in the original]

### 3. The V&E code

[90] The grievor was subject to the V&E code, which outlines the values and expected behaviours that guide all public servants in all activities related to their professional duties. Accepting and adhering to the behaviours it outlines is a condition of employment for every public servant in the federal public sector, regardless of level or position. That code sets out that public servants are expected to abide by it and adhere to the behavioural expectations set out in their organizational codes of conduct. A breach of the values or behaviours set out in the V&E code could result in disciplinary measures being taken, up to and including termination of employment.

[91] The V&E code states the following under “Expected Behaviours”:

*Federal public servants are expected to conduct themselves in accordance with the values of the public sector and these expected behaviours.*

. . .

#### 3. *Integrity*

- Public servants shall serve the public interest by:
- *3.1 Acting at all times with integrity and in a manner that will bear the closest public scrutiny, an obligation that may not be fully satisfied by simply acting within the law.*
- *3.2 Never using their official roles to inappropriately obtain an advantage for themselves or to advantage or disadvantage others.*
- *3.3 Taking all possible steps to prevent and resolve any real, apparent or potential conflicts of interest between their official responsibilities and their private*

*affairs in favour of the public interest.*

- *3.4 Acting in such a way as to maintain their employer's trust.*

#### **4. Stewardship**

- Public servants shall use resources responsibly by:
- *4.1 Effectively and efficiently using the public money, property and resources managed by them.*
- *4.2 Considering the present and long-term effects that their actions have on people and the environment.*
- *4.3 Acquiring, preserving and sharing knowledge and information as appropriate.*

...

[Emphasis in the original]

### **G. The freezer project**

#### **1. The initial plan - to convert a walk-in refrigerator to a walk-in freezer**

[92] In the fall of 2012, the GTA lab conducted an extremely large investigation involving the e-coli contamination of beef (“the e-coli investigation”). It required procuring an extensive amount of beef, which was stored in freezers to maintain its integrity during the testing process. The evidence disclosed that the e-coli investigation was completed by late 2012.

[93] The GTA lab had a number of freezers. However, the general consensus of the witnesses who testified and who worked at the GTA lab was that the sheer size of the e-coli investigation exposed the potential difficulties if another very large investigation were to occur, and the GTA lab management team felt it was a good idea to obtain more freezer space.

[94] Ms. Jessett stated that for major equipment purchases, there is a five-year list, as the labs have only so much money allocated to them. She stated that funds designated for purchasing lab supplies cannot be used for capital equipment purchases. She said that the Facilities Cost Centre, which is under the direction of Jaimie Reath, the facilities manager for the Ontario Laboratory Network (“the Facilities group”), has funds in its budget for purchasing equipment such as freezers.

[95] As of the hearing, George Huszczyński was a microbiology analyst and the supervisor of microbiology at the GTA lab, and he had 36 years of federal public service. Seven people at the GTA lab reported to him, who were responsible for analyzing food for microorganisms and identifying pathogens in it. At the material time, he reported to the grievor.

[96] Mr. Huszczyński testified that he, the grievor, and other members of the GTA lab management team were aware of the HC unit. The evidence disclosed that it had not been used for a number of years and that he and the grievor believed that it could be converted to a walk-in freezer. He said that the grievor approached HC, which agreed to turn it over to the GTA lab. He stated that the grievor told him that he would look into the cost of converting it.

[97] As of the hearing, Mr. Reath had close to 30 years of federal public service. He holds several specialized trade certificates, including as a licenced air balancer; a licenced heating, ventilation, and cooling (HVAC) specialist; a certified biocontainment technologist; and a certified regulator for level 3 and 4 aquatic plant and zoonotic containment plants. He is also a senior project manager for planning, design, and construction. He is a subject matter expert for level 4 HVAC problems at the “Winnipeg Facility”, which is one of two CFIA level 4 laboratories. He is responsible for the Facilities group and the biocontainment group, projects installing walk-in freezers, and for managing a budget of \$4.5 million.

[98] Mr. Reath testified that at the time of the hearing, across its laboratory network, the CFIA owned and maintained approximately 250 refrigerators and freezers. He said that the Fallowfield Road facility in Ottawa, at which he is based, has 14 walk-in freezers and 6 walk-in refrigerators. On his staff he has a refrigeration and cryogenic mechanic. His group is responsible for providing technical advice to the other labs in the Ontario network.

[99] Ms. Jessett testified about a discussion she had with the grievor about the freezer issue in January of 2013, which was when the grievor had told her that the GTA lab had obtained the HC unit. She said that he told her that SNC had provided an estimate to convert it to a walk-in freezer at a cost of \$16 000.00 but that he had a substantially lower quote. She recalled that she told him to speak to Mr. Reath.



[100] Ms. Jessett stated that she advised Mr. Reath about the HC unit and the intended conversion to a freezer and that she told him that the grievor would be in touch with him. Mr. Reath confirmed that he received a call from her, the exact date of which he could not recall, in which she asked him if he could assist the grievor with a freezer project. Mr. Reath testified that he told her that he would and that he advised her to have the grievor call him.

[101] On December 18, 2012, Ms. Wong exchanged the following emails with Dean Broome, who was a team leader with the National Procurement Centre:

[Ms. Wong to Mr. Broome, at 10:43 a.m.]

...

*... We are in a building managed by SNC and there is a walk-in fridge in the building that we would like to convert to a freezer. The estimated cost will be about \$15K (including SNC management fee). Would this project need to go through Procurement. If this project need to go through Procurement, would bid be solicited? Please advise what is the procedure and time frame. ...*

...

[Mr. Broome to Ms. Wong, at 11:27 a.m.]

...

*I will need to see the details to be positive however based on what I know now, yes it would have to be sent here for action. Time-lines are all dependent upon our seeing the request first.*

...

[Sic throughout]

[102] No other documentary evidence shows that Mr. Broome or the National Procurement Centre was contacted again about the freezer project.

[103] Mr. Broome did not testify.

[104] On December 13, 2012, the grievor began a series of email exchanges with a number of individuals at PWGSC, SNC, and within the CFIA, including Mr. Reath, with respect to the potential conversion of the HC unit. The first email in the exchange is to Tameash Persaud of SNC and states as follows: "To move forward with the walk-in

fridge to freezer conversion, I was wondering if you can have some one have a look at the walking fridge and provide us with a quote of parts and labour” [sic throughout].

[105] On January 2, 2013, at 3:01 p.m., the grievor replied to an email about the work from Dave Lazaros at SNC, which stated as follows: “Yes we do, but the estimate provided was over my limit of approval. we are looking at getting additional quotes and possible send for procurement?” [sic throughout].

[106] At 3:38 p.m. on January 2, 2013, the grievor sent a further email to Mr. Lazaros, (copying Mr. Reath), which stated as follows:

...

*I do understand that you need to get a final answer to put on your list of projects if to be done by March 2013.*

*However, the estimate provided is >10K (tax included), this is why it is above my authority. For any projects above 10K I will have to follow CFIA's procurement procedures. I am in process [sic] of getting estimates for the project.*

*I would appreciate receiving additional information regarding the tendering process that CFIA should follow?*

...

[107] Mr. Lazaros replied by email at 3:45 p.m. on January 2, 2013, advising the grievor that he could not help with the tendering process and referring him to Matthew Brady at PWGSC. Mr. Brady's email signature block identified him as a property and facility officer with Professional, Technical Services - Crown Properties, at PWGSC in Toronto.

[108] Mr. Brady emailed the grievor as well as Messrs. Lazaros and Reath on January 2, 2013, at 4:01 p.m., stating the following:

...

*I understand that a project has been proposed to convert a walk-in fridge to a freezer. Typically in these instances we get a quote from the facility manager and estimate on time it takes for the work to be done.*

*Dave can you provide an estimate on the time frame?*

*This project is looking like it will need to be delivered as a*

*tenant service through a Public Works and Government Services Canada SSA given that it may come over \$40,000 given the scope of work. I will need to deal directly with both CFIA and Health Canada to ensure both parties are in agreement of the project.*

*Please note that there was a cut off date of November 30, 2012 for tenant service projects. Depending on the how long this will take to deliver, it may have to be started next fiscal year as per our regulations and policies.*

*Having reviewed the information below, I recommend proceeding with plans and specification for this fiscal year and implementation next fiscal year.*

...

[Sic throughout]

[109] The grievor emailed Mr. Brady (copying Mr. Reath) on January 2, 2013, at 4:42 p.m., stating the following:

...

*This is a simple project, the cost provided by SNC is about \$16K. The estimate we received from a certified contractor is about \$6K that is about \$10K less than that of SNC. There is no restructuring, redesign, electrical work, etc.. to be done. For me it is an equipment upgrade because it only take [sic] one day and it involves the change of compressor, fans, thermometer and a vent.*

*The GTA CFIA lab is in an urgent need for a walk-in freezer and any delay will affect our operation as we have reached capacity. I was wondering with this new information would there be any problem with us proceeding with a CFIA selected contractor (total cost including taxes <\$10K).*

*We can always have SNC supervise the work if necessary.*

*This upgrade has been given more attention than it should. It was clarified to me by Dave at the governance forum that we are not obligated to go with SNC for this upgrade as long as HC is in agreement. If no [sic] objection from your side, we would like to proceed as soon as possible.*

...

[110] On January 7, 2013, the grievor received the following email from Mr. Brady:

...

*I have discussed this with my manager and we are of the opinion that the equipment is not a base building item, rather it is client owned special purpose equipment. Therefore, you do not need to use SNC for contracting the work. PWGSC and SNC will not be responsible for the scope of work, warranties and payment.*

*Having said this, SNC needs to be kept in the loop of the project to provide access to any person involved in the project. Also, all contractors must comply to the regular security clearance process.*

...

[111] The grievor testified that the "\$6K" estimate referenced in his January 2, 2013, email was an estimate he received from a business called "Tung Wing". He testified that Ms. Wong obtained Tung Wing's quote of "\$6K" referred to in that email and that she obtained another quote online, this one for \$9,200.00.

[112] I was not provided with any particulars of the alleged online quote of \$9,200.00.

[113] The PWC investigation disclosed documents from Tung Wing, which state that Tung Wing identified itself as Tung Wing Servicing Co. Ltd., a division of 997327 Ontario Ltd. ("Tung Wing"), located in Markham, Ontario, and that it was in the business of heating, air conditioning, and refrigeration and of installation and maintenance.

[114] The PWC report did not disclose any corporate records for Tung Wing, Tung Wing Servicing Co. Ltd., or 997327 Ontario Ltd.

[115] A copy of an estimate from Tung Wing dated January 2, 2013, was entered into evidence. However, it was emailed to the grievor, was dated January 7, 2013, and was for the sum of \$7,300.00, exclusive of HST (the total with HST was \$8,245.00), not \$6,000.00. The estimate described the work involved to convert the HC unit from a cooler to a freezer as follows:

...

*Change walk-in cooler to walk-in Freezer purpose.*

*To remove existing cooler condenser and evaporator coil.*

*To install a new 3 Hp. 3 Ph 208V. Freezer Air Cool Condensing Unit and evaporator coil.*

*Included: defrost timer, copper tubing, drain pipe heater, vent heater, thermostatic control, and solenoid valve.*

...

[116] The employer called Ms. Wong as a witness, and she testified before the grievor did. She testified that she did no research on sourcing for the freezer. The suggestion that she obtained the “\$6K” estimate from Tung Wing was not put to her in cross-examination, in which she was brought to the Tung Wing quote dated January 2, 2013, for \$8,245.00 and was asked about her role in obtaining it or in identifying Tung Wing as a supplier. She replied that she had had no role.

[117] The “\$16K” estimate from SNC referred to in the grievor’s January 2, 2013, 4:42 p.m., email was for \$16,390.80, was dated December 17, 2012, and was prepared by Mr. Lazaros. The details it set out were as follows:

*Remove existing components to convert walk in [sic] cooler into [sic] freezer in Basement Sample Storage room #B43*

<i>Contractor [Cost]</i>	<i>8,500.00</i>
<i>Consultant [Cost]</i>	<i>3,187.50</i>
<i>Project Manager Labour [Cost]</i>	<i>1,534.57</i>
<i>Project Manager Disbursements</i>	<i>128.56</i>
<i>Commissioning</i>	<i>500.00</i>
<i>... Additional Services</i>	<i>70.13</i>
<i>[5% commission on all services]</i>	<i>584.38</i>
<i>[HST]</i>	<i>[1885.57]</i>

[118] Introduced into evidence was a second SNC estimate, also dated December 17, 2012, and also prepared by Mr. Lazaros, for what appears to be exactly the same work but in the amount of \$37,002.38. It set out as follows:

*Remove existing components to convert walk in [sic] cooler into [sic] freezer in Basement Sample Storage room #B43*

---

<i>Contractor [Cost]</i>	<i>21,000.00</i>
<i>Consultant [Cost]</i>	<i>5,692.50</i>
<i>Project Manager Labour [Cost]</i>	<i>3,504.73</i>
<i>Project Manager Disbursements</i>	<i>293.62</i>
<i>Commissioning</i>	<i>920.00</i>
[5% commission on all services]	<i>1,334.63</i>
[HST]	<i>4,256.91</i>

[119] The grievor testified that the quote for \$37,002.38 was brought to him by Mr. Persaud of SNC about a week after he had received the lower quote of \$16,390.80. He advised that the difference between the two was that the lower quote was for converting the HC unit from a cooler to a freezer while the higher quote was for supplying and installing a new walk-in freezer. In cross-examination, the grievor stated that when he looked at SNC's second quote (for \$37, 002.38), he looked only at the cost and stated that it was way above his level of authority.

[120] Mr. Reath testified that he recalled that the grievor telephoned him and told him of the SNC quote. He remembered telling the grievor that he thought the following:

- that the quote was high;
- that his group could carry out the freezer project for much less; and
- that he could have someone from his group look at the HC unit and help manage the conversion.

[121] Mr. Reath emailed the grievor on January 7, 2013, stating, "Hi Houssam, Any problems with SNC on this one, call me and I will speak to them on your behalf". Mr. Reath stated that the grievor never got back in touch with him. Mr. Reath's opinion was that while he thought that the conversion was not a bad idea and that the intention behind it was good (because it addressed a need for more freezer space), he felt that it was not the best or most cost-effective solution.

[122] The GTA lab all-staff meeting minutes dated January 23, 2013, state as follows at page 5, point 9d), entitled “Building Updates”: “CFIA would like a walk in [sic] freezer for more freezer space, may not happen this year, still ongoing”.

[123] The grievor testified that a contractor looked at the HC unit and advised him that “cotton” filled the unit and that its top was “too soft” to support the weight of the compressors necessary for the conversion. The grievor did not specify when this occurred; nor did he identify the contractor.

[124] The PWC investigation disclosed an email from Tung Wing to the grievor dated January 31, 2013, which stated as follows:

*Hi Houssam,*

*this is the invoice for check up walk-in freezer.  
And I got yur message about the used walk-in freezer. the  
price is not bad with the machine but you only need the box.  
can you ask how much only the box and floor because we  
already had the machine.  
voltage use 3 phase 208v*

*Ricky*

[Sic throughout]

[125] The invoice attached to the January 31, 2013, email from Tung Wing to the grievor was blank. On February 3, 2013, it sent the actual invoice, which was dated January 31, 2013, and was for \$452.00, inclusive of HST. The work described in it was as follows:

*PO# 12-020*

*Supply labors to inspect walk-in cooler change to walk-in  
freezer purpose and removing the compressor unit.*

*To find out existing panel is not suitable for freezer uses.*

*Labors charge*

[Sic throughout]

[126] The grievor forwarded Tung Wing’s January 31, 2013, invoice to Ms. Wong on February 4, 2013. On that same day, she generated a “Funds Commitment”, no. 1000295837, for it, setting out PO no. 12-020 and listing Tung Wing and the amount to be committed, along with the cost centre, 734442.

[127] At the material time, Donna Glezakos was employed by the CFIA. She was hired in 2009 as a term employee and is currently the resource manager (which was Ms. Wong's former position) and has been since February of 2014. She testified that until he was suspended, she reported directly to the grievor.

[128] Ms. Glezakos testified that in or around February of 2013, she received an email from the grievor asking her to check a website for a freezer and a box. She said that she did so and that the supplier was in the United States and did not deliver to Canada. She said that the price was in the vicinity of \$7,000.00 to \$8,000.00. She provided no specifics on the type or size of the freezer or on whether it was new or used.

[129] The grievor testified that he asked Tung Wing how much it would cost for a new freezer and said that it told him that it would be \$17,000.00 to \$18,000.00. He said that Ms. Wong had advised him that the freezer's cost had to be under \$10,000.00. He said that given this information, he told his management team to look for a used freezer and that Mr. Huszczyński told him to speak to his own brother because he was in the meat business and maybe knew of something.

[130] The grievor testified that he, Ms. Wong, Ms. Glezakos, and Mr. Huszczyński looked for freezers on the Internet.

[131] The grievor testified that he was brought a number of possible used freezer options but that they were all for over \$10,000.00. He stated that the problem with a purchase of over \$10,000.00 was that it would have to go through the procurement process.

[132] Mr. Huszczyński testified that after Tung Wing had come by and had opined that the conversion could not be done, he recalled having a discussion with the grievor in the grievor's office about obtaining a new freezer. He said that he recalled telling the grievor that he thought that a new freezer would cost more than \$10,000.00, so the GTA lab management should proceed through the National Procurement Centre. Mr. Huszczyński said that he told the grievor to speak to Mr. Reath as he had more experience than the GTA lab management did.

[133] Mr. Huszczyński testified that in April or May of 2013, he had discussions with the grievor about the freezer, who told him that he would ask Tung Wing to keep an eye out for one.



[134] At the time of the hearing, Mr. Major was a microbiologist supervisor classified at the BI-03 group and level. He graduated from the University of Waterloo in 2007. In 2013, he reported directly to the grievor, and in February of 2014, when the grievor was suspended, he became the GTA lab's acting manager.

[135] Mr. Huszczyński went on to say that the grievor was away during the summer of 2013 and that before he left, he mentioned to him that Tung Wing might get in touch if it found a freezer. Mr. Huszczyński said that he told Brian Major that he hoped that Tung Wing did not contact him because he did not have the authority to make the purchase and was uncomfortable with dealing with Tung Wing because he had never dealt with it before. This point was also set out in the PWC report.

[136] In cross-examination by counsel for the grievor, Mr. Huszczyński was asked why the grievor would have told him that. He replied that he did not know. When asked if it was possible that he was confused on this point, he replied, "No."

## **2. The demolition and the freezer project**

[137] On July 3, 2013, a GTA lab management team meeting was held. The minutes ("the July 3 minutes") identified those that attended as Mr. Major, the acting GTA lab manager, Mr. Huszczyński, Jason Gotera, Michelle Weeks, and Ms. Wong. In addition to Mr. Huszczyński and Ms. Wong, both Mr. Major and Ms. Weeks testified.

[138] As of the hearing, Ms. Weeks was the quality assurance coordinator for the GTA lab. Her position was classified at the BI-03 group and level, and she has been with the federal public service since May of 2001. She obtained her bachelor of science degree from the University of Guelph in Guelph, Ontario, in molecular biology and genetics.

[139] According to the July 3 minutes, under the heading "No. 11, Round Table", Ms. Wong reported on the freezer issue as follows: "For the walk-in freezer, waiting for phone call from the Supplier".

[140] The July 3 meeting and its minutes were not addressed by any of the witnesses who attended it, although both Mr. Huszczyński and Ms. Weeks testified that the need for more freezer space was mentioned at meetings as it was on management's "Preventative Action Chart", and the grievor was identified as the "lead".

[141] As of the hearing, Steven Malette was the following:

- a certified public accountant;
- a chartered insolvency restructuring professional;
- a trustee in bankruptcy;
- a certified fraud examiner;
- the managing director of PWC's Ottawa office;
- the person responsible for PWC's forensic work at its Ottawa office;
- the person responsible for the bid to obtain the contract for the CFIA's investigation into the walk-in freezer; and
- the principal author of the PWC report.

[142] Alzahraa Halal Meat Inc. ("Alzahraa HMI") is a limited liability company incorporated in Ontario. As part of its investigation, PWC conducted a corporate search (as of March 13, 2015) of Alzahraa HMI, which revealed the following:

1. it was incorporated on May 28, 2001;
2. as of incorporation, the registered office address was 2032 Lawrence Avenue East, Scarborough, Ontario, but the mailing address was the grievor's home address;
3. as of incorporation, the grievor was a company director, the president, and the active administrator;
4. the grievor ceased to be a director and the president on May 28, 2005;
5. as of January 1, 2005, Mostapha El-Menini ("Mostapha") was a company director and its president, secretary, and general manager;
6. as of January 1, 2005, Wissam El-Menini ("Wissam") was a company director and its treasurer;
7. the grievor filed the initial corporate return on June 6, 2001;

8. he filed the annual corporate returns in 2004, 2006, 2007, and 2009 to 2011; and

9. the last annual return he filed was for the year 2012, and it was done on September 21, 2013.

[143] Both Mostapha and Wissam are the grievor's brothers.

[144] On May 24, 2015, the PWC investigation obtained a copy of the Ontario Ministry of Agriculture, Food and Rural Affairs's list of freestanding meat plants. The address listed for Alzahraa HMI was 210 Silver Star Boulevard, Scarborough, Ontario. This address matches the one listed on a copy of the master business licence filed as part of the grievor's evidence, which detailed the corporate filings disclosing his removal as a director and president of Alzahraa HMI. The licence record disclosed a business name of El Zahra Halal Meat Products and an address of Unit 866, 210 Silver Star Boulevard, Scarborough, Ontario.

[145] Mr. Malette testified that the PWC investigation came across a business name, "Alzahraa Consultants", which showed the following:

- a registration date of July 22, 2011;
- the named sole proprietor was the grievor; and
- the mailing address was Unit 866, 210 Silver Star Boulevard, Scarborough, Ontario.

[146] The grievor testified that he never owned any part Alzahraa HMI, which Mostapha owned. When it was put to him that he was listed as the president, the grievor testified that Mostapha had done that without his knowledge.

[147] The grievor testified that it was well known within the GTA lab and among the senior staff that Mostapha owned a business called Alzahraa, as on more than one occasion, [the grievor] had spoken about the business, and in one year, the office Christmas party was held next door to it. The grievor also stated that when discussions about the freezer were taking place, Alzahraa's name was brought up.

[148] When Mr. Huszczyński was being cross-examined by counsel for the grievor, it was put to him that he had suggested to the grievor that he contact his brother about

the freezer. Mr. Huszczyński stated that this was incorrect and that he never made this suggestion. He testified that the grievor told him that he would talk to his brother because his brother was in the business of using that type of equipment. Mr. Huszczyński stated he had no objection to the grievor talking to his brother. When the grievor's counsel suggested to Mr. Huszczyński that he knew that the grievor's brother dealt with meat freezers, Mr. Huszczyński stated that that was incorrect; he said that he knew that the grievor's brother had a meat company.

[149] Mr. Huszczyński also testified that he recalled that the grievor told him that he would ask Tung Wing to keep an eye out for a freezer.

[150] Mr. Huszczyński went on to further testify that in September of 2013, after the grievor had returned from vacation, they had a discussion in which the grievor told him that Tung Wing had found a freezer unit. Mr. Huszczyński said that he asked the grievor how much it would cost, as Mr. Huszczyński said he thought it would be "north of \$10,000.00." He said that the grievor told him that Tung Wing had the unit, it would be under \$10,000.00, and it could be installed in October.

[151] In cross-examination by counsel for the grievor, it was suggested to Mr. Huszczyński that the grievor had told him that the grievor's brother's company had found the freezer and that Tung Wing could do the conversion. Mr. Huszczyński stated the following: "No, he told me Tung Wing found a freezer unit and could install it."

[152] When Ms. Wong was cross-examined, she was asked if she recalled that Mr. Huszczyński recommended that the grievor contact his brother about obtaining a freezer. She replied that she did not. Counsel for the grievor then expanded the question and asked her if she recalled anyone recommending that the grievor contact his brother about obtaining a freezer. She answered that she did not recall that happening.

[153] At all material times, Ihab Mourtada was employed by the CFIA. The grievor testified that he and Mr. Mourtada are brothers-in-law as his wife is Mr. Mourtada's sister.

[154] The GTA lab is a secure facility, and employees access it via a swipe-card system. Mr. Reath testified that it is common for labs such as this one to have a system

that requires employees to swipe their cards to both enter and exit. Quite simply, the card unlocks the doors, allowing entry and exit. In the case of a fire, the triggering of the fire alarm would cause the doors to automatically unlock. The system keeps a record log of when a particular swipe card is used (date and time) as well as the entry or exit point.

[155] Mr. Malette testified that as part of the investigation, a record of the grievor's swipe-card activity was obtained.

[156] On Tuesday, October 15, 2013, the grievor emailed Mr. Persaud of SNC to advise him that a contractor would be in the GTA lab building over the weekend of October 19 and 20, 2013, to carry out some work on the walk-in freezer and that he too would be there.

[157] The PWC report disclosed that the grievor entered and exited the GTA lab building on October 19 and 20, 2013, as follows:

October 19

Entered	9:23 a.m.	Exited	11:10 a.m.	Duration	1:47
Entered	11:29 a.m.	Exited	1:42 p.m.	Duration	2:13
Entered	3:38 p.m.	Exited	6:48 p.m.	Duration	3:10
				Total time	7:10

October 20

Entered	9:56 a.m.	Exited	10:30 a.m.	Duration	:34
Entered	12:13 p.m.	Exited	1:46 p.m.	Duration	1:33
Entered	2:50 p.m.	Exited	5:03 p.m.	Duration	2:13
				Total time	4:20

[158] Evidence of the grievor's swipe-card usage for the GTA lab for October 19 and 20, 2013, was entered into evidence. It confirmed the related data set out in the PWC report.

[159] The PWC report disclosed that Mr. Mourtada entered the GTA lab on October 19, 2013, at 10:31 a.m., that he left at 6:48 p.m., and that he did not enter or exit the GTA lab building on October 20, 2013.

[160] Evidence of Mr. Mourtada's swipe-card usage for the GTA lab for October 19 and 20, 2013, was entered into evidence; it confirmed the data set out in the PWC report.

[161] The PWC report also contained a copy of Mr. Mourtada's overtime log, which was handwritten and identified that Mr. Mourtada claimed 10 hours of work on Saturday, October 19, 2013, and 2 hours on Sunday, October 20, 2013. Whether he or someone else completed the overtime log was not identified in the evidence.

[162] The PWC report also contained a copy of the "SNC Contractor Visitor Sign In Log" ("the sign-in log") for the GTA lab building. Ms. Jessett testified that she reviewed all the sign-in logs for that building for September through December of 2013 and that none contained a record of any organization named either Alzahraa or 2253659 Ontario Inc. ("225 Inc."). The only sign-in log that she saw containing the names of the parties signed in to work on the walk-in freezer project were those disclosed as part of the PWC report and identified as All Tech and Tung Wing. According to Mr. Malette's testimony and the PWC report, no contractors signed in or out on October 19 or 20, 2013.

[163] The grievor testified that HC required the CFIA to install the new freezer on a weekend, and so, he had no choice.

[164] The grievor stated that on Saturday, October 19, 2003, Mr. Persaud was at the GTA lab building, as were two companies, which he did not specify. His evidence was as follows:

*I contacted Mr. Persaud, the manager of the building for SNC. They have to be in the building. I told him I would be there. I wanted to introduce the companies to one another. On Saturday morning, Persaud is there; the companies are there, and I was there. Tameash [Mr. Persaud] verified licences of the companies. He took them into the room. Ihab came in.*

[165] The grievor stated that he attended to coordinate the walk-in freezer installation and to do other unrelated work and that Mr. Mourtada attended because someone from the CFIA had to supervise the contractors to ensure they did not wander around,

as SNC would not supervise them in that way. The grievor testified that the room in which the HC unit was located also contained other freezers and fridges as well as paper shredding bins, which Mr. Mourtada was to move. When his counsel asked the grievor if he checked with any other CFIA employee before having Mr. Mourtada involved, he stated that he spoke to both Mr. Major and Mr. Huszczyński, which was never put to those witnesses when they were cross-examined.

[166] The grievor was brought to a copy of a Tung Wing invoice, no. 2024612 and dated October 20, 2013, which listed the CFIA as the customer and the grievor as the contact person. It was for \$8,700.00 plus HST, for a total of \$9,831.00, and its description stated as follows:

*Walk in [sic] freezer box, assembly, balance and installation*

*compressor and fan installation*

*light fixtures connection and assembly*

*fire sprinkler insert and sealing*

*clean up*

*pipng and electricals.*

[167] The grievor's counsel brought him to that invoice and asked him if it was for installation work. He responded as follows:

*It took part of the afternoon of Saturday and then on Sunday. On Saturday morning Tameash [Mr. Persaud] shut down certain power and it was linked into an alert. Tameash shut down the wrong switch. It took until 2:00 in the afternoon to put their equipment back on the network.*

[168] The grievor did not elaborate what or whose systems were affected, who took care of getting them up and running, or what if any affect it had on the freezer project.

[169] The grievor was shown a copy of an All Tech Electrical Systems Ltd. ("All Tech") invoice, no. 109685 and dated October 22, 2013, which listed the grievor as the customer and noted the CFIA in brackets. It was for \$1,020.00 plus HST, for a total of \$1,152.60. Its description simply stated labor at \$500.00 and materials at \$520.00. Nothing else on it specified the labor and materials supplied and why they were

supplied. Nothing listed the work done or how long it took.

[170] The grievor stated as follows about that invoice when his counsel brought it to him:

*The old fridge has fans and lighting that was supplying to the compressor; better to have a separate switch for fans and lighting from the compressor. Tameash said do it but wouldn't allow Tung Wing to do it. Tung Wing's invoice included all the electrical but it was all on one switch on the panel.*

[171] The PWC report disclosed that an email exchange took place on October 22, 2013, between the grievor and George Balaban of All Tech, as follows:

[Mr. Balaban to the grievor, at 1:27 p.m.:]

*Good Afternoon,  
attached please find for your review requested estimate.  
Regards  
George*

[The grievor to Mr. Balaban, at 1:45 p.m.:]

*The work is complete, can you please send me the bill. so as to process the payment.  
Just one note, the name/address should say\* Houssam Elmenini, (CFIA) ref 230 midland Ave.\**

*Thanks Again,*

[Sic throughout]

[172] The grievor's counsel brought him to a photograph that he identified as a plate attached to the compressor for the new freezer unit. On it were the name "Tecumseh", a specified voltage of 200-230, refrigerant R404A, and serial no. 0B60689249 ("the serial number plate").

[173] The photograph of the serial number plate was attached to an email sent to the grievor on October 22, 2013, at 9:55 a.m. from Ricky Wu at Tung Wing. Nineteen minutes later, he forwarded the email and photograph to Mostapha with the following simple message: "Serial # for compressor."

[174] The grievor's counsel asked the grievor about the emails from Mr. Wu and from Mustapha and about the photo of the serial number plate, starting with asking who



Mr. Wu was. The grievor testified that Mr. Wu assembled the freezer. When asked by his counsel why he sent that photo to his brother, the grievor stated as follows:

*When we tried to install the compressor on the new freezer, it didn't fit due to a beam. Ricky said he would adjust the compressor by cutting pipes to get it installed under the beam. He [Mostapha] was concerned that Wu may switch the compressor with another so Mostapha told me to get Ricky Wu to send the serial no., etc., of the compressor to ensure it is the correct one. So I got Ricky to do that. He [Mr. Wu] took the compressor to his shop to make the changes to the compressor.*

[175] The GTA lab building sign-in log disclosed that contractors associated with work on the freezer project were in the building on three separate days, Monday, October 21, Tuesday, October 22, and Tuesday, October 29, 2013.

[176] On October 21, "George" from All Tech signed in at 2:30 with the reason for the visit cited as "see electrical work." The sign-in log disclosed that on October 22, "Adrian" from All Tech signed in at 8:00, out at 9:30, in again at 10:30, and out again at 3:15, with the reason for the visit cited as "work".

[177] On October 29, four entries were made by businesses related to the freezer project. The first three all listed the company as Tung Wing; each entry listed a different individual, one being Mr. Wu. All three were shown as signing in at 10:00, with no sign-out time. The reason for the visits was cited as "walk-in cooler installation." At 12:00, an entry shows that Adrian from All Tech signed in, with the reason for the visit cited as "electrical." There is no sign-out time for him.

[178] In cross-examination, counsel for the CFIA put to the grievor an email he sent to Mr. Mourtada and dated Monday, October 28, 2013, at 1:03 p.m., which stated as follows:

*Hello Ihab,*

*Ricky from Tung Wing Servicing Co. Ltd. will call your cell phone directly to allow him and his team access to the building.*

*Stay with him for about 15 min and let him know that he is not to walk around with out [sic] an escort. [sic] and to call you as needed.*

...

[179] In cross-examination, the grievor was asked whether he selected the freezer based on a recommendation from his brother, to which he stated, “Yes, for the demolition, because I am not into this type of work.” When then asked why he did not go to Mr. Reath, the grievor stated, “Jaimie Reath is to provide advice regarding issues with SNC Lavalin. He doesn’t do work in the GTA lab.” When counsel for the employer suggested that Mr. Reath offered to send someone from the Facilities group to assist the GTA lab with the freezer, the grievor stated, “We have to have SNC down to manage the project. When Jaimie Reath sends people down they check the air pressure and air flow and they will bill us for that.”

[180] Mr. Malette testified that as part of its investigation, PWC conducted a corporate search (as of March 12, 2015) of 225 Inc. The corporate filings disclosed that it had been incorporated on August 13, 2010, and that from the date up to and including January 10, 2015, Karen El-Menini (“Karen”, also known as Karen Gamblen) had been a director and its president, secretary, and treasurer.

[181] Karen is married to Mostapha, and so, she is the grievor’s sister-in-law.

[182] The corporate address for 225 Inc. is the same residential address given for Mostapha in the corporate filings for Alzahraa HMI.

[183] The grievor stated that the freezer installation took place on October 19 and 20, 2013. He stated that the demolition of the HC unit was supposed to take four hours but that it took until 3:00 p.m. He stated that two employees from 225 Inc. handled that demolition. He stated that he did not know them and that they disassembled it and put the pieces in a truck. He said that the side panels were too big for the truck and they had to be cut to be put inside.

[184] The grievor stated that his brother (he did not specify which one) provided him with an estimate for the demolition work from 225 Inc., which he said he gave to Ms. Wong. He said that he was not an expert, so he did not know if the price of the demolition was fair. He said that he relied on his brother.

[185] There was no estimate from 225 Inc. in any of the material produced to me.

[186] The grievor said that the new freezer arrived at about 11:00 a.m. on October 19, 2013, and that when he went to take a look at 4:00 p.m., the panels were going up. According to him, the new freezer arrived in a truck with a driver and that

two people from Tung Wing and Mr. Persaud unloaded it.

[187] Mr. Persaud did not testify; nor was it identified that he was interviewed as part of the PWC investigation. No one else from SNC testified.

[188] No one from HC testified.

[189] Mr. Wu did not testify; nor was it identified that he was interviewed as part of the PWC investigation. No one else from Tung Wing testified.

[190] No one from All Tech testified; nor was it identified that anyone from it was interviewed as part of the PWC investigation.

[191] Neither Mostapha, Wassim, Karen, nor Mr. Mourtada testified.

[192] Mostapha, Karen, and Wassim either live or have lived at the address listed for them in the corporate records of both Alzahraa HMI and 225 Inc.

[193] Mr. Huszczyński stated that he heard nothing further on the topic until the freezer was being installed. The PWC report stated that he advised the PWC investigation that the grievor had advised him that he had been at the GTA lab building on the weekend on which the new freezer was installed, that it took all day to remove the HC unit, that the grievor became involved in removing it, and that he called in Mr. Mourtada to help. In his evidence-in chief, Mr. Huszczyński was brought to these points in the PWC report and was asked if they were accurate statements, to which he answered, "Yes." He was not cross-examined on these statements.

### **3. After the freezer installation; the investigation and the paperwork**

[194] Obtained as part of the PWC investigation was SNC invoice no. 324973, dated October 22, 2013, with no reference to a PO. The box marked "PROJECT DESCRIPTION" merely states, "Provide access to contractor." The invoice is marked to the attention of the grievor, and the detailed charges are as follows:

<i>Non-construction/design costs</i>	<i>420.00</i>
<i>Property mgt service(PMS)lab</i>	<i>60.48</i>
<i>HST . . .</i>	<i><u>62.45</u></i>

---

TOTAL . . .

542.94

[195] That invoice contained no specifics of the “non-construction/design costs” or the property management services, what the “PMS lab” referred to, who the contractors were, or the time frame within which the work was carried out.

[196] The PWC investigation turned up a CFIA PO, no. 13-007 and dated October 20, 2013. It had been computer generated and printed. Its description referenced SNC invoice no. 324973 and a CFIA commitment, no. 1000314292. That description also set out the same limited specifics as were set out in the SNC invoice and for the same dollar amount. Both Ms. Wong and the grievor signed the PO on October 20, 2013. The CFIA commitment was dated November 7, 2013, and referenced the PO.

[197] October 20, 2013, was a Sunday. According to the PWC report, Ms. Wong told the PWC investigators during her interview that she was not required to work weekends and that she did not work the weekend of October 19 and 20, 2013. According to the PWC report, when she was asked why PO no. 13-007 was completed on the weekend, her response was that it must have been a mistake. When asked why it showed her and the grievor executing it on a weekend, she again stated that it was a mistake.

[198] During her testimony, Ms. Wong was shown SNC invoice no. 324973 and CFIA PO 13-007. She stated that she processed the SNC invoice and stamped it. When it was pointed out to her that it was signed on a Sunday, she confirmed that that would not have happened. When it was pointed out to her that the funds commitment was done after the SNC invoice and the CFIA PO were done, she confirmed that she would have done it when she sent the CFIA PO and SNC invoice for payment.

[199] The grievor testified that he submitted to Ms. Wong an invoice, no. 12431, dated November 15, 2013, from 225 Inc. (“the 225 Inc. invoice”) for payment. It was made out to the CFIA and to her attention. The description of the work was as follows:

*To supply labor and materials to dismantle and and dispose  
Walk-In cooler.; repair damaged floor.*

*-dismantle wall, floor and top panels*

*-disconnect and cap electrical connections*

*-disconnect condenser unit, fans and drain*

*-Cap drain*

*To dispose cooler panels and other wastes*

*To supply materials for repair and installation of new floor tiles, (15'x13' area)*

*To cleanup, dust and polish Area (Room B 12)*

[Sic throughout]

[200] The 225 Inc. invoice set out a total of \$6,800.00 plus HST for the work. However, it actually charged \$6,820.00 plus HST for the work, for a total invoiced amount of \$7,706.60.

[201] On the bottom of the 225 Inc. invoice was a box titled "Notes" that had the following typed into it: "Work performed over the weekend of October 5, 2013.. [sic] Make Cheque payable to 2253659 Ontario Inc." Handwriting at the top stated, "PO13-009", and at the bottom stated, "Commitment #1000310542".

[202] Ms. Wong testified that the paperwork for the freezer project work was done after the fact. She stated that invoices would have been provided to her or Ms. Glezakos and that one of them would have prepared the paperwork.

[203] Ms. Wong testified that the grievor gave her the 225 Inc. invoice. Based on it, she created a PO, no. 13-009, which is dated September 30, 2013, lists her as the CFIA contact person, and sets out the work based on the 225 Inc. invoice. The box on the PO in which to certify that an unencumbered amount of money is available to meet the commitment in the PO was signed by Ms. Wong and dated September 30, 2013. The approval box was signed by the grievor and dated that same date.

[204] The grievor also testified that when the work was completed, he did not know what 225 Inc. was or that his sister-in-law owned it. He stated that Mostapha had referred that company to him. He stated that his instructions to Mostapha were that the company had to be certified. The grievor did not explain what he meant by that. He stated that he became aware that his sister-in-law was the principal of 225 Inc. only when payment was attempted.

[205] The PWC investigation turned up two invoices from a company called Alzahraa Inc. Both had the same number, 2024228, and were for the same work and amount, \$9,983.55, broken down in the description section as follows:

[Item No.] WKN302	<i>12'x13, x7'8" walk-in freezer box with factory floors. Cam-lock panels 4" urethane insulation. 60" x 78" hinged swinging door. Stucco white interior/exterior finish.</i>	5,985.00T
[Item No.] CND103	<i>Tecumseh Condenser, Model R404A, 200-230V, 3-60 HZ, serial number 0B60689249</i>	2,850.00T
	<i>HST Sales tax total</i>	<i>1,148.55</i>

[206] Each Alzahraa Inc. invoice states that it is directed to Tracy Wong of the CFIA at the Midland Avenue address. Alzahraa Inc.'s address shown on both invoices is the same one recorded at the Ontario Ministry of Government Services as Alzahraa HMI's business address.

[207] On May 6, 2015, the PWC investigation obtained a copy of the Canada Revenue Agency GST/HST number for Alzahraa HMI. The number for Alzahraa Inc., as shown on both invoices is the same one as that of Alzahraa HMI.

[208] Mr. Malette testified that the corporate search that PWC conducted during the investigation yielded no returns for a company named "Alzahraa Inc."

[209] One of the Alzahraa Inc. invoices (which for the purpose of this decision is identified as "invoice 2024228 A"), dated November 6, 2013, shows a payment due date of December 6, 2013, and a delivery date of September 15, 2013. The other invoice (identified in this decision as "invoice 2024228 B") is dated September 11, 2013, and has a payment date of September 12, 2013, and a delivery date of July 9, 2013.

[210] The other significant difference between the two Alzahraa Inc. invoices is that 2024228 A has the following handwritten on it: "Auth: 130310 Nov 13, 2013 CD2000517242". Next to that handwriting is a stamp noting "CFIA Section 34 FAA

Goods and Services Received” with space for a signature and a date that contains the grievor’s signature and the date of September 15, 2013.

[211] Ms. Wong was asked about that invoice and its stamp. She testified that she did not know why the stamped approval was dated September 15, 2013. She stated that generally with invoices and s. 34 of the *FAA* approval, either she or Ms. Glezakos would apply the stamp and bring it to the grievor for his approval.

[212] Ms. Wong could not explain why there were two invoices from Alzahraa Inc. She said that she saw and processed only one, 2024228 A, because she identified the handwriting on it, “CD2000517242”, as hers.

[213] Ms. Glezakos testified that she recalled specifically a morning in November of 2013 when the grievor provided Ms. Wong with an invoice from Alzahraa Inc. She recalled this specifically because Ms. Wong was on her way out to training, and she gave Ms. Glezakos the invoice to process with instructions to create an RFM, pay the invoice, and have the grievor sign it.

[214] The PWC investigation turned up three CFIA RFM forms, all numbered “MC13-169” and all related to the Alzahraa Inc. invoices. The first MC13-169 (identified in this decision as “MC-169 A”) is undated, does not appear signed, is handwritten in two different ink colours (black and red), and has attached a yellow 2” x 2” sticky note. It identifies the originator as the grievor; however, his name is crossed out and Mr. Major’s name is inserted, both in red ink. The “Date required” box states November 13, 2013. However, that date has brackets around it in red ink; above it, a line (also in red ink) points to it, and written above that in red ink are the words, “change before Sept 15, 2013.” Written in red ink on the sticky note are the words, “Please change.” The balance of MC-169 A contains the following information:

...

*Project No. . . .*  
*REFERENCE # 130310*

[Description and cost of materials supplied]

[Item No.]	<i>WKN302</i>	<i>Walk-in Freezer</i>	<i>5985.00</i>
		<i>Box w/Floors</i>	
		<i>60 x 78 hinged doors</i>	

[Item No.]CND103	<i>Tecumseh Condenser-Model R404A</i>	2850.00
	<i>HST</i>	1148.55
	<i>TOTAL</i>	9983.55
<i>Suggested Supplier . . . .</i>		
<i>NAME: ALZAHRAA INC.</i>		
<i>TEL: 2032 Lawrence</i>		

. . .

[215] The second MC13-169 (identified in this decision as “MC-169 B”) contained the same supplier, materials, and price information as MC-169 A. It differed in that the originator’s name changed from the grievor’s to Mr. Major, and the date on which the material was required was changed from November 13, 2013, to September 9, 2013. Where the yellow sticky note was located on MC-169 A, MC-169 B had the date and signature block to confirm that funds were available and that the expenditure was approved under s. 32 of the *FAA*. The signature was that of the grievor, and the date was September 9, 2013. Below that box was another one, titled “Action by”, which was left empty.

[216] The third MC13-169 (identified in this decision as “MC-169 C”), contained the same information about the supplier and materials to be supplied and price points as did MC-169 A and MC-169 B. MC-169 C is identical to MC-169 B except that on MC-169 C, the box marked “Action by” is signed by Mr. Major, and the box for “Financial Code” is filled in.

[217] Ms. Wong testified that she believed that the original handwriting in black ink on MC-169 A was Ms. Glezakos’s. Ms. Glezakos confirmed that she created MC-169 A and that the handwriting in black ink was hers. She confirmed that the November 13, 2013, date on the form came from the date she received the Alzahraa Inc. invoice. She stated she filled out the RFM and that she left it for Ms. Wong.

[218] Ms. Wong stated that she brought MC-169 A to the grievor for his signature and that he asked her to make changes. The markings on MC-169 A in red ink were hers, to coincide with the changes the grievor asked her to make. She testified that the changes were made to MC-169 A because the grievor could not be an originator for RFMs, because if so, they would have had to go to Ms. Jessett for approval.



[219] Ms. Wong testified that the originator on an RFM is supposed to be the person or cost centre that needs the material being ordered.

[220] Ms. Wong was also asked if November 13, 2013, was the date on which she brought the RFM to the grievor to sign; she replied that it was not. She stated that that date would have come from the invoice. She stated that MC-169 A, which was the first of the three versions in evidence, would have been completed after November 13, 2013.

[221] Ms. Glezakos stated that she had seen MC-169 A with the red ink on it because Ms. Wong had brought it back to her and had asked her to make the changes outlined in red ink, which Ms. Glezakos said she made.

[222] Ms. Wong was brought to the RFM identified as MC-169 B, which has the changes she was asked to make and the grievor's signature. She testified that he did not sign it on September 9, 2013. She was brought to the RFM identified as MC-169 C, which has the changes she was asked to make and the signatures of both the grievor and Mr. Major. She testified that she did not know when Mr. Major signed the document; however, she recalled him signing it at her desk.

[223] Ms. Glezakos was brought to MC-169 B and was asked about the grievor's signature. She testified that she believed she witnessed him signing it but that she could not recall that. She did testify that she usually brought the RFMs to the grievor for his signature. When she was asked whether he had signed it on September 9, 2013, she replied that he had not because it did not yet exist on September 9, 2013; the first version had been prepared only on November 13, 2013.

[224] In his evidence-in-chief, Mr. Major testified that his signature was on the bottom of MC-169 C in the box marked, "Action by". He stated that while his name was in the box marked "Originator", he would not consider himself the originator. He stated that he did not recall signing it, although he stated that he has been led to believe he signed it when he visited the office while on leave, along with his wife and their newborn.

[225] In cross-examination, Mr. Major testified that generally, for RFMs that he originated, he would fill in as much of the information as he could and would then provide the incomplete form to Ms. Wong or Ms. Glezakos for completion. When it was put to him on cross-examination that Ms. Wong gave him this form to sign, he did not

recall that or signing it. Ms. Glezakos testified that he signed MC-169 C sometime in December of 2013; she recalled him coming in with his newborn and Ms. Wong getting him to sign it.

[226] Ms. Glezakos testified that she believed that Ms. Wong did things backwards, meaning that purchases were not put into the accounting system until an invoice was received. She said that when an invoice was received, the paperwork was started, RFMs were filled out, fund commitments were entered, and a PO was issued. She stated that that was backwards because funds were supposed to be available and committed before purchases or services were bought.

[227] In cross-examination, the grievor was shown the RFMs. It was suggested to him that he did not sign the RFM on September 9, 2013, but either on or after November 13, 2013. He replied that he did not remember.

[228] The PWC investigation turned up an invoice from Tung Wing, no. 2024612 dated October 20, 2013, naming the customer as the CFIA and the contact as the grievor. It was for \$8,700.00 plus HST, for a total of \$9,831.00. Its description stated as follows:

*Walk in [sic] Freezer box, assembly, balance and installation  
compressor and fan installation  
light fixtures connection and assembly  
fire sprinkler insert and sealing  
clean up  
piping and electricals.*

[229] The PWC investigation turned up CFIA PO no. 13-008. According to the PWC report, Ms. Wong was provided with that Tung Wing invoice after the freezer was installed, and in turn, she created that PO. However, it is dated October 11, 2013, and the amount on it and the description of work is exactly as set out in Tung Wing's invoice. The PO also sets out a funds commitment, no. 1000310546. The box to certify that funds are available was signed by Ms. Wong and was dated October 11, 2013, and the PO was signed as approved by the grievor, also on October 11, 2013.

[230] The PWC report disclosed that Ms. Wong stated that the grievor approached her about the 225 Inc. invoice not being paid, which caused her to inquire about the payment. The PWC investigation turned up a series of emails on this issue between January 22 and February 4, 2014, in which it was discovered that 225 Inc. was not enrolled in the federal government's direct-deposit payment system.

[231] On February 4, 2014, the grievor forwarded that email chain, about what had occurred with respect to the 225 Inc. invoice not being paid, to Mostapha, along with a form titled, "Recipient Electronic Payment Registration Request", and a set of instructions. The email stated as follows: "As per our phone conversation, you will need to fill out the DD form, and send back for authorization. If you have a check then that is good. scam [sic] and attach."

[232] On February 5, 2014, the grievor emailed Ms. Wong that form filled out for 225 Inc. It had been signed and hand-dated February 2, 2014.

[233] Ms. Jessett testified that on November 13 or 14, 2013, she walked by Ms. Glezakos's desk and saw an RFM with the name "Alzahraa" on it. She stated that it took her by surprise as she recognized it as a business related to the grievor's family. Upon seeing the RFM, she asked Ms. Glezakos about it, who she said told her that it was part of the freezer project. Ms. Jessett stated that she asked Ms. Glezakos if any other things were involved, and when she was told some were, she had all the documents brought to her.

[234] Ms. Jessett stated that when she saw the invoices from Alzahraa Inc., Tung Wing, and 225 Inc., she did not know where to start. So the first thing she did was contact Mr. Reath for a quote for a brand-new freezer. She stated that she provided him with the specifications for the size of the freezer.

[235] In his evidence, Mr. Reath confirmed that Ms. Jessett approached him for a quote for a brand-new freezer and that he obtained one (dated November 14, 2013), which he emailed to her on November 15, 2013. The quote, no. 4044302-2 from the Master Group L.P. for a new walk-in freezer of dimensions 12' x 13' x 7'6" (the last dimension is height) was for, excluding taxes, \$11,159.00. Mr. Reath stated that the quote was for a top-of-the-line and brand-new freezer — a "Cadillac version." He stated that it had a heavier gauge compressor and a better thermo coupler. He stated that he considered the HC unit and the unit installed in the GTA lab as part of the freezer

project and stated that a used freezer would have lasted 10 to 12 years while the new one in the quote would have lasted closer to 20 years.

[236] Mr. Reath was brought to paragraph 157 of the PWC report, which set out the total cost of the freezer project (not including accessories such as mats and shelving), and was asked about the costs. He testified that the amount for the demolition, \$7,706.60, made no sense because it is common practice when installing a freezer that demolishing any old freezers and refrigerators is covered in the cost of purchasing and installing the new unit. He said that there is no extra cost for the demolition; contractors keep the copper and the scrap metal. When it was suggested to him that the demolition was somewhat onerous because the HC unit was bolted to the floor, he stated that it would not have been so because properly trained contractors would use a cutting torch to remove troublesome nuts and bolts. He said that demolishing it should have taken about four hours.

[237] Mr. Reath testified that federal legislation governs handling refrigerant gases and that only a licensed tradesperson with the appropriate certificates to deal with evacuating gas can demolish a refrigerator or freezer.

[238] With respect to the extra cost associated with the electrical installation, Mr. Reath stated that refrigeration contractors are licensed up to 600 volts. He stated that refrigeration companies have appropriate licensed mechanics and that they supply and install new units, including electrical work and the demolition of any old units.

[239] Mr. Reath said that he was not familiar with 225 Inc. He stated that the company's licence has to be reviewed to allow it to do a specific type of work. He further stated that this is set out in CFIA policies and that the National Procurement Centre deals with it.

[240] Mr. Reath stated that in his opinion, the total cost of the freezer project, including supplying and installing a new or used freezer and demolishing the HC unit, along with any electrical work, should have been in the range of \$8,000.00 to \$9,000.00. He was brought to paragraph 128 of the PWC report and was asked about the freezer project being split in the way that it was, into the demolition, the purchase, the installation, and the electrical work. He responded that in his view, it was clearly contract splitting. He stated that it was common in such contracts to include all costs

in the purchase of the new unit and used the term “Re in Re”, which he defined as “remove and replace”, which is standard in any walk-in cooler or freezer project.

[241] In cross-examination, it was put to Mr. Reath that Master’s quote did not include installation, which perhaps would have been at extra cost. He replied that the quote would have included the demolition of any old unit and the installation of the new unit. He did admit that his group had never purchased from Master before.

[242] Mr. Reath testified on October 15, 2015. Two months after that, when the hearing reconvened on December 15, 2015, the grievor filed into evidence an affidavit sworn on December 10, 2015, by Lisa Achchan, who was a legal assistant with the law firm of Stevenson Whelton MacDonald and Swan LLP, the grievor’s lawyers. The affidavit had attached as an exhibit a copy of the Master quote. The affidavit stated as follows:

...

*2. On December 9, 2015, I had a telephone conversation with Doug Geairns, an Internal Estimator with The Master Group with respect to Quotation 4044302-2, provided to the Canadian Food Inspection Agency and annexed hereto as **Exhibit “A”**.*

*3. Mr. Geairns advised me and I verily believe that The Master Group is a wholesale supplier to contractors and does not, itself, provide installation or service. Annexed hereto as **Exhibit “B”** is a true copy of Mr. Geairns [sic] email to me confirming the above.*

...

[Emphasis in the original]

[243] Doug Geairns’s email is dated December 10, 2015, at 7:39 a.m., and states as follows:

...

*In regards to the discussion we had yesterday, this is being sent to you to confirm that Master is a wholesale supplier to contractors and does not provide installation or service.*

*The quotation number 4044302-2 was for the supply only of the walk in [sic] freezer and refrigeration equipment.*

...

[244] Neither Mr. Geairns nor Ms. Achchan testified.

[245] Ms. Jessett stated that the concerns that came to mind upon reviewing the documents she received from Ms. Glezakos and the quote from Mr. Reath were contract splitting and the use of businesses related to the grievor. Ms. Jessett stated that she contacted labour relations (“LR”).

[246] On November 18, 2013, at 10:15 a.m., the grievor emailed Ms. Jessett as follows:

...

*I have just submitted my Oct. month overtime.*

*It covers the work done during the E-coli 0157 investigation and the new freezer installation time for work performed over two weekends.*

*The new system does not have fields for justifications.*

*Let me know if you have any questions.*

...

[247] At 2:34 p.m. on November 18, 2013, Ms. Jessett replied, asking questions about the work and the overtime. A little more than an hour later, the grievor answered. The questions and answers were as follows (the questions are not in bold, and the answers are in bold):

...

*1. Why did the work have to be performed on weekend? The freezer was in the basement so it shouldn't have disrupted things if the work were done during week. **HC and SNC requested that work is performed over the weekend. I do understand their request, given the amount of noise and disturbance made to the main floor. Taking out the older fridge was not as easy as speculated, the main floor was a big mess. (older fridge was well bolted and sealed, unlike newer models)***

*2. Were you the only one that came in on the weekend or are we paying OT for anyone else? **I was the only one supervising the work and answering their concerns as it arises. (Tameash came in for 3 hours on two days of the weekends to open the back door and verify licences, open electrical panel, provide guidance to what is required, he was sick and went to the hospital after). This left me obliged to stay with the workers and help out as well, so as***

**to make sure that the noisy work is complete before the end of the weekend and garbage is out of the building.**

**3. Could the oversight of this installation not have been done by the staff working the weekend? NO, Staff were busy with the 0157 investigation. I have asked the management team and no one felt comfortable supervising the work.**

**4. Did we have to have someone in from SNC or PWGSC to supervise and if so are we responsible for paying this now or later? SNC for a short period of time (see 2), cost is payed already.**

**5. I was not made aware of this need so was this pre-authorized by someone acting in my position? I remember mentioning this issue to you from the door of your office, you did shake your head.**

*I would like to see this before I approve the OT. Sorry for all the questions but it is a lot of OT and I was not made aware of this need prior to this being done. Note - In future I will only approve OT if it has been pre-authorized.*

**Thanks Karen, I do understand your concerns and I might have done the same for my staff. I am in a position of responsibility and would like to make sure that CFIA rules are adhered to as well. I am sorry that you can't remember me talking to you about the Walk-in freezer installation, weekend work, E-coli 0157 investigation, etc.. . We would need to develop a better system for overtime approval, may be an E-mail, OT approval worksheet or RDIM??. I don't remember claiming my overtime since a long time ago, unless it is recoverable. and I was hesitant about making this claim as well, When Tracy asked me about overtime performed (to update our financial spending), I have told her not to include any for me and she mentioned that if not claimed, it will be hard to justify our OT needs for next year. I will stick to my original plan in not claiming this OT and cancel my request.**

...

[Sic throughout]

[248] Ms. Jessett stated that she was referred to the CFIA's Audit and Evaluations branch and that she met with it in December of 2013. She said that in consultation with that branch and LR, it was determined that an administrative review would take place.

[249] In a letter dated February 20, 2014, Ms. Jessett suspended the grievor with pay pending an administrative investigation into allegations about his duties as the GTA lab manager. She stated that the CFIA was looking into a number of concerns with invoices and POs that he had authorized for the GTA lab. The letter advised him that the suspension was not disciplinary, that he should remain available for interviews, and that if he intended to leave town, he was required to submit a leave application. She stated that the CFIA expected that the investigation would be completed quickly and efficiently.

[250] On March 25, 2014, the Ernst report was produced. The version entered into evidence was marked as a draft; however, no other version was produced. Ms. Jessett stated that she reviewed it, that it recommended launching an investigation into the walk-in freezer project, and that it identified the following:

1. there were inconsistencies at the GTA lab with the procurement process;
2. there was evidence of contract splitting; and
3. conflict-of-interest issues could exist.

[251] Based on the Ernst report and consultations with LR, Ms. Jessett determined that there was sufficient information to warrant a full investigation, so she placed the grievor on leave without pay. She testified that she met with him on April 17, 2014, and that she advised him that his suspension pending the administrative investigation would continue; however, from that point forward, it would be without pay. She said she advised him that the CFIA had engaged Ernst to conduct a preliminary review into allegations about the freezer project to determine whether there was sufficient information and whether a full investigation should to be conducted. She also advised him that the Ernst report recommended that a full investigation be carried out.

[252] Ms. Jessett told the grievor that the CFIA expected that the full investigation would be completed quickly and efficiently and that while he was suspended, he remained a CFIA employee. In addition to meeting with him, she gave him a letter dated that same day (“the April 17 letter”) that stated as follows:

...



*This letter is further to the letter of February 20, 2014, in which you were informed that an administrative review or investigation was to be conducted into certain serious allegations regarding your performance of your duties as Manager, GTA Laboratory.*

*The Employer had engaged Ernst and Young to conduct a preliminary or administrative review into the allegations first to determine whether or not there was sufficient information and whether or not a full investigation ought to be conducted into the allegations. As you were interviewed as part of this review, you are aware of the particular issues which have been identified as concerns. I have now received a recommendation from Ernst and Young; following their administrative review they have recommended that the matters be fully investigated, so as to determine the validity of the allegations and purported facts.*

*We have reached a point where I believe the concerns and/or issues, if proven could be very serious and so I feel it is now prudent to place you on leave without pay pending the completion of the investigation. I must stress to you that this in no way means that any determination has been made into the outcome of this investigation, nor has any determination been made as to whether or not disciplinary or corrective action is required.*

*This action is not disciplinary, but is intended to allow the Employer to examine the issues thoroughly, and to determine appropriate action. While it is my expectation that the investigation be conducted quickly and efficiently, I will require you to remain at home without pay until such time as the investigation has been completed.*

*Please note, while you are at home on leave without pay, you will be required to be available for interviews, attend meetings as required and respond to any requests during this full period. Should you need to leave town or not be available for interviews, you must submit a request and be granted approved leave, in advance. . . .*

. . .

[253] Ms. Jessett said that sometime after that, she received an email from Joe Freamo of the Audit and Evaluation group and that she was instructed to cease and desist carrying out a second investigation until further notice. She said that although he told her not to take any further steps, she also stated that he told her that he could not tell her why. She stated that she was not privy to that information. She did state that she heard that there was a letter from the Royal Canadian Mounted Police (“RCMP”),

although she stated that she never saw it.

[254] I was not provided with a copy of Mr. Freamo's email; nor was I provided with a date of the discussion with him. I was not provided a copy of any correspondence from the RCMP.

[255] On May 27, 2014, the grievor's legal counsel wrote to Ms. Jessett, stating as follows:

...

*We are litigation counsel retained by Houssam El-Menini. He has authorized us to act for him in this matter pursuant to section 69(2) of the Public Service Labour Relations Board Regulations, SOR/2005-79 ("the Regulations"). Attached hereto, please find a signed authorization in that regard.*

*We have reviewed your letter dated April 17, 2014, in which the Canadian Food Inspection Agency ("CFIA") suspended Mr. El-Menini without pay. Mr. El-Menini understood that the CFIA would have the results of an investigation into his conduct within two weeks.*

*Mr. El-Menini depended upon his employment with the CFIA to provide for his family. Given that the results of the CFIA investigation have not been communicated to our client, and there is no end in sight, our client takes the position that the steps taken by the CFIA relate to termination under the Regulations.*

*Given that he is not in the work place [sic], please accept this letter as a notice of grievance in lieu of the form set out at s. 67 of the Regulations. Further, pursuant to s. 71 of the Regulations, since this grievance relates to termination, we are moving to the final level of the grievance process.*

...

[256] On June 20, 2014, Ms. Jessett wrote to counsel for the grievor in response to the grievance they delivered on his behalf on May 27, 2014, in file 566-32-9869. She stated as follows:

...

*It's unfortunate that you have taken this approach and have not been willing to work collaboratively with the CFIA to resolve this matter.*

*As indicated in my letter of April 17, Mr. El-Menini has not been demoted or terminated, nor has any disciplinary action been taken.*

*Therefore, with respect to your categorisation that this grievance is a termination grievance, as Mr. El-Menini has not been terminated or demoted as per paragraph 12.(2)(c) or (d) of the Financial Administration Act, the grievance does not transmit directly to the final level. As a result, the skipping of steps in the grievance process has to be mutually agreed to. In this case, the Employer has not agreed to such a request. As a result, it is premature to transmit this grievance to the Public Service Labour Relations Board. The Employer will of course respond to the Board with respect to the filing directly.*

...

[257] Via email on June 20, 2014, at 2:20 p.m., counsel for the grievor responded to Ms. Jessett's letter of that same day, stating as follows:

...

*We disagree regarding your interpretation of whether Mr. El-Menini has been terminated/demoted.*

*Moreover, it is not reasonable for you to suggest that we have "not been willing to work collaboratively with the CFIA". Our letter of May 27, 2014 states:*

*"Although Mr. El-Menini is prepared to grieve this matter, and if necessary, proceed to adjudication, he is also eager to return to work. As such, he will gladly agree to withdraw this grievance if he is permitted to return to work, and is paid back wages for the period of his suspension.*

*Please contact me if you have any questions. I am hopeful that this matter can be resolved quickly and amicably."*

*Unfortunately, you did not respond to our letter until June 19, 2014 (23 more days of our client being unpaid). Moreover, in your response you provided no details of a possible "collaborative" approach and appeared to be purposely vague in your response.*

*Thus, in these circumstances, we stand by what we have stated and done. If you have a "collaborative" suggestion that responds to ours of May 27, please advise us in this regard forthwith.*

...

[258] Ms. Jessett created a memo dated March 27, 2015 (“the March 27 memo”), which she identified. She said that Mr. Silva requested it of her for a meeting he was to have with the CFIA’s president on either March 27 or 28, 2015. It states the following in part:

...

**April 17, 2014**

- *Megan [Megan Turpin of LR] and I met with both employees [the grievor and Ms. Wong] and placed them on leave without Pay as the concerns if proven could be very serious and we were going to conduct the secondary full investigation as per recommendations in Ernst and Young report.*
- *Megan informed me that corporate security was looking at the file and they handed it over to RCMP. We were told by Joe Freamo [of Audit and Evaluation] to stop all our activities while the RCMP was looking at this.*
- *RCMP took several months to reach a conclusion on whether they would take this on. Megan would have those dates. They did recommend we take it to the Toronto police Services.*

**August 2014**

- *I reported the above to the Toronto Police Services and they began their investigation.*

**December 16, 2014**

- *Constable Washilishin of Toronto Police called to let me know of the findings of the investigation. . . .*

**December 17, 2014**

- *I spoke with Megan to let her know what Police said and we then started the process of getting our full investigation started which Price Waterhouse Cooper are finalizing hopefully within the month.*

*We are also taking about re-instating Pay base on legal advice. Jurisprudence and undue hardship are the reasons. Undue hardship due to the delay but the delays was unforeseen as corporate security became involved and we were significantly delayed starting the second investigation.*

...

[Sic throughout]

[Emphasis in the original]

[259] Megan Turpin of LR did not testify.

[260] Ms. Jessett testified that in August of 2014, she brought the freezer project issue to Toronto Police Service's attention and that from time to time between August and December of 2014, she spoke with the service and provided it information.

[261] No one from the RCMP or the Toronto Police Service testified. There is no evidence that either one charged the grievor.

[262] Mr. Freamo did not testify; nor did anyone else from the CFIA's Audit and Evaluation branch or from its corporate security.

#### **4. The transport of beef samples from the GTA lab to a Mississauga lab**

[263] The evidence disclosed that during the e-coli investigation, some of the beef samples were moved from the GTA lab to a CFIA lab in Mississauga that did not ordinarily carry out testing on beef. In cross-examination by counsel for the grievor, it was suggested to both Ms. Weeks and Mr. Huszczyński that transporting the beef from the GTA lab to the Mississauga facility had been against protocol; both denied it. It was also suggested to both that the transport could have compromised the investigation, to which they both stated that it would not have, as long as the beef remained frozen.

[264] The grievor testified that he was surprised to hear that beef samples had been transported during the e-coli investigation. He said that there had been potential risks with that transport as strict guidelines must be followed on how beef is handled, sampled, and analyzed. He stated that the beef samples would have been considered a biohazard due to the potential presence of e-coli. According to him, the samples that were transported had not been put in proper containers and had not been properly labelled. When transported, they had to be kept below a certain temperature, to maintain their integrity. His evidence was that the transport breached CFIA guidelines.

[265] I was not provided with any of the guidelines with respect to storing and transporting food samples.

---

## 5. The hiring of Mr. Mourtada

[266] In 2009, the CFIA identified a need under the “Food Safety Action Plan” (“FSAP”) that led to a number of people being hired. According to the grievor’s evidence, about 20 people were hired via this process for the GTA lab, including Mr. Mourtada. He said that the process was run out of the Guelph HR office.

[267] The grievor stated that he had no HR training, that this was his first foray into staffing, and that he worked step-by-step with that HR office.

[268] Ms. Weeks testified that when she was hired for her position at the GTA lab in 2011, the grievor was on the hiring board.

[269] The grievor, Mr. Huszczyński, and Ms. Weeks formed the hiring board for the process to hire persons to work at the GTA lab under the FSAP. On May 19, 2009, all three signed a document titled, “Signed Statement of Person(s) Participating in Assessment”, which stated as follows:

*I, THE UNDERSIGNED, promise that I will faithfully and honestly fulfill the duties which devolve upon me in connection with this board and that I will not reveal to any person or persons, except those authorized by the Canadian Food Inspection Agency, the deliberations of the board, or the nature of its report. Having been made aware of the persons to be assessed, I declare that to the best of my knowledge I am not related to any of these persons, and that the nature of my association, if any, with these persons to be assessed, is such that I can render decisions in an impartial manner.*

...

[270] Both Mr. Huszczyński and Ms. Weeks testified that at the time the hiring board was in place from which Mr. Mourtada was hired, they were not aware that he was the grievor’s brother-in-law. Mr. Huszczyński stated he did not know that Mr. Mourtada was related to the grievor until the grievor was suspended from work. Ms. Weeks stated that she learned of the grievor’s relation to Mr. Mourtada when she was off work on maternity leave. There is no evidence as to when she was on maternity leave.

[271] Mr. Huszczyński testified that because Mr. Mourtada was not being considered for hiring in the part of the GTA lab for which he was responsible, he was not involved in the interview and marking process for Mr. Mourtada.

[272] Ms. Weeks testified that the process by which Mr. Mourtada was hired was her first venture into staffing. She stated that the grievor had asked her to participate. She stated that the process involved both a written questionnaire and an interview; the written questionnaire was marked against fixed answers. She stated that her role was to participate in the interviews for those people who would be hired into the section of the GTA lab for which she was responsible.

[273] Ms. Weeks testified that she and the grievor interviewed Mr. Mourtada and that they both took notes. She stated that her recollection was that she did not grade the interview. She stated that the grievor made the grade marks on his interview notes of Mr. Mourtada. She did not recall sitting with the grievor and grading the answers.

[274] The grievor testified that Ms. Weeks conducted the interview of Mr. Mourtada and stated that she did so because he felt uncomfortable asking Mr. Mourtada questions. The grievor did not put this point to Ms. Weeks in cross-examination.

[275] The grievor testified that he and Ms. Weeks collaborated in the grading process for Mr. Mourtada. He suggested that she contributed more than he did. She testified that she did not recall grading the interview answers with the grievor, that the grade was written in his interview notes, and that he did the marking. She also stated that again, when it came to the reference checks, she did not do make them — the grievor did.

[276] When counsel for the CFIA asked Ms. Weeks who decided to hire Mr. Mourtada, she replied that it was the grievor. When the grievor was asked who made that decision, he stated that it had been a collaborative decision; everyone on the hiring board had to agree. He admitted that in the end, he provided the signature because he had the signing authority.

[277] During cross-examination, Ms. Weeks was provided with a copy of both her notes and the grievor's from Mr. Mourtada's interview. She identified both her and the grievor's notes. Her notes had no numerical marks in them, but the grievor's did. She stated that all the handwriting in the grievor's notes was his, not hers, including the marks.

[278] The grievor's counsel suggested to Ms. Weeks that the grievor recalled her grading the interview notes. She stated that she did not recall that. The grievor's

counsel suggested to her that she had been involved in grading Mr. Mourtada's written questionnaire. She stated that she also did not recall that. When in re-examination, she was brought specifically to the written questionnaire and to each of its 10 pages and was asked in whose handwriting was the marking, she identified the marks as being in the grievor's handwriting.

[279] The grievor was not brought to the handwritten notes of Mr. Mourtada's written questionnaire nor was he asked to identify his handwriting or the marking.

[280] The grievor testified that he had not been involved in getting Mr. Mourtada to apply for the position. He stated that he did not view Mr. Mourtada as a relative because to him, in his culture, relatives are by blood. When married, a woman becomes part of her husband's family.

[281] I was provided with no evidence as to what culture the grievor belonged to or of its tenets.

#### **H. Not working the required hours**

[282] The PWC report disclosed that, which Mr. Malette testified to, due to irregularities identified while reviewing the walk-in freezer project, PWC expanded its analysis to include the grievor's arrival and departure activity at the GTA lab on each workday. The time frame reviewed was January 2013 to January 2014.

[283] In accordance with the grievor's offer of employment, he was required to work 37.5 hours per week, exclusive of lunch breaks.

[284] The PWC report disclosed that the review of the grievor's swipe-card entry and exit record showed that his hours of attendance at work per week were below 37.5 in 38 of 41 weeks reviewed, including any recorded leave that was taken during those weeks. Mr. Malette also testified to that effect.

[285] The process that Mr. Malette described in both the PWC report and in his testimony was that the information relied on was the grievor's first swipe-card activity on a workday, which would disclose when he arrived at work, and his last swipe-card activity on the workday, which would disclose when he left for the day.

[286] The PWC investigation was unable to determine if the grievor was at work or on leave on three days, October 23 to 25, 2013. At the outset of the hearing, the employer



conceded that on this point, the PWC report was incorrect, and that he was on authorized leave on those days.

[287] The PWC report disclosed that the grievor did not participate in interviews with PWC. Mr. Malette also testified to that effect and confirmed in cross-examination by the grievor's counsel that the information in the PWC report would not reflect any days that the grievor might not have been in the GTA lab due to work-related outings, such as meetings or training; nor would it reflect him working from home.

[288] Mr. Malette testified that the PWC report and the swipe-card records would not reflect any times "piggybacking" occurred, which was defined as occurring when one person swiped his or her electronic swipe card, yet more than one person entered or exited at the same time.

[289] Mr. Malette testified that the entry and exit points were doors as opposed to barriers that could limit access to only one person. He stated that if someone piggybacked into the GTA lab and did not swipe his or her card, when that person exited by swiping his or her card, an alarm would sound in a security office. Mr. Malette could not say whether a record of these piggybacking events was kept; nor did he check.

[290] The grievor testified that sometimes, he worked from home.

[291] Ms. Jessett testified that while she had no problem authorizing the grievor to work from home, she was not aware that he had been working from home. Nor had she authorized him to work from home.

### **I. The failure to co-operate in the PWC investigation**

[292] The PWC report states that on numerous occasions, its investigators corresponded with the grievor's civil and criminal counsel and requested that he participate in an interview. He declined.

[293] In an email dated April 16, 2015, Chantal Seeton, Executive Director of Workplace and Workforce Relations, CFIA, wrote to counsel for the grievor, confirming an email of April 15, 2015, and advising that Monday and Tuesday, April 20 and 21, 2015, had been set aside for the PWC investigators to interview him. She further set out that he was entitled to bring a support person or observer to the interview, but

that person would not be a representative.

[294] On April 17, 2015, counsel for the grievor emailed Ms. Seeton, stating that while given the pace of the investigation, they felt that the an interview request had come with short notice, they would seek instructions from the grievor and advise her in due course. Later that same day, she replied by email, providing two other interview date options.

[295] On April 20, 2015, counsel for the grievor emailed Ms. Seeton, advising that it was their understanding that the Toronto Police Service investigation was still ongoing and that since the grievor was entitled only to a support person who could act as an observer and not a representative, he would not attend the interview. However, they would consider answering any questions in writing that the investigators might wish to send.

[296] On April 21, 2015, Mr. Malette wrote to counsel for the grievor and stated as follows:

...

*As outlined in your email noted below, we are writing to seek Mr. El-Menini's full cooperation in responding to the following question:*

- *Full particulars in relation to any direct or indirect knowledge/information with respect to any current or past CFIA employee(s), including himself, who may have breached or contravened CFIA's Code of Conduct, CFIA's Conflict of Interest and Post-Employment Code or any other Federal Government Policies and Procedures, including but not limited to, procurement, contracting and hiring policies. The time period we are seeking Mr. El-Menini's cooperation in providing such information is for the period of April 2012 to current.*

*We recognize that time is of the essence and appreciate a written response by close of business on Friday April 24, 2015.*

...

[297] On April 25, 2015, Mr. Malette emailed counsel for the grievor and stated as follows:

...

*Further to our email of 04/21/2015, copy attached below, we are writing to advise that we have not received a response from you and/or your client, Mr. Houssam El-Menini, within the time frame we requested.*

*We respectfully request your response confirming that you and/or your client did not send a response as we want to rule out the possibility that it was sent to an incorrect email address.*

...

[298] On April 27, 2015, at 11:24 a.m., counsel for the grievor emailed Mr. Malette and stated as follows:

...

*Thank you for your emails of April 21 and 26, 2015.*

*The question posed by you, to Mr. El-Menini, is too broad to have it answered within the 72 hours that you have provided. With respect, I note that your investigation ignored Mr. El-Menini for one year and is now demanding detailed responses from him - set to a 72 hour deadline.*

*We have forwarded your question to Mr. El-Menini's criminal counsel and will contact you with our response, if he is advised to provide one.*

...

[299] On April 27, 2015, at 12:19 p.m., Mr. Malette emailed counsel for the grievor, stating as follows:

...

*We wish to clarify the content of your email and advise as follows:*

- 1. PwC was contracted, following a competitive bidding process, in January 2015; and*
- 2. Notwithstanding your position that 72 hours was insufficient for your client to provide a detailed response to our request, we wish to advise that it appears that pursuant to various Government of Canada policies and legislation, Mr. El-Menini had a duty to report any illegal acts or violations of work related rules to management, whether committed by himself or others.*

*We recognize that time is of the essence and we are attempting to obtain the information requested in an expeditious manner. Therefore, we kindly ask for the name of Mr. El-Menini's criminal counsel so that we can correspond directly with him/her.*

...

[300] On Monday May 4, 2015, counsel for the grievor wrote to Mr. Malette and advised him of the identity and phone number of the grievor's criminal counsel. Later that same day, Mr. Malette emailed the grievor's criminal counsel, stating as follows:

...

- *PricewaterhouseCoopers LLP (PwC) was contracted by the Canadian Food Inspection Agency (CFIA) to conduct an investigation into, and analysis of, various activities including the use and application of procurement, contracting including a freezer project, hiring policies and processes as they relate to our Staffing Values and actions as they related to CFIA's Code of Conduct or the CFIA's Conflict of Interest and Post-Employment Code. As part of this investigation, PwC has requested interviews with numerous CFIA employees, including Mr. El-Menini.*
- *Mr. El-Menini refused to attend an interview with us; however, he has agreed to respond to written questions. In this regard, on April 21, 2015, we requested Mr. El-Menini's full cooperation in providing us with the following information, which to date, remains outstanding:*

Full particulars in relation to any direct or indirect knowledge/information with respect to any current or past CFIA employee(s), including himself, who may have breached or contravened CFIA's Code of Conduct, CFIA's Conflict of Interest and Post-Employment Code or any other Federal Government Policies and Procedures, including but not limited to, procurement, contracting and hiring policies. The time period we are seeking Mr. El-Menini's cooperation in providing such information is for the period of April 2012 to current.

- 
- *In response to our follow-up correspondence, Mr. Macklin advised us on April 27, 2015, that a response would be forthcoming from Mr. El-Menini's*

*criminal counsel. To date, no response has been received.*

*As you are likely aware from Mr. Macklin, time is of the essence and we kindly request notification as to when we can expect receipt of the above noted information from Mr. El-Menini. In accordance with CFIA's Code of Conduct, Mr. El-Menini is obliged to cooperate and assist in the conduct of an investigation e.g. providing information to an investigation.*

...

[301] On May 6, 2015, the grievor's criminal counsel emailed Mr. Malette, stating as follows:

...

*Thank you for your correspondence below. I understand that the Toronto Police Service has an open investigation file in relation to this matter. As I trust you are aware, my client has the right to silence and a right against self-incrimination. In the absence of full use immunity or an undertaking to not provide information to the police (neither of which, I presume you can or would be willing to provide), my client is not prepared to answer any questions or provide any statements.*

*While he would otherwise want to cooperate fully with your investigation, the existence of an ongoing criminal investigation makes this option unfeasible. I trust that in the circumstances no adverse inference will be drawn against him.*

...

[302] I was not provided with any evidence that the grievor participated in any interview with PWC.

#### **J. The termination of employment**

[303] On May 29, 2015, the grievor was provided with two letters. One provided him with a copy of the PWC report, and the other invited him to a disciplinary hearing scheduled for June 3, 2015, which did not occur.

[304] On June 15, 2015, the grievor was invited to attend a disciplinary hearing scheduled for June 23, 2015. On June 22, 2015, his legal counsel advised the CFIA that he preferred that it provide a written decision to him. On June 23, 2015, Dr. Silva wrote to the grievor and copied the grievor's counsel with a letter terminating his

employment, stating the following:

...

*... I have carefully reviewed all the information concerning these matters and am satisfied that there is overwhelming evidence of your willful misconduct. As indicated in the Report prepared by PricewaterhouseCoopers I find that your actions are in contravention of:*

- 1. Your Conditions of Employment including:
  - a. Conflict of Interest and Post Employment Code*
  - b. Values and Ethics Code for the Public Sector*
  - c. Code of Conduct**
- 2. Agency Staffing Values*
- 3. Financial Administration Act*
- 4. Various Agency Policies and Guidelines such as the Policy on Procurement and Contracting and the Staffing Accountability Policy.*

*These actions are summarized as follows:*

- 1. The awarding of contracts to Alzahraa Inc. and 2253659 Ontario Inc. were not conducted at arm's length or in an impartial manner putting you in a direct conflict of interest. You did not follow and comply with the Financial Administration Act (FAA) and CFIA Policies and Procedures in relation to fulfilling your duties as a Manager including your signed attestation in the Specimen Signature Record for Delegated Authorities. This includes the falsification of documents through backdating and the issuance of contracts to companies related to you.*
- 2. The allocation of the Freezer Project to three separate phases was done to keep each of the contractor's costs below \$10,000.00 which is defined in the CFIA Procurement and Contracting Policy as Contract Splitting to keep the delegations of such contracts within your authority.*
- 3. Negligence in your duties as the delegated manager when signing S. 34 certification without looking at the details of the reports.*
- 4. Failure as a Manager to meet the additional obligations as indicated in the CFIA's Code of Conduct where you are expected to set an example by demonstrating high ethical and professional standards through your own conduct.*
- 5. Failure to report illegal acts or violations of work*

- related rules to management, whether committed by yourself or others.*
- 6. You failed to faithfully and honestly fulfill the duties which devolved upon you in connection with the hiring of your brother-in-law, Mr. Ihab Mourtada. Specifically, your declaration that to the best of your knowledge you were not related to any of the persons assessed, and that the nature of your association, if any, with Mr. Mourtada was such that you could not render a decision in an impartial manner.*
  - 7. You failed to respect the Code of Conduct when selecting Mr. Mourtada to work overtime during the week-end [sic] of the removal and installation of the freezer when he was not a certified tradesperson and should not have been there.*
  - 8. You failed to cooperate in the investigation conducted by PricewaterhouseCoopers and requests by management to provide information with respect to the investigation and findings.*
  - 9. You did not fulfill your obligations of working the required hours of work for 38 weeks of the 41 weeks investigated in accordance with your offer of employment; in addition, there are unauthorized absences on October 23 to 25, 2013.*

*I have taken into consideration your employment record and the nature of your duties. As a Manager with delegated financial authority you had additional obligations where you were expected to set an example by demonstrating high ethical and professional standards. Your actions fell far short of this expectation. I view your actions to be extremely serious as they have irreparably damaged the relationship of trust which must exist between you and this Agency. Under the circumstances, I find no alternative but to terminate your employment effective April 17, 2014 for just cause.*

...

[305] Dr. Silva testified that he has been in the public service since 1993. He has a PhD and is a veterinarian by profession. He joined the CFIA in 1997, when it was formed. He was appointed to his current position as the chief of science operating officer for the Science Branch in January of 2014.

[306] Dr. Silva testified that as the GTA lab manager, the grievor had full autonomy and full authority to act with respect to finance and HR matters. He stated that he puts a high level of trust in the lab managers, such as the grievor, because of the work they do and oversee. Lab managers are part of the CFIA's senior management team and are an extension of CFIA management in its regions.

[307] Dr. Silva stated that this matter came to his attention from Ms. Jessett, who provided him with a verbal briefing, which he believed occurred shortly after he began working in his current position. He stated that because she had been in the same location as the grievor and had known him for a long time, as an organization, it was determined that she would not be involved in the decision-making process for disciplining him.

[308] Dr. Silva reviewed the PWC report. He testified that it brought up several instances of misconduct, including breaches of the *FAA*, the *CFIA* code, and the *CFIA* *COI* code; clear evidence of contract splitting; breaches of the procurement policies; and breaches of the *V&E* code.

[309] Dr. Silva stated that the overall impact of the documentary evidence weighed, versus the grievor's years of service, led him to feel that the grievor could not be trusted to administer HR and financial matters with the required level of trust. He felt that the grievor would put the *CFIA* and the government at risk.

[310] Dr. Silva was brought to his letter of June 23, 2015, and was asked if all nine actions listed were equal in weight when discipline was considered. He stated that they were not all equal and that the ones at the top of the list were given more weight.

[311] In cross-examination, Dr. Silva stated that the unauthorized absence from work on October 23 to 25, 2013, was a factor but that he gave it limited weight. He conceded that in fact the grievor worked those three days, attending training.

[312] Dr. Silva confirmed that the disciplinary and security investigations were running in parallel.

[313] Dr. Silva confirmed that signing an *RFM* without reviewing it would be a breach of policy.

[314] Dr. Silva confirmed that the fact that the grievor did not attend the disciplinary meeting did not factor in the decision to terminate his employment; however, the absence of the grievor and what he had to say left the evidence against him unchallenged.



---

**K. The revocation of the grievor's reliability status**

[315] On June 23, 2015, the grievor's reliability status was revoked by a letter dated that day. Both Ms. Jessett and Dr. Silva testified that a term and condition of employment is having a minimum security clearance to hold a position at the CFIA, which is reliability status. When asked if he filed a grievance about it, the grievor stated that he referred it to his lawyer. Dr. Silva testified that he was not sure if the grievor had grieved the revocation.

**IV. Summary of the arguments****A. For the employer****1. The alleged constructive dismissal (grievance in file 566-32-9869)**

[316] The grievor contended that the action taken on April 17, 2014, was a termination of his employment, which the CFIA denied. It submitted that even if the constructive-dismissal grievance is characterized as being against a suspension without pay, then that suspension was administrative, not disciplinary, and the Board is without jurisdiction to deal with it. The CFIA referred me to s. 209 of the *Act* and to *Clark v. New Brunswick (Department of Natural Resources and Energy)*, [1995] N.B.L.A.A. No. 15 (QL); *Canada (Attorney General) v. Frazee*, 2007 FC 1176; and *King v. Deputy Head (Correctional Service of Canada)*, 2011 PSLRB 45.

[317] There is no evidence that the suspension without pay was disciplinary. In correspondence to the grievor on April 17, 2014, and again June 20, 2014, Ms. Jessett stated that he had not been terminated, that no disciplinary action been taken against him, and that he remained a CFIA employee. In her testimony, she stated that the suspension was not disciplinary and that he had been suspended pending the completion of the investigation.

[318] In the alternative, the employer submitted that when the suspension without pay was invoked, its evidence showed serious questions about the grievor's behaviour that warranted imposing it. It is within management's authority to organize its affairs and to preserve the integrity of an investigation, its operations, and its reputation.

[319] The employer submitted that this grievance should be dismissed.

**2. The termination of employment (grievance in file 566-32-11540)**

[320] The CFIA has the authority to establish terms and conditions of employment, including standards of conduct and rules governing the procurement of goods and services. The grievor's employment offer for his position as the GTA lab manager specifically referred to the CFIA code and the CFIA COI code.

[321] Both codes address conflict of interest. It is clear that the grievor was responsible for avoiding real, potential, or apparent conflicts of interest. The CFIA COI code specifically mentions that CFIA employees must review their obligations annually and file a report if necessary. The CFIA COI code specifically references family members when dealing with conflicts of interest. Finally, the V&E code outlines expected behaviours of all public servants and sets out that managers are held to a higher standard.

[322] The grievor received training on the V&E code and confirmed that he had read and understood both the CFIA code and CFIA COI code.

[323] Both the CFIA code and the CFIA COI code note that a breach of either one can lead to discipline, up to and including termination of employment.

[324] The grievor received mandatory training. In April of 2006, he took the CFIA's MFS course, and Ms. Jessett confirmed that before he was issued his financial signing authorities, he had to take and pass a test based on his training, which he did.

[325] The MFS course sets out that it is the job of managers (such as the grievor) to lead, which contradicts the grievor's evidence and position that subordinates were either directing him or condoning his doing the wrong thing.

[326] The MFS course specifically sets out the following:

1. contract splitting is a common concern with the contracting process;
2. all purchases over \$10,000.00 must go through the National Procurement Centre, and that goes for all CFIA employees up to and including the president;
3. for purchases over \$10,000.00, there is a requirement to fill out certain forms, obtain managerial approval, and send the request to the National

Procurement Centre, and the estimated time to award and issue a contract of between \$10,000.00 and \$25,000.00 is 12 days;

4. the section on the delegation of financial signing authorities sets out that one of the objectives is for managers to understand their accountability;

5. the section on the generic expenditure process outlines the steps for the procurement process, starting with committing funds through to receiving goods and services under ss. 32 and 34 of the *FAA*;

6. under contracting principles, it lists integrity, competition, openness and transparency, fairness, and best value; and

7. there are pitfalls such as splitting a requirement or need (contract splitting) and conflicts of interest.

[327] The grievor was required annually to sign a specimen signature record. He signed one on March 23, 2012, and Ms. Jessett signed off as his delegated manager. She testified that he had full authority for purchasing materials and services up to \$10,000.00.

[328] On the conflict-of-interest issue, the employer referred to me *Atkins v. Treasury Board (Ministry of Transport)*, PSSRB File No. 166-02-889 (19740321); *Threader v. Canada (Treasury Board)*, [1987] 1 F.C. 41; *Lalla v. Treasury Board (Industry, Science and Technology)*, PSSRB File No. 166-02-23969 (19940113), [1994] C.P.S.S.R.B. No. 4 (QL); *McIntyre v. Treasury Board (Revenue Canada - Customs and Excise)*, PSSRB File No. 166-02-25417 (19940718), [1994] C.P.S.S.R.B. No. 101 (QL); *Oliver v. Canada Customs and Revenue Agency*, 2003 PSSRB 43; and *Brazeau v. Deputy Head (Public Works and Government Services)*, 2008 PSLRB 62.

#### **a. The demolition**

[329] A need was identified in the GTA lab for another freezer. The original plan was to convert the HC unit from a walk-in cooler to a walk-in freezer. The grievor obtained from SNC an estimate in the range of about \$16,000.00. While he was referred to the CFIA Facilities manager (Mr. Reath), who offered him assistance, the grievor did not avail himself of that assistance and took on the freezer project himself.

[330] Early into the process, it was determined that the original planned conversion of the HC unit was not going to work, and that plan was scrapped. However, the contractor who had advised that the conversion was not possible, Tung Wing, also advised the grievor that he needed only a freezer box, as it had a compressor.

[331] The grievor signed a PO dated September 30, 2013, under his authority under s. 32 of the *FAA*, committing funds for the demolition phase of the freezer project in the amount of \$6820.00 to a contractor, 225 Inc., of which all the corporate officer positions were held by his sister-in-law Karen. He authorized this work and committed the funds without receiving any estimates. While the invoice for the work is dated November 15, 2013, he signed off on the approval under s. 34 of the *FAA* on October 8, 2013. He emailed Mostapha and attached the 225 Inc. invoice as well as the forms to fill out to permit the direct deposit of a payment to 225 Inc.'s account.

[332] According to the evidence, the HC unit was demolished and removed on October 19, 2013. As part of it, the grievor approved overtime for his brother-in-law, Mr. Mourtada, for a total of 12 hours of work (19 hours of straight time). This is consistent with the SNC invoice dated October 22, 2013, and with the grievor's email dated October 15, 2013, indicating that the work would be done on that weekend.

[333] The CFIA submitted that the grievor knowingly contracted with a related company for the demolition phase of the freezer project. It was also clear that Ms. Jessett did not know that the work was being done by a company related to the grievor. Ms. Wong's evidence was that the grievor was responsible for choosing 225 Inc. as a contractor.

**b. The freezer purchase**

[334] Under his authority under s. 34 of the *FAA*, the grievor signed the confirmation of goods and services for a walk-in freezer box and compressor on September 18, 2013, based on an invoice dated November 6, 2013, in the sum of \$9,983.00 from his brother's company, for which as late as September 21, 2013, the grievor had filed corporate documents, and until October 15, 2009, was listed as its president.

[335] With respect to the RFM to commit funds for the purchase of the walk-in freezer, it appears that Ms. Glezakos completed the original RFM on

November 13, 2013, only later to be altered at the grievor's request to identify another CFIA GTA lab employee as the originator of it, rather than him. The form was also backdated at his request and then signed. The commitment of funds under s. 32 of the FAA was done well after the walk-in cooler had already been purchased.

[336] The employer submitted that by his action, the grievor was "cooking the books" to cover up the fact that he was not following the rules.

**c. The freezer installation**

[337] It appears that on October 11, 2013, the grievor signed a PO committing funds for the installation of the walk-in freezer to be done by Tung Wing, which was done on October 29, 2013, and for which Tung Wing provided an invoice on October 20, 2013, for the sum of \$9,831.00, which included electrical work. An email dated October 28, 2013, from the grievor to his brother-in-law, Mr. Mourtada, which advised Mr. Mourtada that Tung Wing would require access to the GTA lab building, was consistent with the work being done on October 29, 2013.

[338] All Tech invoiced the CFIA for \$1,152.00 for labour and materials. The invoice is dated October 22, 2013. This is despite an email on that same date at 1:27 p.m. from All Tech to the grievor providing an estimate, and 22 minutes later, the grievor confirming that the work had already been done. There was clearly no prior approval as the RFM was dated October 22, 2013, and according to the grievor, the work was done on October 19 and 20, 2013.

**d. The freezer project - conclusions**

[339] The freezer project process was a clear case of contract splitting, which was a violation of the procurement and contracting policies.

[340] The total cost of the freezer project, without the purchase of shelving or mats, was split into five separate contracts totalling \$29,216.69, as follows:

Demolition	\$7,706.60
SNC	\$542.94
Purchase	\$9,983.55

---

Installation	\$9,831.00
<u>Electrical</u>	<u>\$1,152.60</u>
Total	\$29,216.69

[341] Mr. Reath testified that breaking up the freezer project into the three phases was clearly contract splitting. He further testified that he has seen the unit in question that is installed in the GTA lab building and that that the costs associated with demolishing the HC unit did not make sense. He said that in a project like this, the demolition would have been included in the cost of installing the new unit. He also stated that there would have been no need for a separate electrical cost as any certified refrigeration company would be able to do the necessary electrical work. He stated that a project of this type should have cost somewhere in the range of \$8,000.00 to \$9,000.00 inclusive and that the cost expended by the CFIA GTA lab was ridiculous.

[342] The grievor testified that demolishing the HC unit took two individuals the course of one morning and perhaps part of the afternoon of one day, yet the invoice for the work was over \$7,000.00.

[343] The grievor was well aware that if the freezer project exceeded \$10,000.00, it would exceed his spending authority, and he would have to go through the National Service Centre. The CFIA submitted that on its own, the contract splitting would warrant terminating the grievor's employment.

[344] In addition to the contract splitting, the grievor was clearly in a conflict of interest. Given the policies in force and the jurisprudence in this area, again, on its own, his action would warrant terminating his employment.

[345] Backdating and falsifying documents and avoiding the requirements of ss. 32 and 34 of the *FAA* are also serious acts of misconduct that on their own would warrant terminating the grievor's employment.

[346] The grievor maintained that he followed Ms. Wong's instructions, directions, and authorization. This position is without foundation. Her evidence was that she advised him of the rules and that he chose the direction he took. Ms. Jessett, who was his direct supervisor, was unaware of any conflict of interest or contract splitting in the freezer project. Only when it was complete did she discover an invoice in

Ms. Wong's work area that made her suspicious about what might have happened.

[347] Despite regular bilateral meetings with Ms. Jessett, the grievor never mentioned to her that he intended to use his brother's or his sister-in-law's companies with respect to the freezer project. At no time was she aware that the grievor was contracting on behalf of the CFIA with organizations that were related to him or that he was contract splitting. She further testified that she had been unaware that Mr. Mourtada was the grievor's brother-in-law.

[348] Ms. Wong did not have authority to commit funds for the freezer project; it rested with the grievor, and she did the paperwork.

[349] Mr. Huszczyński, who reported to the grievor, testified that he told the grievor that the freezer project should proceed through the National Procurement Centre or the Facilities group. Mr. Huszczyński specifically denied that he suggested to the grievor that he use his brother's company. In fact, Mr. Huszczyński stated that two weeks after the grievor returned from his vacation, the grievor told him that Tung Wing had located a freezer for under \$10,000.00 that it could install in October.

[350] Messrs. Huszczyński and Major and Ms. Weeks all testified that the freezer project was not urgent.

**e. The hiring of Mr. Mourtada**

[351] Mr. Mourtada is the grievor's brother-in-law. During the hiring process that led to Mr. Mourtada's hiring, the grievor signed a document titled, "Signed Statement of Person(s) participating in Assessment", which contains a declaration that he was not related to any person in the selection process. The grievor's testimony that he did not view Mr. Mourtada as a relative strains the preponderance of probabilities. The grievor has been married for 16 years. Stating that Mr. Mourtada was not a relative went directly to the grievor's credibility.

[352] In addition to the signed statement, the grievor also had covered staffing in the MFS course and had received "Fast Track Staffing" training on May 15, 2008.

[353] Ms. Weeks, who was involved in the staffing board with the grievor and who participated in interviewing Mr. Mourtada, stated that the grievor was the lead in the process, that he marked Mr. Mourtada's written questionnaire and the oral interview

answers, and that he conducted the reference check on Mr. Mourtada. While she certainly participated in the hiring process and on the selection board, only the grievor had the authority to hire Mr. Mourtada.

**f. The failure to work his full complement of hours**

[354] The PWC report disclosed that the swipe-card activity analysis reflected that the grievor was not working his full complement of 37.5 hours per week as per his employment contract. No issue was taken with the accuracy of the swipe-card information. It was clear from the PWC report that there was a significant shortfall in the grievor's hours at work.

[355] Had the grievor participated in the PWC investigation, perhaps the PWC report on this would have been different; however, he did not, and the employer made its decision based on the evidence it had.

**g. The failure to report a violation of work rules**

[356] The CFIA code, under the heading "Ethical Decision Making and Conduct", makes it clear that the grievor was required to report violations of work rules and to demonstrate leadership (due to his position), neither of which he did.

**B. For the grievor**

**1. The investigation delay**

[357] The grievor was suspended with pay in February of 2014, which became a suspension without pay in April of 2014. At that time, he was told that the investigation would be quick and efficient; it was not.

[358] While the investigation was pending, the grievor could not look for another job.

[359] *Baptiste v. Deputy Head (Correctional Service of Canada)*, 2011 PSLRB 127, stands for the proposition that an indefinite suspension can be quashed. The grievor referred me specifically to paragraphs 326, 330, 331, and 335.

[360] *University of Ottawa v. International Union of Operating Engineers, Local 796-B*, [1994] O.L.A.A. No. 21 (QL), held that a lengthy delay disciplining an employee for wrongdoing can give rise to setting aside the penalty.



[361] The grievor submits that the delay was 14 months and that it was inordinate, given the employer's unlimited resources; as such, the termination of his employment should be quashed for that reason.

[362] The reason for the delay was canvassed primarily with Ms. Jessett, who had no explanation. She said that she had hoped it would not take too long. The internal memo that she prepared identified the delay as a serious issue. According to the evidence, someone at the CFIA said that the RCMP had told the CFIA to stop investigating.

[363] There is no reasonable explanation for the failure to pursue the investigation. The grievor was told to go home and wait, which he did for over nine months, while nothing happened. No investigation was proceeding. The evidence disclosed that perhaps the local police were looking at the situation, but as of December of 2014, it was known that that avenue was going nowhere.

[364] The delay alone is substantial and based on *University of Ottawa*, it is sufficient to justify quashing the discipline.

## **2. The termination of employment**

### **a. The alleged conflict of interest and contract splitting**

[365] The test that should be applied with respect to the allegations against the freezer project are set out in *McKinley v. BC Tel*, 2001 SCC 38, as follows:

1. Did the employer establish the deceit?
2. Does the nature and degree of the deceit justify the termination of employment?

[366] In *McKinley*, the court held that there are degrees of deceit and that less-serious acts of deceit do not justify terminating employment. The grievor referred me to paragraphs 48, 49, 51, 53, 55, and 56, which state in part as follows:

*48 . . . I am of the view that whether an employer is justified in dismissing an employee on the grounds of dishonesty is a question that requires an assessment of the context of the alleged misconduct. More specifically, the test is whether the employee's dishonesty gave rise to a breakdown in the employment relationship . . . that just cause for dismissal*

exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee's obligations to his or her employer.

49 . . . (1) whether the evidence established the employee's deceitful conduct on a balance of probabilities; and, (2) if so, whether the nature and degree of the dishonesty warranted dismissal. . . .

. . .

51 . . . a contextual approach to assessing whether an employee's dishonesty provides just cause for dismissal emerges from the case law on point. In certain contexts, applying this approach might lead to a strict outcome. Where theft, misappropriation or serious fraud is found, the decisions considered here establish that cause for termination exists. This is consistent with this Court's reasoning in *Lake Ontario Portland Cement Co. v. Groner*, [1961] S.C.R. 553, where this Court found that cause for dismissal on the basis of dishonesty exists where an employee acts fraudulently with respect to his employer. This principle necessarily rests on an examination of the nature and circumstances of the misconduct. Absent such analysis, it would be impossible for a court to conclude that the dishonesty was severely fraudulent in nature and thus, that it sufficed to justify dismissal without notice.

. . .

53 Underlying the approach I propose is the principle of proportionality. An effective balance must be struck between the severity of an employee's misconduct and the sanction imposed. The importance of this balance is better understood by considering the sense of identity and self-worth individuals frequently derive from their employment, a concept that was explored in *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313, where Dickson C.J. (writing in dissent) stated at p. 368:

*Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.*

. . .

55 In light of these considerations, I have serious difficulty with the absolute, unqualified rule that the Court of Appeal endorsed in this case. Pursuant to its reasoning, an employer

would be entitled to dismiss an employee for just cause for a single act of dishonesty, however minor. As a result, the consequences of dishonesty would remain the same, irrespective of whether the impugned behaviour was sufficiently egregious to violate or undermine the obligations and faith inherent to the employment relationship.

56 Such an approach could foster results that are both unreasonable and unjust. Absent an analysis of the surrounding circumstances of the alleged misconduct, its level of seriousness, and the extent to which it impacted upon the employment relationship, dismissal on a ground as morally disreputable as “dishonesty” might well have an overly harsh and far-reaching impact for employees. In addition, allowing termination for cause wherever an employee’s conduct can be labelled as “dishonest” would further unjustly augment the power employers wield within the employment relationship.

[367] The grievor referred me to *Noseworthy v. Riverside Pontiac Buick Ltd.*, 1998 CarswellOnt 4889, in which the Ontario Court of Appeal upheld a decision of wrongful dismissal because although the employee acted dishonestly, it was an error of judgment. The grievor submitted that the facts in this case parallel those in *Noseworthy*.

[368] *Way v. Canada Revenue Agency*, 2008 PSLRB 39, states that whenever possible, employment relationships should be salvaged.

[369] *Brazeau* set out the 10 factors in *Brown and Beatty, Canadian Labour Arbitration*, 4th edition, which an adjudicator should consider when assessing the fairness of a particular penalty. The grievor submitted that those factors, as they apply to his situation, should be viewed as follows:

1. his record was impeccable;
2. the uncontested evidence was that he was a good manager;
3. he was a long-serving employee with 19 years of public service;
4. the offence was an isolated event, and as set out earlier, he had an impeccable record;
5. the provocation factor does not apply;

6. the actions that took place were not planned;
7. the penalty has imposed a special economic hardship for him as he is the father of five children and the sole income earner;
8. the rules with respect to contract splitting were not uniformly applied as Ms. Wong had also engaged in it, and Mr. Major participated in practices that did not follow the CFIA's policies and procedures;
9. the circumstances negate intent in that the grievor did not receive appropriate training when he asked for it, and the training that he received was substandard; and
10. there was no mal-intent — he was not clear on specific policy rules.

[370] The grievor referred me to *Demers v. Treasury Board (Revenue Canada, Taxation)*, PSSRB File Nos. 166-02-13980 and 13990 (19830912), [1983] C.P.S.S.R.B. No. 99 (QL). From the beginning of his employment, Mr. Demers had been engaged in preparing tax returns and other sundry accounting duties for remuneration outside his work with the employer, which it viewed as a conflict of interest. It terminated him from his position. The Public Service Staff Relations Board (PSSRB) reinstated him, finding that he did not understand conflict-of-interest directives, that he had otherwise been a fully satisfactory employee, that he had failed to comprehend the seriousness of his actions, and that he could be rehabilitated.

[371] The grievor is a life-long public servant who works in a niche area in which it is difficult to find a job.

[372] With respect to the contract-splitting allegation, the grievor submitted that there was no question that a freezer had been required. He provided detailed evidence about the problems encountered due to the large e-coli investigation and the potential hazards of transporting beef, which was done under Mr. Huszczyński's direction. Ms. Wong told him that if the freezer project proceeded in the fashion it did, it would not be contract splitting. This was her area of expertise and her advice. He took her advice, to his detriment.

[373] The grievor pointed to the voluminous policy documents. What happened was not that separate contracts were all awarded to one supplier but to several separate

suppliers for several separate contracts for different stages of a project. These were Ms. Wong's responsibilities. She committed the funds with no input from the grievor.

[374] The grievor readily admitted that documents were backdated; however, Ms. Wong and Ms. Glezakos did it, not him. There is no evidence that he instructed anyone to backdate any documents. According to Ms. Wong, it was a common practice that was not isolated. The hearing heard that Mr. Major backdated documents.

[375] The grievor is a scientist; a crisis occurred, and lives were at stake. He was trying to get his laboratory back up to snuff, and he relied on the guidance of his resource manager, Ms. Wong. There is no evidence of mal-intent.

[376] At that point, the contract splitting became a conflict of interest. The hearing heard that Mr. Huszczyński told the grievor to source the freezer from his brother. Detailed evidence showed how Mr. Huszczyński suggested that the grievor look to his brother's company.

[377] There is undisputed evidence that the grievor made numerous attempts to obtain a freezer. Mr. Reath stated that the first effort to convert the HC unit showed good intentions and arm's-length transactions under the \$10,000.00 maximum. It is noteworthy that both Mr. Malette and Ms. Jessett stated that had the conversion been successful, there would have been no contract splitting or conflicts of interest. It was a diligent attempt.

[378] The grievor tried to go through SNC and PWGSC; the costs were high, approximately \$37,000.00 and \$40,000.00, respectively.

[379] Mr. Reath suggested that the quote he provided to Ms. Jessett in November of 2013 for \$11,159.00 was for a "Cadillac version"; however, Ms. Achchan's affidavit dispels the cost myth. The grievor submitted that Mr. Reath is not credible and that an adverse inference should be drawn from his evidence.

[380] There is no evidence that the cost of the freezer and the demolition was anything but reasonable. The grievor entered into contracts for the work after carrying out exhaustive searches. There was nothing wrong sourcing the freezer from his brother's company and having it installed at arm's length.

[381] With respect to policies and procedures, during her cross-examination, Ms. Jessett, who was more senior and prepared to give evidence, had difficulty finding details with respect to ss. 32 and 34 of the *FAA*. It spoke volumes that someone of her position, experience, and preparation would have difficulty with these sections, yet the CFIA submitted that the grievor should have been well versed in that area.

**b. Mr. Mourtada**

[382] Two issues involve Mr. Mourtada — his hiring and the grievor using him for overtime.

[383] The grievor's evidence was that he did not know Mr. Mourtada very well. He admits that Mr. Mourtada is his brother-in-law. He met him in Lebanon, and Mr. Mourtada came to Canada in 2005. They did not socialize with one another. The grievor stated that he had not been involved in recruiting Mr. Mourtada.

[384] Conflicting evidence was tendered by Ms. Weeks and the grievor with respect to the hiring process. She took detailed notes. She suggested that she had minimal involvement, yet the documentary evidence suggests otherwise. The grievor stated that they had equal involvement.

[385] Mr. Huszczyński stated that the hiring panel had equal input into the hiring process.

[386] The grievor testified that he did not have more input than Ms. Weeks in the hiring of Mr. Mourtada, who had the highest scores.

[387] The grievor admitted that he signed the declaration; however, there was no intent to breach any rules. In his culture, a brother-in-law is not a relative. They did not see each other very often or socialize. The grievor referred me to *Noseworthy* and likened the actions involving hiring Mr. Mourtada to an error in judgement; there was no mal-intent. The grievor made a bad decision and should not have lost his job over it.

[388] With respect to overtime, the employer submitted that having him work the weekend at issue was wrong; however, the grievor stated that he asked Mr. Huszczyński and Mr. Major if they could work that weekend. Neither could, so he got Mr. Mourtada to work it. The employer suggested that liability issues would have

been involved, yet certified tradespeople were carrying out the work, and Mr. Persaud from SNC was there.

[389] The grievor submitted that nothing with respect to Mr. Mourtada should be a basis for terminating his employment.

**c. The failure to co-operate in the PWC investigation**

[390] The grievor referred me to *Tober Enterprises Ltd. v. United Food and Commercial Workers International Union, Local 1518*, 1990 CarswellBC 2995, which states as follows:

...

*On the other hand, where an employee deliberately attempts to deceive his employer by a false or misleading explanation, the employee's conduct is clearly blameworthy and threatens the basis of the employment relationship. The employee's behaviour is equally blameworthy where he knowingly allows his silence to damage the legitimate business interests of the employer. Absent these kind of circumstances, however, an employee's decision to remain silent when accused of wrongful conduct by his employer does not form a proper basis for the imposition of discipline.*

...

[391] The grievor submitted that there is no basis upon which his failure to co-operate with the PWC investigation should have led to discipline as during the course of that investigation, he did not provide a false or misleading explanation; nor by his silence did he knowingly allow a legitimate business interest to be damaged.

[392] The CFIA referred the matter to both the RCMP and the Toronto Police Service. In turn, the grievor heeded the advice of his legal counsel to remain silent, which was not an admission of fault. He would have been happy had there been no police investigation.

**d. The failure to work his full complement of hours**

[393] The grievor testified that he often worked at home. He also stated that he would often leave the building for meetings.

[394] There was also evidence that "piggybacking" occurred with the swipe cards.

[395] The facts that piggybacking occurred and that the grievor both worked at home and was required to leave the building at times to conduct his job duties renders the swipe-card evidence completely unreliable.

**e. The bond of trust**

[396] The grievor submitted that he is passionate about his work, that he received awards and worked long hours, that he placed his job before his family, and that he turned down a promotion.

[397] The grievor never did anything to deceive his employer. With respect to the freezer project, he relied on the resource manager, Ms. Wong. There was no mal-intent, and at the worst, there was a lapse in judgement. Ms. Jessett described him as a good employee, and Mr. Reath described his actions in trying to convert the HC unit as good intentions.

[398] The grievor wants his job back.

[399] In the alternative, if I find that there has been misconduct, the grievor submitted that a lengthy suspension, such as the time served, would be appropriate given all the circumstances.

**C. The employer's reply**

[400] With respect to *Baptiste*, the remedy was not to quash the discipline but to provide the grievor in that case with some salary.

[401] With respect to *University of Ottawa*, it is illogical to quash the termination; again, if there was a delay, the remedy should deal with it.

[402] The CFIA submitted that it brought forward several cases that deal with terminations of employment and that are more in line with the facts of this case than those submitted by the grievor. *McKinley* and *Noseworthy* are not applicable to the grievor's case.

[403] With respect to *Way*, the CFIA referred me to paragraph 101, which states as follows:

*. . . The penalty is severe but justifiable. Brown and Beatty, Canadian Labour Arbitration, 4th ed., at 7:3330, state the*



*following: "Indeed, some behaviour is so unethical and so inconsistent with the goals and objectives of an enterprise that it raises real doubts about the employee's capacity and/or willingness to adhere to the most fundamental rules of honesty and loyalty . . . ."*

[404] With respect to *Demers*, in that case, the grievor immediately acknowledged his wrongdoing.

[405] As for *Tober*, the failure to co-operate was clearly an aggravating factor.

## **V. Reasons**

### **A. The suspension without pay or constructive dismissal grievance (file 566-32-9869)**

[406] The grievor characterized this grievance (in file 566-32-9869), filed with respect to his suspension without pay commencing on April 17, 2014, as being about a termination of his employment. In correspondence, he or his legal counsel also referred to the suspension without pay as constructive dismissal. The employer took the position that its action was an administrative suspension pending the investigation.

[407] On August 21, 2014, in correspondence to the PSLRB, counsel for the grievor characterized the CFIA's actions of April 17, 2014, as a constructive dismissal. In final argument, the grievor did not argue this.

[408] It is not uncommon within the federal public service, over which this Board and its predecessors, the PSLREB, PSLRB, and PSSRB have and have had jurisdiction, for the employer, in cases of a suspicion of misconduct, to suspend employees without pay, pending investigations. There is an abundance of jurisprudence.

[409] As set out in *Frazer*, not every action taken by an employer that adversely affects an employee amounts to discipline. I agree and accept that an employee may well feel aggrieved by decisions that negatively impact on the terms of his or her employment. I also agree that the vast majority of such workplace adjustments are administrative in nature and are not intended to be a form of punishment. The jurisprudence indicates that the issue is not whether an employer's action was ill conceived or badly executed but whether it amounted to a form of discipline involving a suspension, or in this case, a termination of employment. Similarly, an employee's feelings about being unfairly treated do not convert administrative action into

discipline.

[410] In addition, as set out in *Frazee*, one of the primary factors in determining if an employee has been disciplined concerns the employer's intention. The question to be asked is whether it intended to impose discipline and whether the impugned decision was likely to be relied upon in imposing future discipline. The Court went on to state that nonetheless, how an employer chooses to characterize its decision cannot by itself be a determinative factor.

[411] I have no doubt that as of April 17, 2014, the employer's intention, as described by Ms. Jessett and as set out in the April 17 letter, was to suspend the grievor pending a more extensive investigation.

[412] Ms. Jessett testified that she made the decisions to suspend the grievor in both February and April of 2014. Her evidence was that he remained an employee. After suspending him with pay in February of 2014, the CFIA engaged Ernst to carry out an investigation that disclosed issues with the procurement process and that recommended a more fulsome investigation. Ms. Jessett testified that after she reviewed the Ernst report, she consulted with LR and took the steps to continue the grievor's suspension, albeit without pay. In the April 17 letter, she stated as follows:

...

*This letter is further to the letter of February 20, 2014, in which you were informed that an administrative review or investigation was to be conducted into certain serious allegations regarding your performance of your duties as Manager, GTA Laboratory.*

*The Employer had engaged Ernst and Young to conduct a preliminary or administrative review into the allegations first to determine whether or not there was sufficient information and whether or not a full investigation ought to be conducted into the allegations. As you were interviewed as part of this review, you are aware of the particular issues which have been identified as concerns. I have now received a recommendation from Ernst and Young; following their administrative review they have recommended that the matters be fully investigated, so as to determine the validity of the allegations and purported facts.*

*We have reached a point where I believe the concerns and/or issues, if proven could be very serious and so I feel it is now prudent to place you on leave without pay pending the*

*completion of the investigation. I must stress to you that this in no way means that any determination has been made into the outcome of this investigation, nor has any determination been made as to whether or not disciplinary or corrective action is required.*

*This action is not disciplinary, but is intended to allow the Employer to examine the issues thoroughly, and to determine appropriate action. While it is my expectation that the investigation be conducted quickly and efficiently, I will require you to remain at home without pay until such time as the investigation has been completed.*

*Please note, while you are at home on leave without pay, you will be required to be available for interviews, attend meetings as required and respond to any requests during this full period. Should you need to leave town or not be available for interviews, you must submit a request and be granted approved leave, in advance. . . .*

. . .

[413] After receiving the grievance in the form of the letter from the grievor's counsel of May 27, 2014, and in response to it and to counsels' subsequent letter of June 20, 2014, Ms. Jessett replied and stated as follows:

. . .

*As indicated in my letter of April 17, Mr. El Menini has not been demoted or terminated, nor has any disciplinary action been taken.*

*Therefore, with respect to your categorisation that this grievance is a termination grievance, as Mr. El-Menini has not been terminated or demoted as per paragraph 12.(2)(c) or (d) of the Financial Administration Act, the grievance does not transmit directly to the final level. As a result, the skipping of steps in the grievance process has to be mutually agreed to. In this case, the Employer has not agreed to such a request. As a result, it is premature to transmit this grievance to the Public Service Labour Relations Board. The Employer will of course respond to the Board with respect to the filing directly.*

. . .

[414] All the evidence points to the fact that the CFIA intended to suspend the grievor pending a further investigation.

[415] In the April 17 letter, Ms. Jessett said that she expected that the investigation would be conducted quickly and efficiently. The grievor testified that she told him that it would be done within a week. I do not accept his evidence on this point.

[416] Originally, when the grievor was suspended on February 20, 2014, he was told that an administrative investigation was underway into what were described as serious allegations about how he performed his GTA lab manager duties. While he was initially suspended on that date, the Ernst report was completed only on March 25, 2014, and he was unaware of it until April 17, 2014.

[417] Given what was set out in the Ernst report, the length of time that the initial investigation took, and what Ms. Jessett stated in the April 17 letter, it makes no sense that she would state that the further investigation would be done within a week. In addition, the grievance filed on his behalf by his legal counsel on May 27, 2014, stated that the grievor understood that the CFIA would have the investigation results within two weeks.

[418] I find that the evidence disclosed that the CFIA's action on April 17, 2014, was a suspension without pay and that the grievance of May 27, 2014, was against a suspension and not a termination, despite the grievor's characterization of that action as a termination of his employment.

[419] The employer raised an objection that the Board does not have jurisdiction to hear this grievance because the grievor did not properly pursue it through the grievance process. I agree.

[420] According to the *Regulations*, the grievance process requires employers, who are bound by the *Act*, to have a maximum of three grievance process levels. A grievor must file a grievance against his or her employer within a specified time at a specified level, failing which he or she is barred from doing so without seeking an extension of time as per the *Regulations*.

[421] The *Regulations* provide further that if a grievance is filed within the appropriate timelines at the appropriate level, the employer is required to respond to it within a specified time. Once that time has expired (even if the employer has not responded), the grievor has a deadline within which to move his or her grievance to the next level. This process for advancing a grievance and replying to it is repeated at each

level of the grievance process until the final level is reached. There, again, the employer has a specified time limit within which to reply to the grievance, after which a grievor has a specified time within which to refer it to the Board for adjudication, assuming the Board has jurisdiction to hear it.

[422] However, the facts of this case present a conundrum because a termination grievance can potentially follow a different path through the grievance process than a suspension grievance can. Section 71 of the *Regulations* provides that a grievance against a termination of employment may bypass all levels of the grievance process and start at the final level, after which it can be referred to the Board for adjudication. This is a variance in the process that is different from that for other grievances, which, unless the parties agree, are required to go through all levels of the grievance process before reaching the final level.

[423] The Board derives its jurisdiction from the *Act*, of which s. 225 states as follows:

***Jurisdiction***

***Compliance with procedures***

*225 No grievance may be referred to adjudication until the grievance has been presented at all required levels in accordance with the applicable grievance process.*

[Emphasis in the original]

[424] Section 225 of the *Act* sets out that as a condition precedent to the Board having jurisdiction over a grievance, it must first be presented at all levels of the grievance process.

[425] Section 208 of the *Act* sets out what can be grieved. Not everything that can be grieved can be adjudicated, as the Board's jurisdiction is limited by s. 209. The portion of s. 209 relevant to this grievance specifies as follows:

***Reference to adjudication***

*209 (1) An employee who is not a member as defined in subsection 2(1) of the Royal Canadian Mounted Police Act may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to*

...

*(b) a disciplinary action resulting in termination, demotion, suspension or financial penalty . . . .*

...

[Emphasis in the original]

[426] The grievor delivered this grievance by a letter sent by his legal counsel and dated May 27, 2014. In it, his counsel, who had been authorized to act on his behalf, advised Ms. Jessett that they took the position that the CFIA's actions amounted to a termination of the grievor's employment, stating as follows:

...

*Given that he is not in the work place [sic], please accept this letter as notice of grievance in lieu of the form set out at s. 67 of the Regulations. Further, pursuant to s. 71 of the Regulations since this grievance relates to termination, we are moving to the final level of the grievance process.*

...

[427] Neither Ms. Jessett nor anyone else at the CFIA responded to the May 27, 2014, letter by June 17, 2014, on which date counsel for the grievor wrote to Ms. Jessett, advising that unless she responded by June 18, 2014, they would refer the grievance to the PSLRB for adjudication. She did respond by June 18, 2014, and in a letter advised counsel for the grievor that she would respond to the correspondence during the week of June 23, 2014. Despite that letter, counsel for the grievor wrote to her on June 19, 2014, advised her that the time frame to deliver a response to the grievance had elapsed, and delivered a copy of the "Notice of Reference to Adjudication" (Form 21 under the *Regulations*) referring the May 27, 2014, grievance to the PSLRB for adjudication.

[428] Ms. Jessett wrote to counsel for the grievor on June 20, 2014, advising that the CFIA's position was that the grievor had not been terminated from his employment. Despite that he had categorized the grievance as involving the termination of his employment, there had been no termination, so the grievance could not have been referred to adjudication because it could not have been transmitted to the final level of the grievance process. She advised that skipping steps in the grievance process required mutual agreement, which the CFIA was not prepared to do. Its position was

that the reference to adjudication was premature.

[429] The PSLRB received the Notice of Reference to Adjudication on June 23, 2014.

[430] On August 29, 2014, when responding to requests from the PSLRB's registry for copies of the CFIA's decisions at every level of the grievance process, it stated its objection to the PSLRB's jurisdiction to hear the grievance on the basis that under s. 209 of the *Act*, it had not been presented at every level. The CFIA maintained that the grievor had not been terminated from his employment, that he remained its employee, and that an investigation was pending.

[431] On September 12, 2014, the grievor responded to the CFIA's objection to jurisdiction, stating that by failing to render a decision on the May 27, 2014, grievance within the timelines of the *Regulations*, the CFIA waived any right it had to insist that the grievance process be revisited. The grievor stated the following:

...

*. . . Section 71 of the Regulations allow [sic] for the acceleration of the grievance process to the final level, where termination of an employee is at issue. Nothing in the Regulations appears to be [sic] define "termination". However, at common law, a suspension without pay for almost five months would very likely be considered termination. . . .*

...

[432] The grievor's position cannot stand because the relevant point in time is not August and September of 2014, when he and the employer exchanged correspondence, but May and June of 2014, when the grievance was initially filed and referred to adjudication. While that might have been his position, that does not make it so. On May 27, 2014, when he filed his grievance, he stated that it was against a termination of employment. That was only 30 days after Ms. Jessett met with him and gave him the April 17 letter. It was not five months later.

[433] As I have found as a fact that the CFIA's action in April of 2014 was a suspension and not a termination, the grievor's recourse process required him to refer a grievance on that action to the first level of the grievance process. He stated that he referred his grievance to the final level; however, he could not have done so because it was not against a termination. Therefore, while he did deliver a grievance, he was

required to deliver it at the first level.

[434] When time ran out for a response at that level, he should have referred his grievance to the next level in the process. Eventually, he would have either received satisfaction or eventually exhausted the process and would have been in a position to refer it to the Board for adjudication. He did not, instead remaining steadfast in his position that he had been terminated and that his grievance had been delivered at the final level, which allowed him to refer it to the Board for adjudication when he did not receive a response from the CFIA within the timelines he believed were applicable. He did so at his own peril.

[435] Failing to act within the timelines set by the *Regulations* has consequences, one of which is set out in s. 225 of the *Act*, which states, “No grievance may be referred to adjudication until the grievance has been presented at all required levels in accordance with the applicable grievance process.” This means that if a grievance is not moved to the appropriate next level within the set time, the grievance cannot move any further without either the consent of the other party (in this case, the CFIA) or by order of the Board.

[436] As I have found that the CFIA’s action on April 17, 2014, was in fact to suspend the grievor and not terminate his employment, the grievance against this suspension was required, by s. 225 of the *Act*, to be presented at every level of the grievance process before it could be referred to the Board for adjudication. If it was not, it could not have been referred to the Board for adjudication.

[437] The evidence disclosed that the employer did not consent to any change to the grievance process. As the grievor did not comply with the grievance process, the grievance in file 566-32-9869 has not been properly referred to adjudication under the *Act*, and as such, I have no jurisdiction.

**B. The termination of employment grievance (file 566-32-11540)**

[438] Adjudication hearings with respect to discipline under s. 209(1)(b) of the *Act* are hearings *de novo*, and the burden of proof is on the employer.

[439] The usual basis for adjudicating discipline issues is by considering the following three questions (see *Wm. Scott & Company Ltd. v. Canadian Food and Allied Workers Union, Local P-162*, [1977] 1 CLRBR 1): Was there misconduct by the grievor? If so, was



the discipline imposed by the employer an appropriate penalty in the circumstances? If it was not an appropriate penalty, what alternate penalty is just and equitable in the circumstances?

[440] Mr. Silva stated that he terminated the grievor's employment for the nine reasons set out in his letter of June 23, 2015, all of which in essence related to misconduct in these four areas:

1. the freezer project;
2. the hiring of Mr. Mourtada;
3. not fulfilling his required work hours; and
4. failing to co-operate in the PWC investigation.

[441] The employer called eight witnesses. The grievor testified on his own behalf and did not call any other witnesses. Most of the evidence I heard was related to the freezer project. Much of the grievor's evidence was at odds with what the employer's witnesses presented and the PWC report. Credibility is an issue.

[442] Issues of credibility are dealt with by the test articulated in *Faryna v. Chorny*, [1952] 2 D.L.R. 354, in which the British Columbia Court of Appeal stated as follows:

...

*If a trial Judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility . . . A witness by his manner may create a very unfavourable impression of his truthfulness upon the trial Judge, and yet the surrounding circumstances in the case may point decisively to the conclusion that he is actually telling the truth. I am not referring to the comparatively infrequent cases in which a witness is caught in a clumsy lie.*

*The credibility of interested witness [sic], particularly in cases*

*of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. . . .*

. . .

[443] For reasons that shall be outlined as I review the evidence, I find that much of the grievor's evidence does not meet the test set out in *Faryna*.

### **1. The freezer project**

[444] I will refer to the newly installed freezer as "the new freezer", meaning that it was new to the GTA lab but not necessarily new in the context of never having been used before or having been purchased from the manufacturer or an authorized distributor.

[445] The freezer project was precipitated by a large e-coli investigation that was completed by late 2012. After it ended, everyone in the GTA lab's management structure appeared to agree that it had disclosed a potential problem with storage if another very large investigation occurred.

[446] In his opening statement, in his evidence, in his cross-examination of the employer's witnesses, and in argument, the grievor suggested that the need for the new freezer was urgent. "Urgent" is defined in the *Canadian Oxford Dictionary* (second edition) as "demanding or requiring immediate action or attention; pressing . . . expressing a need for prompt action or attention; insistent . . .".

[447] Some of the evidence presented disclosed that during the e-coli investigation, due to the large volume of beef obtained and being tested, GTA lab staff, under Mr. Huszczyński's direction, transported some samples to a CFIA lab in Mississauga, where the beef was stored and tested. The grievor took issue with this. Mr. Huszczyński stated that while it was not the optimum way to deal with the overabundance of samples, the procedure used did not cause any risk to the samples or the testing.

[448] The evidence about transporting the samples from the GTA lab to the CFIA lab in Mississauga at an unknown date during that investigation, which was complete by the end of 2012, does not and cannot somehow deem urgent the purchase and installation of the new freezer some 10 to 12 months later. If transporting the samples at some unknown time during the course of the e-coli investigation truly created an emergency or an urgent need, I would have expected a freezer or multiple freezers would have been purchased and installed then and there, when the samples were on hand; none was.

[449] The evidence disclosed the following:

- on December 18, 2012, Ms. Wong first exchanged emails with the National Procurement Centre about the potential conversion of the HC unit to a freezer;
- by early January of 2013, extensive email exchanges and discussions were taking place within the CFIA and with PWGSC with respect to that potential conversion;
- by the end of January of 2013, a contemplated plan for that conversion was determined not feasible; and
- the new freezer was not purchased and installed until late October of 2013.

[450] I find as a fact that while GTA lab management might have wanted a new freezer and that it was a good idea, the fact that it took 10 months to acquire and install one dispels any suggestion that the need was urgent. An urgent need would have involved samples arriving at the GTA lab with no freezer space to store them. The evidence disclosed that during the e-coli investigation, while space was tight and it was likely that all or close to all freezer space was being used, by the time the freezer project was underway, there was no urgent need for freezer space.

[451] After the conversion plan did not work out, the exact facts as to what happened that led to acquiring the new freezer are not entirely clear. What is clear is that the CFIA has policies and procedures for purchasing assets, which were not followed. It has a Facilities group, headed by Mr. Reath, which specializes in acquiring, installing,

and maintaining equipment, specifically refrigerators and freezers. For large purchases, it has the National Procurement Centre. The evidence disclosed that the grievor chose not to engage either the group or the centre.

[452] The grievor suggested that the new freezer was purchased from his brother's company. If I look closely at the evidence, certain questions arise with respect to demolishing the HC unit and acquiring and installing the new freezer.

[453] At the time relevant to demolishing the HC unit and purchasing and installing the new freezer, the evidence disclosed the following:

- Alzahraa HMI was a legitimate company duly incorporated under the laws of Ontario whose directors and officers were Mostapha and Wissam, and its business address was listed as 2032 Lawrence Avenue East, Scarborough, Ontario;
- Alzahraa Inc. did not appear to be a legal entity of any type, not even a registered business name, and the business address listed on the invoices issued to the CFIA was 2032 Lawrence Avenue East, Scarborough, Ontario;
- Alzahraa Consultants was a sole proprietorship registered in the grievor's name with a business address listed as 2032 Lawrence Avenue East, Scarborough, Ontario;
- 225 Inc. was a legitimate company duly incorporated under the laws of Ontario whose director and officer was the grievor's sister-in-law, Karen, who was married to Mostapha; and
- Tung Wing appeared to be a company in the Toronto area that according to the invoices it issued, did business in heating, air conditioning, and refrigeration.

[454] There was no documentary evidence of any price estimate provided to the grievor or anyone within the GTA lab management structure from or in the names of Alzahraa Inc., Alzahraa HMI, Alzahraa Consultants, 225 Inc., or Tung Wing.

[455] The evidence disclosed the following:

- the invoices for the demolition of the HC unit and the supply and installation of the new freezer were delivered sometime after October 20, 2013; and
- the funds commitments and RFMs produced by either Ms. Wong or Ms. Glezakos were created after invoices were received from Alzahraa Inc., 225 Inc., Tung Wing, All Tech, and SNC.

[456] Alzahraa Inc. issued two invoices to the CFIA that are for the same equipment but that are dated two months apart and that have different delivery dates. Invoice 2024228 A is dated November 13, 2013, with a delivery date of September 15, 2013, and invoice 2024228 B is dated September 11, 2013, with a delivery date of July 9, 2013.

[457] Ms. Wong and Ms. Glezakos testified to seeing only invoice 2024228 A. Ms. Wong saw it because she wrote on it with respect to a funds commitment number, and Ms. Glezakos saw it because she used it to create the initial RFM, MC-169 A. In short, the GTA lab administrative staff processed this invoice for payment.

[458] However, the grievor testified that the new freezer was delivered and that installation started on Saturday, October 19, 2013. His evidence was that on that day, two unidentified people from Tung Wing and Mr. Persaud unloaded it from a truck. The grievor also testified that on that day, 225 Inc. demolished and removed the HC unit. He said that two people whom he did not know took it apart, that its demolition took until 3:00 p.m., and that by 4:00 p.m., the new freezer's panels were being assembled.

[459] According to the paperwork uncovered in the PWC investigation, the 225 Inc. invoice was in the amount of either \$6800.00 or \$6820.00, both plus HST. The invoice stated that the work was done on October 5, 2013.

[460] The PWC investigation disclosed that the electronic access cards of the grievor and Mr. Mourtada (the grievor's brother-in-law) were used on October 19, 2013. The grievor swiped in and out of the GTA lab building several times for a total of 7:10 hours and minutes, with his first access recorded at 9:23 a.m. and his last exit

recorded at 6:48 p.m. Mr. Mourtada swiped in at 10:31 a.m. and out at 6:48 p.m. for a total of 8:17 hours and minutes. The PWC investigation also disclosed that the grievor's electronic swipe card was used on October 20, 2013, documenting that he was in the GTA lab building for a total of 4:20 hours and minutes.

[461] The PWC investigation also disclosed an overtime form filled in by Mr. Mourtada, who the grievor testified attended the GTA lab building on October 19 and 20, 2013. That form stated that Mr. Mourtada claimed 12 hours of work over those two days (10 hours on October 19, and 2 hours on October 20). The grievor testified that Mr. Mourtada had attended to supervise the demolition and installation on behalf of the CFIA because Mr. Persaud from SNC would not supervise that sort of work. It is clear that the electronic access records for the GTA lab building and Mr. Mourtada's overtime form do not match.

[462] Contrary to that evidence is an email the grievor sent to Ms. Jessett dated November 18, 2013, in an attempt to justify a claim he made for overtime in October of 2013 and specifically with respect to working when the HC unit was demolished and the new freezer was installed. In his email, in response to a question Ms. Jessett asked him, he stated as follows:

...

*I was the only one supervising the work and answering their concerns as it arises. (Tameash came in for 3 hours on two days of the weekends to open the back door and verify licences, open electrical panel, provide guidance to what is required, he was sick and went to the hospital after). This left me obliged to stay with the workers and help out as well, so as to make sure that the noisy work is complete before the end of the weekend and garbage is out of the building.*

...

[Emphasis added]

[Sic throughout]

[463] According to the PWC investigation and the PWC report, as well as the evidence of both Mr. Malette and Ms. Jessett, the GTA lab building sign-in log disclosed that on the weekend of October 19 and 20, 2013, no one identified as having anything to do with the freezer project was signed-in to the building.

[464] The first entry in the GTA lab building sign-in log identifying anyone related to the freezer project was made on Monday, October 21, 2013, when George from All Tech signed in at 2:30 p.m. (with no sign-out time) with the reason for the visit stated as, "See electrical work". The next log entry was made on Tuesday, October 22, 2013, when Adrian, also from All Tech, signed in at 8:00 a.m., out at 9:30 a.m., in again at 10:30 a.m., and out again at 3:15 p.m. Under the reason stated for the visit, he wrote, "work". The log for October 22, 2013, also has entries from companies that have not been identified as having had anything to do with the freezer project.

[465] All Tech issued an invoice, no. 109685 and dated October 22, 2013, which simply noted labour at \$500.00 and materials at \$520.00 (for a total of \$1,020.00) plus HST, for a total of \$1,152.60. Nothing specified what labour and materials were supplied and why. Nothing listed the actual work that was done or how long it took. In his evidence-in-chief, the grievor stated as follows:

*The old fridge has fans and lighting that was supplying to the compressor; better to have a separate switch for fans and lighting from the compressor. Tameash said do it but wouldn't allow Tung Wing to do it. Tung Wing's invoice included all the electrical but it was all on one switch on the panel.*

[466] Also entered into evidence was an email exchange between the grievor and Mr. Balaban of All Tech, dated October 22, 2013. The first email is from Mr. Balaban at 1:27 p.m., stating, ". . . attached please find for your review requested estimate." No estimate was attached. Eighteen minutes later, the grievor replied stating as follows: "Thanks George, The work is complete, can you please send me the bill. so as to process the payment."

[467] The first entry for Tung Wing in the GTA lab building sign-in log is dated Tuesday, October 29, 2013, and discloses that three of its people all signed in at the same time, "10:00 a.m." No sign-out time was listed, and all three indicated the stated reason for the visit was "walk-in cooler installation." This is 9 to 10 days after the grievor stated that the new freezer installation was carried out.

[468] Tung Wing issued invoice no. 2024612 dated October 20, 2013, for work on the freezer project in the amount of \$8700.00 plus HST, for a total of \$9831.00. The invoice simply stated the following: "Walk in [sic] freezer box, assembly, balance

and installation compressor and fan installation light fixtures connection and assembly fire sprinkler insert and sealing clean up piping and electricals.”

[469] According to the grievor, the new freezer was installed on October 19 and 20, 2013. His November 18, 2013, email to Ms. Jessett stated that he was the only one supervising the work, yet according to the evidence uncovered by the PWC investigation and the grievor’s testimony before me, Mr. Mourtada, his brother-in-law, did the supervising. The grievor never explained this inconsistency.

[470] I was never provided with any evidence that Mr. Mourtada had any experience or expertise with respect to any sort of construction work or with supervising it.

[471] The Alzahraa Inc. invoices (2024228 A and 2024228 B) set out two different dates for delivering the freezer, neither of which is accurate if I accept the grievor’s evidence, who testified that the demolition work, the freezer delivery, and the start of the installation were all done on October 19, 2013.

[472] The documentary evidence uncovered during the PWC investigation and set out in the PWC report overwhelmingly tied the grievor to the business identified, in one form or another, as Alzahraa. The grievor’s evidence, which was that Mostapha put the grievor’s name on the business records without him knowing about it, is just not believable. If that were true, it was incumbent on him to provide some evidence, apart from simply saying so. He could have called his brothers as witnesses; he did not. If they were not prepared to voluntarily give evidence, he could have obtained summonses from the Board; he did not. He did not even offer an explanation as to why his brother would have done it. The grievor’s statements about this situation do not meet the credibility test set out in *Faryna*.

[473] While the grievor stated that he purchased the freezer from his brother’s company, and while the corporate records of Alzahraa HMI do indicate the current directors and officers are Mostapha and Wissam, this does not somehow help him. The grievor did not address the fact that another business, Alzahraa Consultants, disclosed him as the sole owner and that the registered address of this organization is the same as Alzahraa HMI and Alzahraa Inc. Since Alzahraa Inc. does not exist, was it Alzahraa HMI that invoiced the CFIA, or was it Alzahraa Consultants? Perhaps Alzahraa Inc. was short for Alzahraa HMI; however, the grievor did not suggest it was. He could have explained all this; he did not. His only evidence was that his name is on



corporate documentation because his brother put it there.

[474] In cross-examining Mr. Huszczyński about the purchase of the freezer from the grievor's brother, the grievor's counsel suggested to him that he told the grievor to see his brother about the new freezer. Mr. Huszczyński denied this, stating that the grievor told him that he would speak to his brother about a freezer and stating that he had no objection because he knew the grievor's brother was in the meat business.

[475] I prefer Mr. Huszczyński's evidence to that of the grievor. Mr. Huszczyński had no connection to any of the external parties involved in the freezer project, while the grievor did. However, in the end, I do not see how this in any way would exonerate the grievor. Whether Mr. Huszczyński suggested that the grievor speak to his brother or not in no way absolved the grievor of his responsibilities under the CFIA COI code, the CFIA code, the V&E code, and the *FAA*.

[476] If I view the evidence in the best possible light for the grievor, what I am left with is that he authorized total payments with respect to the freezer project of \$29,216.69 to five different entities, as follows:

1. SNC	\$542.94
2. Alzahraa Inc.	\$9983.55
3. 225 Inc.	\$7706.60
4. Tung Wing	\$9831.00
5. All Tech	<u>\$1152.60</u>
Total	\$29216.69

[477] There is no doubt that at the very least, the grievor's authorization of payments to Alzahraa Inc. and Tung Wing were solely about supplying and installing the freezer. Alzahraa Inc. invoiced the CFIA, which paid it \$9,983.55 for the new freezer. Tung Wing invoiced the CFIA, which paid it \$9,831.00 for the installation of that same freezer. This still leaves three payments, made to All Tech, 225 Inc., and SNC.

[478] According to the grievor's evidence, both in front of me and via his email to Ms. Jessett on November 18, 2013, Mr. Persaud from SNC was there for only three hours on October 19, 2013. The SNC invoice, for a total of \$480.48, exclusive of HST, has only \$60.48 attributed to property management services. While no one explained what those were, I assume that they were for Mr. Persaud's three hours at the GTA lab building on October 19, 2013, as that would amount to a little over \$20.00 per hour.

[479] However, the SNC invoice also provided \$420 for design costs, none of which were explained. The only evidence about this in addition to the invoice was the grievor's evidence explaining Mr. Balaban and All Tech's attendance, as follows:

*It took part of the afternoon of Saturday and then on Sunday. On Saturday morning Tameash [Mr. Persaud] shut down certain power and it was linked into an alert. Tameash shut down the wrong switch. It took until 2:00 in the afternoon to put their equipment back on the network.*

...

*The old fridge has fans and lighting that was supplying to the compressor; better to have a separate switch for fans and lighting from the compressor. Tameash said do it but wouldn't allow Tung Wing to do it. Tung Wing's invoice included all the electrical but it was all on one switch on the panel.*

[480] From the grievor's evidence, I took it that some form of electrical work was needed to hook up the new freezer to the building's electrical system, which assumedly the All Tech invoice in the amount of \$1152.60 and the design cost of \$420.00 in the SNC invoice are for.

[481] With respect to 225 Inc. and the HC unit removal, the grievor stated as follows:

- 225 Inc. did the demolition because it was referred to him by Mostapha;
- two people unknown to him dismantled the HC unit, put it in a truck, cut some of its panels because they were too big to fit in the truck;
- the demolition took longer than anticipated because of trouble with bolts attaching it to the floor; and
- he did not know that Mostapha's wife Karen was the director,

president, secretary, and treasurer of 225 Inc., until there was a problem processing its invoice.

[482] The evidence disclosed that Mr. Reath, who headed up the Facilities group, had the following at the time of the hearing:

- close to 30 years of service with the federal public service;
- several specialized trade certificates, including as a licensed air balancer, a licensed HVAC specialist, a certified biocontainment technologist, and a certified regulator for level 3 and 4 aquatic plant and zoonotic containment plants;
- a position as a senior project manager for planning, design, and construction;
- knowledge as a subject matter expert for level 4 HVAC problems at the Winnipeg Facility;
- responsibility for the Facilities group and the Biocontainment group;
- responsibility for projects involving installing walk-in freezers; and
- responsibility for managing a \$4.5 million budget.

[483] Mr. Reath testified as follows:

- a contractor who installed walk-in refrigerators and freezers, as a matter of course, would be able to remove the old refrigerator, which would then be part of the costs included with the purchase and installation of the new freezer as contractors keep copper and scrap metal;
- federal legislation governs handling refrigerant gases, and anyone who demolishes a refrigerator or freezer has to be a licensed tradesperson with the appropriate certificates to deal with evacuating gas in the unit;
- as for the extra cost associated with the electrical installation,

Mr. Reath stated that refrigeration contractors are licensed up to 600 volts and stated that refrigeration companies have appropriate licensed mechanics and supply and install new units, including the electrical connections and the demolition of any old units;

- he was not familiar with 225 Inc. and stated that a company's licence must be reviewed to allow it to do this specific type of work, and he further stated that that is set out in CFIA policies and is dealt with by the National Procurement Centre; and
- the demolition and removal of the HC unit should not have taken more than four hours, and contractors would have had appropriate cutting torches to remove difficult bolts.

[484] I find that based on the evidence before me, all the work invoiced by Alzahraa Inc., 225 Inc., Tung Wing, All Tech, and SNC, and paid by the CFIA, was all with respect to supplying and installing the new freezer. It clearly fits the definition of contract splitting as set out in the procurement policy.

[485] The grievor also stated that Ms. Wong told him it was okay to pay for the freezer project the way they did, in essence by splitting the contract in two if not three or four ways. While she was also suspended and subsequently disciplined for her actions with respect to the freezer purchase, there was no evidence that she had any connection or relationship to the persons, businesses, or organizations to which the CFIA paid \$29,216.69.

[486] In addition, Ms. Wong testified that the grievor had asked her specific questions and that she had provided him with specific answers. In her evidence before me, it was clear that the grievor had asked her certain questions, which she had responded to. The discussion did not appear to be about the grievor's financial authority and monetary spending limits or about whether entering into three separate contracts was contract splitting.

[487] However, again, at the end of the day, the grievor was required to ensure that as the manager responsible, he followed the procurement policy, the CFIA COI code, the CFIA code, the V&E code, and the *FAA* when expending CFIA funds for the purchase and installation of the new freezer.

[488] I also find that the excuse that the grievor was following his subordinate's instruction is not credible because he stated as much. He said that he knew that he could not make a purchase in excess of \$10,000.00 as far back as January 2, 2013, when he exchanged emails with Mr. Lazaros of SNC about the potential conversion of the HC unit. In two separate emails dated January 2, 2013, the grievor stated to Mr. Lazaros that the cost was over his limit of authority. He did so first at 3:01 p.m. and again at 3:38 p.m., when he was more specific and stated as follows:

...

*I do understand that you need to get a final answer to put on your list of projects if to be done by March 2013.*

***However, the estimate provided is >10K (tax included), this is why it is above my authority. For any projects above 10K I will have to follow CFIA's procurement procedures. I am in process of getting estimates for the project.***

*I would appreciate receiving additional information regarding the tendering process that CFIA should follow?*

...

[Emphasis added]

[Sic throughout]

[489] It is abundantly clear to me that early on in the freezer project, the grievor knew that he had a limit on his spending authority of \$10,000.00. It is also clear that he knew that for projects costing above \$10,000.00, he had to follow CFIA procurement procedures.

[490] In addition, Mr. Reath testified that he recalled that the grievor telephoned him and told him of the SNC quote about the conversion and that he told the grievor the following:

- the quote was high;
- the Facilities group could take care of the freezer project for much less; and
- he could get someone from his group to look at the HC unit and help manage the conversion.

[491] Again, if I view the evidence in the best possible light for the grievor, it disclosed that he authorized the CFIA's payment to Alzahraa Inc. for the new freezer. It is clear that he was connected to Alzahraa HMI, having been a director and its president, and that he had filed the corporate returns on the company's behalf for several years both before and after he was no longer a director and officer. Whether it was Alzahraa HMI, Alzahraa Consultants, or his brother or brothers using the name Alzahraa Inc. that sold the freezer to the CFIA, the grievor's connection to them was a clear conflict of interest, which breached the CFIA COI code, the CFIA code, and the V&E code.

[492] Again, if I view the evidence in the best possible light for the grievor, it disclosed that he also authorized the CFIA's payment to 225 Inc. for the demolition of the HC unit. The evidence disclosed that at least on paper, 225 Inc. is owned and run by the grievor's sister-in-law, Karen, who is his Mostapha's wife. The amount paid for the demolition was \$7,706.60 (inclusive of HST). Again, the grievor's association to that company disclosed that he was in a conflict of interest, which breached the CFIA COI code, the CFIA code, and the V&E code.

[493] By virtue of his position, the grievor was responsible under s. 34 of the *FAA* for ensuring that no payment would be made as part of the freezer project unless he certified that the work performed, the goods supplied, or the services rendered and the price charged were according to the contract, or if not specified by the contract, were reasonable.

[494] Based on all the evidence before me, I am satisfied that the grievor did not fulfil his duties and responsibilities as required under s. 34 of the *FAA*. He has no specific knowledge or expertise in construction, demolition, electrical work, or refrigeration, yet he authorized payments related to all that work from the CFIA to 225 Inc., Alzahraa Inc., Tung Wing, All Tech, and SNC.

[495] With respect to 225 Inc., the grievor claimed that he had no knowledge whatsoever about this company, stating he did not even know it was controlled by his sister-in-law until there was a problem with paying its invoice. He said that he relied on Mostapha with respect to it being appropriate for the demolition. A simple reading of the 225 Inc. invoice would have disclosed at a bare minimum that the date on which the work was carried out was wrong.

[496] There is absolutely no evidence that the CFIA's payment of \$6800.00 or \$6820.00 exclusive of HST authorized by the grievor was value for the work or services rendered. What did the CFIA pay for? Was \$6800.00 (or \$6820.00) appropriate for the work carried out, or was it a gross overpayment? According to the grievor's evidence, two people removed the HC unit. Even if I estimate those two people worked 8 hours each and were paid \$50 an hour each, the total labour would amount to only \$800. What was the other \$6000.00 for?

[497] The grievor's due diligence under s. 34 of the *FAA* with respect to Alzahraa Inc. was non-existent. This is particularly troubling for him considering that Alzahraa HMI listed him as its founding director, its original president, and its filer of corporate returns for seven years and that Alzahraa Consultants is a sole proprietorship in his name.

[498] If I give the grievor the benefit of the doubt, at a bare minimum, whatever Alzahraa entity allegedly supplied the new freezer, there is no evidence whatsoever that the new freezer sold to the CFIA for \$8835.00 exclusive of HST was value for the materials supplied. The grievor had no expertise in this area. The CFIA's expert was Mr. Reath, and he was not consulted. Again, was \$8835.00 good value for the purchase or a complete rip-off? The grievor's duty was to ensure that the CFIA received value for its payment, and there is no evidence that it did.

[499] The same holds true for the work carried out by Tung Wing, All Tech, and SNC. There is no evidence whatsoever that the money paid to them was value for service and work supplied as part of the freezer project.

[500] The evidence of Mr. Malette and Ms. Jessett was that the GTA lab building log-in sheet disclosed that no one related to the freezer project was at the GTA lab building on October 19 or 20, 2013. While the grievor testified that he and his brother-in-law, Mr. Mourtada, were onsite both days, the electronic access card records disclosed that they were both there only on October 19 and that on October 20, only the grievor was there. Mr. Mourtada filled out an overtime sheet for 10 hours of work on October 19 and 2 hours of work on October 20. Yet, at the same time and in an email to Ms. Jessett on November 18, 2013, the grievor said that only he was there that weekend.

[501] Missing from the evidence is any detail of the people on site from either Alzahraa Inc. or 225 Inc., save and except the grievor's testimony that they were on site. No one is recorded on the GTA lab building sign-in log from either entity. The grievor said that two people he did not know demolished and took away the HC unit. He also said that the new freezer was delivered by truck. Again, no one is recorded from any Alzahraa entity as entering the building. The grievor's evidence is equally scant, stating that the freezer was brought by a truck and that two people from Tung Wing and Mr. Persaud brought it into the building. I am at a loss to understand why persons employed by the business selling the freezer would not have brought it into the building.

[502] What is more perplexing is why Mr. Persaud helped bring in the freezer since, according to the grievor's evidence before me, he was actually sick, enough to go to a hospital. Again, why did he do it instead of someone from the business entity (Alzahraa Inc.)? The grievor's evidence is not congruent with the documentary evidence or even his testimony. He stated that Mr. Persaud from SNC was there for about three hours on October 19, 2013, for, in his words, the following reasons:

*I contacted Mr. Persaud the manager of the building for SNC. They have to be in the building. I told him I would be there. I wanted to introduce the companies to one another. On Saturday morning, Persaud is there; the companies are there, and I was there. Tameash [Mr. Persaud] verified licences of the companies. He took them into the room. Ihab came in.*

[503] If according to the grievor Mr. Persaud was there and verified the licences, I would assume that at the very least he verified the licences of Tung Wing, All Tech, and 225 Inc. If he was there and did that, then why are none of these businesses in the GTA lab building sign-in log?

[504] More curious is why the grievor said, "I wanted to introduce the companies to one another." This makes absolutely no sense whatsoever. His evidence was that Mostapha arranged to have 225 Inc. take care of the demolition because the grievor did not know anything about demolition. Surely, if his brother, who was supplying the freezer, arranged for 225 Inc. to take care of the demolition, he already knew of 225 Inc. If that brother was Mostapha, then surely, if he arranged for 225 Inc. to take care of the demolition, he knew his wife!



[505] Why would the grievor have had to introduce either 225 Inc. or Alzahraa Inc., to Tung Wing? The work of 225 Inc. was separate of that of Tung Wing, which was allegedly installing the new freezer. According to the grievor's evidence, two employees and Mr. Persaud unloaded the new freezer from the truck it arrived on. Surely, the employees of Tung Wing, which is in the business of supplying and installing refrigerators and freezers, would know what a freezer looked like.

[506] The other curious piece of evidence is the photograph of the serial number plate attached to the new freezer's compressor. The documentary evidence disclosed that on October 22, 2013, at 9:55 a.m., Mr. Wu from Tung Wing emailed the grievor the photograph, which he immediately forwarded to Mostapha, under the cover of an email message simply stating, "Serial # for compressor". When asked about this in evidence, the grievor said the following:

*When we tried to install the compressor on the new freezer, it didn't fit due to a beam. Ricky said he would adjust the compressor by cutting pipes to get it installed under the beam. He [Mostapha] was concerned that Wu may switch the compressor with another so Mostapha told me to get Ricky Wu to send the serial no., etc., of the compressor to ensure it is the correct one. So I got Ricky to do that. He [Mr. Wu] took the compressor to his shop to make the changes to the compressor.*

[507] The grievor's evidence is just not believable. If his brother owned the freezer and compressor, a reasonable assumption is that he would have had this information as part of his business records. And why would information from the serial number plate have to be photographed and sent to the grievor instead of directly to Mostapha? In addition, the two Alzahraa Inc. invoices (2024228 A and B) contained the information on the serial number plate. The date on invoice 2024228 B, allegedly September 13, 2013, is some five weeks before the alleged delivery and installation of the freezer. Therefore, photographing the serial number plate and emailing it would have been redundant.

[508] If this is truly what happened, did the grievor suggest that he believed that Tung Wing, which he had arranged to install the new freezer, was so unscrupulous that it would steal the compressor supplied by Alzahraa Inc. and replace it with another of lesser value and quality? If so, this is not helpful to him, as he was the one who arranged for a less-than-trustworthy organization to supply services in return for

public funds, which clearly did not fulfil the mandate required of him under s. 34 of the FAA.

[509] In addition, if Tung Wing had the compressor and thus was so unscrupulous as to exchange it for one of a lesser value, it would have been easy for it to photograph and email the serial number plate of the lesser-value compressor it was going to swap.

[510] Photographing the serial number plate and then emailing it is also curious when considering the documentary evidence from Tung Wing from when the determination was made that the HC unit could not be converted from a walk-in refrigerator to a walk-in freezer. On January 31, 2013, Tung Wing issued an invoice to the CFIA after it had inspected the HC unit and had determined that the freezer box (the panels consisting of the floor, ceiling, and walls) were not appropriate to retain freezer temperatures. In forwarding the invoice to the grievor, Mr. Wu said the following:

*Hi Houssam,*

*this is the invoice for check up walk-in freezer.  
And I got yur message about the used walk-in freezer. the  
price is not bad with the machine but you only need the box.  
**can you ask how much only the box and floor because we  
already had the machine.**  
voltage use 3 phase 208v*

*Ricky*

[Sic throughout]

[Emphasis added]

[511] It appears from that email that Tung Wing already had a compressor and that all that was needed was the freezer box.

[512] In addition, what makes things more suspicious about the entire freezer purchase from Alzahraa Inc. is that Mr. Huszczyński testified that when the grievor returned from his vacation in September of 2013, the grievor told him that Tung Wing had found a freezer. Somewhere, somehow, between early September and mid-October 2013, the new freezer no longer came from Tung Wing but Alzahraa Inc.

[513] As set out earlier in this decision, I referred to the lack of documentary estimates for the goods and services to be provided by Alzahraa Inc., 225 Inc., Tung Wing, SNC, and All Tech. Not only was there that lack of estimates, but also,

despite testifying before me, the grievor provided absolutely no indication as to how any of the arrangements for the supply of either goods or services were made. There are no emails from or to anyone at any of 225 Inc., Alzahraa Inc., Tung Wing, or SNC about what exactly they would provide to the CFIA, or when or how. In fact, despite testifying, he did not tell me how the prices for the goods and services to be supplied by the five suppliers were determined.

[514] While Ms. Wong and Ms. Glezakos might have backdated the funds commitments and RFMs, by approving them, the grievor breached the procedures for purchasing goods and services.

[515] In the end, I am left to wonder what really happened with respect to the freezer project. If I view the evidence in the best possible way for the grievor, I am left with someone who blatantly breached the purchasing policy, the CFIA COI code, the CFIA code, the V&E code, and s. 34 of the *FAA*.

[516] There are so many inconsistencies in the grievor's rendition of the facts, it is not unreasonable for me to consider that based on the facts before me, none of Alzahraa Inc., Alzahraa HMI, or Alzahraa Consultants actually supplied a new freezer and that it was actually supplied and installed by Tung Wing. It is also not unreasonable to consider that perhaps 225 Inc. actually did nothing or that the grievor and Mr. Mourtada spent October 19, 2013, dismantling the HC unit themselves.

[517] However, the employer does not have to prove those facts, as the basis for its position with respect to the grievor's actions in the freezer project is that he committed misconduct by breaching the CFIA COI code, the CFIA code, the V&E code, the procurement policy, and the *FAA* through contract splitting and through breaching COI guidelines, which it established.

## **2. The hiring of Mr. Mourtada**

[518] The grievor signed the staffing process declaration, which stated as follows:

*I, THE UNDERSIGNED, promise that I will faithfully and honestly fulfill the duties which devolve upon me in connection with this board and that I will not reveal to any person or persons, except those authorized by the Canadian Food Inspection Agency, the deliberations of the board, or the nature of its report. Having been made aware of the persons to be assessed, I declare that to the best of my knowledge I*

*am not related to any of these persons, and that the nature of my association, if any, with these persons to be assessed, is such that I can render decisions in an impartial manner.*

...

[519] Mr. Mourtada is the grievor's brother-in-law and was so when the grievor interviewed him. It is also quite likely that before the interview, the grievor was aware of the names of the individuals he would be part of interviewing. However, if not, he was certainly aware of an issue when he participated in Mr. Mourtada's interview.

[520] The grievor should have disclosed the fact that Mr. Mourtada was his brother-in-law and should have sought advice and instructions as soon as he realized that Mr. Mourtada was part of the staffing process.

[521] The grievor told no one involved in the staffing process about his relationship to Mr. Mourtada. The two other management representatives, Mr. Huszczyński and Ms. Weeks, were unaware of it. Mr. Huszczyński stated that he did not know that Mr. Mourtada was related to the grievor until the grievor was suspended and placed under investigation.

[522] The grievor's evidence about why he did not disclose this fact was that he did not view Mr. Mourtada as a relative and that in his culture, only people related by blood are relatives. Other than that statement, I was provided with no evidence about the grievor's culture and that culture's beliefs.

[523] While Mr. Mourtada is not a direct blood related relative of the grievor, he is the next closest thing. He is the brother of the grievor's wife and is hardly a stranger or a mere passing acquaintance. The grievor is well educated. He certainly knew that he had a relationship to Mr. Mourtada close enough to render it inappropriate for him to participate in marking Mr. Mourtada's test, in conducting his interview, and in his eventual hiring.

[524] Even if I give the grievor the benefit of the doubt, it does not explain why he did not tell Ms. Weeks when they were carrying out or marking Mr. Mourtada's interview that, at a bare minimum, he knew Mr. Mourtada.

[525] The grievor suggested in his evidence that Ms. Weeks had been responsible for marking Mr. Mourtada's written questionnaire. She testified before the grievor did.

During the course of her cross-examination, the grievor's counsel produced a copy of Mr. Mourtada's written questionnaire and the notes taken of his interview by both the grievor and Ms. Weeks. She was brought to the notes in her evidence and identified the handwritten grading of Mr. Mourtada's oral interview and written questionnaire answers as the grievor's.

[526] The grievor was also brought to those notes. He identified the grading on his notes as his handwriting. While he was shown the written questionnaire, he was brought only to the third page and was asked if the handwriting on a sticky note attached to that page was his; he stated that those were Ms. Weeks's notes. He was not asked and did not volunteer as to whether the grading on the written questionnaire was in his handwriting.

[527] The grievor's evidence does not stand up to close scrutiny. If he did not know that it was wrong to participate in marking, interviewing, and hiring Mr. Mourtada, it would not explain why he did not even tell Ms. Weeks that he knew Mr. Mourtada.

[528] I find as a fact that the grievor was clearly in a conflict of interest as defined in the CFIA COI code, and as such, he was in breach of the CFIA COI code, the CFIA code, and the V&E code.

### **3. Not fulfilling working hours**

[529] The evidence proffered in this area was scant and amounted to the electronic swipe-card records and the summary of them reproduced in the PWC report. According to the evidence, the summary and analysis set out in the PWC report also took into account those days on which the grievor was on authorized leave.

[530] As tendered, the evidence discloses only when the grievor used his swipe card to enter or exit the building. In no way does it disclose those times not covered by the swipe card when the grievor would ordinarily have been at work (as opposed to being on some form of authorized leave) but perhaps working outside the time captured by the reports, including for any work done outside the office building.

[531] The grievor testified that sometimes, he was outside the GTA lab building on CFIA work-related business, and that sometimes, he worked from home. While Ms. Jessett testified that he did not receive her approval to work from home and that she did not know when he did it, she also did state that she would not have had a

problem with it.

[532] While the PWC report states, and as Mr. Malette testified during the course of the hearing, it reviewed the grievor's leave records, none was produced at the hearing. The CFIA conceded that the allegation that he was away from the office without authorized leave for October 23, 24, and 25, 2013, was wrong. This suggests that the leave records the employer provided to the PWC investigators might not have been 100% accurate.

[533] The evidence also disclosed the potential for employees to piggyback; that is, to follow other employees into the secure work area without swiping their passes. While they were not supposed to do it, it did occur, and the evidence disclosed that an alarm would sound in a security office if an employee who swiped while exiting had not swiped to enter. Mr. Malette admitted that the PWC investigation did not check if records were kept of that.

[534] While I am mindful that I have found that the grievor's testimony in many of the areas was simply not credible, the burden of proof was on the CFIA to satisfy me that the grievor acted in the manner it alleged. On the issue of not working the appropriate hours, it has not met its burden.

#### **4. The failure to co-operate in the PWC investigation**

[535] The evidence disclosed that the employer referred this matter to the police. Ms. Jessett stated in her evidence that, as the March 27 memo suggested, someone of the employer, exactly who is not clear, referred the freezer purchase and installation to the RCMP, while she reported the matter to the Toronto Police Service.

[536] The grievor declined to participate in the PWC investigation on advice from his legal counsel, who stated in a May 6, 2015, email as follows:

...

*Thank you for your correspondence below. I understand that the Toronto Police Service has an open investigation file in relation to this matter. As I trust you are aware, my client has the right to silence and a right against self-incrimination. In the absence of full use immunity or an undertaking to not provide information to the police (neither of which, I presume you can or would be willing to provide), my client is not prepared to answer any questions or provide any statements.*

*While he would otherwise want to cooperate fully with your investigation, the existence of an ongoing criminal investigation makes this option unfeasible. I trust that in the circumstances no adverse inference will be drawn against him.*

...

[537] The employer's position on this point is somewhat ironic and hypocritical. By April 17, 2014, it had received the Ernst report, which clearly indicated issues with respect to the freezer purchase of such a concern that they caused Ms. Jessett to not only continue the grievor's administrative suspension but also to alter it to make it without pay.

[538] When Ms. Jessett did that, she told the grievor that the full investigation would be completed quickly and efficiently. However, that did not happen. In fact, according to the evidence, PWC was not retained until early 2015, close to nine months after she said it would be completed quickly and efficiently. Indeed, PWC did not contact the grievor for an interview until April 16, 2015, exactly a year after he had been suspended without pay.

[539] In fact, as Ms. Jessett set out in her oral testimony, someone at the CFIA told her to stop the investigation while the RCMP looked into it, which was recorded in her March 27 memo. According to it and her oral testimony, she reported the matter to the Toronto Police Service in August of 2014, based on the RCMP's advice.

[540] The grievor was caught between the proverbial rock and a hard place. His employer suspended him without pay and told him that a quick and efficient investigation would take place, and then it promptly reported him to the RCMP, which allegedly instructs the CFIA to stop the investigation. Later on, Ms. Jessett reported the grievor's activities to the Toronto Police Service. What did the employer expect him to do when facing not one but potentially two criminal investigations? He followed his lawyer's advice. Given the daunting potential of criminal charges, which could have affected his liberty, his job became the lesser of his worries, and he chose to remain silent.

[541] It is difficult to fault someone who is abiding by sound legal advice when facing potentially serious criminal charges that could result in incarceration. While the employer considered that factor, standing alone and all other things being considered,

I do not consider it is something that would justify terminating employment.

[542] It is difficult to give credence to the employer's position on this point when it largely ignored the grievor for a year, leaving him in limbo.

## **VI. Conclusion**

[543] Although I have found that on a balance of probabilities, the employer has not established that the grievor did not fulfil his work hours and that his lack of participation in the PWC investigation would not in and of itself justify the termination of his employment, I have found that he committed misconduct with respect to both the freezer project and the hiring of Mr. Mourtada.

[544] The freezer project and the events surrounding the hiring of Mr. Mourtada, his wife's brother, clearly disclose that the grievor was in a conflict of interest involving his family. With respect to the freezer project, at a bare minimum, he authorized a payment of in excess of \$10,000.00 to businesses owned or controlled by close family members (his brothers and sister-in-law). These actions clearly breached the CFIA COI code, the CFIA code, and the V&E code.

[545] In addition, with respect to the freezer project, by authorizing payments to Alzahraa Inc., 225 Inc., Tung Wing, All Tech, and SNC totalling \$29,216.69 for the supply and installation of the new freezer, the grievor engaged in contract splitting, which breached the procurement policy, the CFIA COI code, the CFIA code, the V&E code, and s. 34 of the *FAA*.

[546] The evidence disclosed that the grievor had received training in these areas, that he is well educated, and that he had been a manager for several years. It is inconceivable to me that despite his education, training, and experience, at a bare minimum, he would not question the actions he was taking and would not have sought guidance from or refer these matters to someone further up the management chain. I find as a fact that his actions could only be called calculated and deliberate.

[547] The CFIA code, in the section titled "Ethical Decision Making and Conduct", sets out that the key to ethical decision making and good conduct is to abide by the laws affecting the CFIA, for example the *FAA*, public service values, and the CFIA code and related policies. The V&E code sets out that public servants are not only expected to abide by it but also to adhere to behavioural expectations as set out in their respective



organizational codes (thus incorporating the CFIA code and the CFIA COI code). The grievor failed woefully in all these areas.

[548] I have considered the grievor's years of service and the glowing performance reviews he received. However, as set out in *Way*, quoting Brown and Beatty, at 7:3330, ". . . some behaviour is so unethical and so inconsistent with the goals and objectives of an enterprise that it raises real doubts about the employee's capacity and/or willingness to adhere to the most fundamental rules of honesty and loyalty." The grievor's misconduct was extremely serious, and I find that the discipline imposed by the employer was appropriate in the circumstances. Thus, even absent findings of misconduct with respect to non-fulfillment of required working hours and failure to co-operate in the PWC investigation, I conclude that the bond of trust between the grievor and the employer was irrevocably severed.

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

*(The Order appears on the next page)*

**VII. Order**

[550] The grievance against the suspension without pay, alternatively submitted as a constructive-dismissal grievance, in file 566-32-9869, is dismissed.

[551] The grievance against the termination of employment, in file 566-32-11540, is dismissed.

May 7, 2018.

**John G. Jaworski,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**