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*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

RYAN LYTTLE

Grievor

and

**DEPUTY HEAD
(Canada Border Services Agency)**

Respondent

Indexed as

Lyttle v. Deputy Head (Canada Border Services Agency)

In the matter of an individual grievance referred to adjudication

Before: Nancy Rosenberg, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: Nina Ziolkowski, Public Service Alliance of Canada

For the Respondent: Karl Chemsí, counsel

Heard at Ottawa, Ontario,
January 7 to 9, 2019.

REASONS FOR DECISION

I Introduction

[1] The grievor, Ryan Lyttle, began his career as a border services officer (BSO) with the Canada Border Services Agency (CBSA) at the Lansdowne Port of Entry (in the Thousand Islands region) in Lansdowne, Ontario in 2007. His position is classified at the FB-03 group and level. In April of 2010, he began working at the McDonald-Cartier International Airport in Ottawa, Ontario.

[2] Steven MacNaughton started his career with the CBSA as a BSO in Cornwall, Ontario, in 1986. As the district director for Ottawa at the time of these events, he was responsible for several CBSA locations, including Cornwall, the Ottawa airport, Ottawa Cargo Services, and the Territory of Nunavut.

[3] Director MacNaughton described the CBSA's mandate as twofold: providing protection to Canadians through integrated border services and facilitating the expedition of low-risk passengers across the border. He described the BSOs' role as very important and challenging. They are in the front line and are the delivery arm of the CBSA's mandate.

[4] On the morning of March 3, 2014, the grievor was in full uniform except for his name tag, which was not visible. It was covered by his Restricted Access Identification Card (RAIC) (his airport access card), which was in the pocket of his protective vest. That led to two brief encounters with Director MacNaughton. The first was when the director asked, and then directed the grievor to uncover his name tag. The second was when the grievor twice approached the director to discuss the first encounter. These events led to an investigation, followed by the grievor receiving a one-day suspension for being in breach of the *CBSA's Uniform Policy and Standards of Appearance* ("the uniform policy") and its *Code of Conduct* (the 2013 version).

[5] The grievor grieved the suspension and stated that although he had covered his name tag, he was not in breach of the uniform policy, as he was not on-duty at the time. In the alternative, he stated that if the policy was breached and if discipline was warranted, then a one-day suspension was excessive in the circumstances. He also submitted that Director MacNaughton harassed and intimidated him; however, no grievance or complaint of that nature was filed. Nor was this allegation argued as an issue during the investigation or the grievance procedure. Therefore, the only matter before me is the issue of the grievor's one-day suspension for breaching the uniform policy and *Code of Conduct*.

[6] There is very little factual dispute between the parties. I heard testimony from a number of witnesses and refer here only to that evidence which is pertinent to my decision. The witnesses described the tone of the encounters between the grievor and Director MacNaughton somewhat differently; however, the differences are minor and not relevant as they do not go to the issues to be determined, which are the following:

1. Did the grievor breach the uniform policy and the *Code of Conduct* by covering his name tag and refusing to uncover it before the start of his shift?
2. If so, did that breach amount to misconduct that warranted discipline?
3. If it did, was the one-day suspension excessive in the circumstances?

[7] Having heard all the evidence, I conclude that the grievor breached the uniform policy and the *Code of Conduct*, that discipline was warranted, and that the one-day suspension was not excessive in the circumstances.

II. Summary of the events

A. At the Tim Hortons

[8] Shortly before 9:00 a.m. on March 3, 2014, the grievor was in uniform just before the start of his shift. He and his colleague, BSO Samantha Goyer, went to the Tim Hortons at the Ottawa airport arrivals level for coffee.

[9] That small Tim Hortons is situated just beside the central entrance doors to the airport, fairly close to both the domestic baggage claims area and the customs hall exit for international passengers. As the BSOs approached, they saw Director MacNaughton and Julie Burke in line just ahead of them. Ms. Burke is currently the CBSA's director of labour relations. At the time of these events, she was the director of human resources for the CBSA's Northern Ontario Region. At that time, the BSOs did not know her.

[10] Small talk was exchanged. The grievor noticed that Director MacNaughton was holding two coffees, one on top of the other, and remarked to him, "I guess you need two coffees; it's going to be one of those days." Director MacNaughton then said, "Your name tag is not visible." The grievor replied, "I know." The grievor testified that

their exchange was “a bit embarrassing”.

[11] Director MacNaughton testified that he fully expected the grievor to simply indicate that he had not realized his name tag was covered. He assumed that the grievor would simply uncover it. Instead, the grievor responded “I know”, and further indicated that he was not on-duty. Director MacNaughton advised him that his appearance indicated that he was on-duty because he was in full uniform and displaying the CBSA flash (the CBSA insignia); therefore, his name tag had to be visible.

[12] Director MacNaughton and Ms. Burke both testified that after completing their transaction at the Tim Hortons counter, Director MacNaughton turned around, and seeing that his request had not been complied with, directed the grievor to uncover his name tag. According to both him and Ms. Burke, the direction was given in a firm, professional manner. Director MacNaughton’s evidence was clear that the second time, it was no longer a request. He directed the grievor to uncover his name tag.

[13] BSOs Lytle and Goyer testified that Director MacNaughton walked perhaps 10 to 15 feet, then turned around and with a raised voice directed the grievor to uncover his name tag. The BSOs testified that someone standing in line behind them commented negatively about Director MacNaughton. The grievor testified that Director MacNaughton “raised his voice. I could tell he was definitely upset at that point; he was basically giving me an order to do something and [was] obviously upset that it hadn’t been done previously. I felt pretty embarrassed”.

[14] BSO Goyer also said that she was embarrassed that the director spoke to the grievor in that manner, when they were all in uniform and in the presence of members of the public. She described the director’s tone as condescending. Both BSOs described the grievor’s tone as low key and neutral. The grievor testified, “I didn’t want to get into any issues, so I downplayed the interaction. I know I didn’t give him the answers he wanted to hear but was still maintaining my tone and behaviour with him.”

[15] Ms. Burke heard it differently. She said that she and Director MacNaughton were investigating an unrelated labour relations matter and had approximately 18 meetings scheduled with employees that day, starting at 9:00 a.m. She described the interaction at the Tim Hortons as follows:

Director MacNaughton advised BSO Lyttle that his name tag was covered. He just stated it as a fact. BSO Lyttle replied, "I know." Director McNaughton advised him that his name tag should be visible, and BSO Lyttle replied, "Oh really?" Director MacNaughton replied, "Yes, it has to be visible at all times." BSO Lyttle was rude and nonchalant, with an attitude that it didn't matter. He said he was not on-duty. We got the coffee. Director McNaughton turned and again advised BSO Lyttle that the name tag needed to be visible. It still wasn't uncovered when we left ... I thought it was almost insubordination.

[16] Ms. Burke provided a report to Daniel Asselin, a labour relations advisor, on March 12, 2014 (Exhibit 4). It sets out the same facts and describes the grievor's responses to the director as "rude and challenging".

[17] Both Director MacNaughton and Ms. Burke testified that the director did not walk 10 to 15 feet away but rather spoke to the grievor directly while still at, or very near, the Tim Hortons counter. The director testified that he did not think he had raised his voice but that it has been five years, and he could not be sure that his voice had not raised somewhat. However, there had certainly been no shouting.

[18] After Director MacNaughton directed the grievor to uncover his name tag, he thought the conversation was finished, and he walked away with Ms. Burke to deal with the matter that had brought him to the airport that day. The grievor did not comply with the direction. Instead, he kept his name tag covered until he walked into the customs hall to begin his shift.

[19] Before that interaction, the grievor had known Director MacNaughton only by sight; he had had no direct interactions with him. The grievor explained as follows:

... the only time we'd see him was if he came to inform officers of a new program or an anniversary. He comes to make announcements and give feedback and information about where the agency is headed. I don't report to him, I deal directly with the Superintendents. I also have very little interaction with the Chief. We are advised to deal with the Superintendents. The hierarchy is Director, Chief of Operations, Superintendent and Officers.

B. In the customs hall

[20] As with the Tim Hortons incident, there is little factual variation in the witnesses' testimonies about the second incident. Again, only the tone of the interchange was described somewhat differently. Unlike the exchange at the

Tim Hortons, the interaction in the customs hall was not the basis of any discipline.

[21] BSOs Goyer and Lyttle testified that apart from logging in to computers and generally preparing to start a shift, there is little to do until the first flight arrives. The BSOs chat with each other, and as soon as the first flight arrives, they begin engaging with disembarking passengers. Shortly after starting his shift, the grievor left the customs hall and went to see Chief of Operations Philip Whitehorne. The chief's assistant advised him that the chief was not available. The grievor indicated that he would like to speak with the chief when he was available and then returned to the customs hall.

[22] The grievor was speaking with BSO Chantal Draper when Director McNaughton entered the customs hall. He testified that the director "came around behind me, looked at my name tag, which was visible, looked up at me with displeasure, and asked BSO Draper to go with him." He continued as follows: "Because Steve was there, I just advised him that I wanted to talk about the incident at Tim Hortons, that I wasn't pleased with what had happened on the outcome, and wanted to explain myself. I said I disagree with what happened. I wasn't on-duty."

[23] The grievor explained that the BSOs enforce many laws and policies and that they discuss them. He said that they often question the superintendents and that doing so is somewhat normal for them; they often have different interpretations, and the superintendents provide them with answers.

[24] Not surprisingly, Director MacNaughton was not interested in debating the uniform policy. The grievor testified that he said, "Not now; I'm going to deal with you later." The grievor did not find it appropriate for the director to say that, so he reiterated that he wanted to discuss the matter. He recounted that the director "was trying to terminate the conversation with me, and he basically said if I was unhappy, go speak to my union."

[25] A few minutes later, the director was still in the area, so the grievor persisted. He approached the director again. He testified, "I made mention to him that my understanding was if you are not on-duty the name tag didn't have to be visible." The grievor offered the example of grocery shopping while in uniform, suggesting that the name tag would not need to be visible during such an activity. He recounted that Director MacNaughton had become agitated and that he said, in a raised voice, "No, it has to be visible all the time." Director MacNaughton then walked away, and the

grievor mumbled to himself, “I can’t believe this happened twice in one day.” He testified that the director then turned and walked back “with [his] chest out and [his] arms back” and said again, “I’ll deal with you later; that’s enough out of you.” The grievor testified that he informed the director: “[w]hen he was in my face, that I didn’t appreciate being intimidated by him in the way he was acting with me.”

[26] Director MacNaughton relayed essentially the same scenario except that he indicated that he never approached the grievor but that the grievor approached him twice and that each time, he tried to firmly convey that he was busy and was not interested in any further discussion at that time. He had come to the customs hall to fetch BSO Draper, as she was the first BSO scheduled for a fact-finding meeting. He was not there to speak with the grievor, and his goal was always to terminate the conversation.

C. The discussion with Chief Whitehorne

[27] The grievor recounted that an hour-and-a-half later, he was alone in the primary booth when Chief Whitehorne came to speak to him, in response to the message he had left with the chief’s assistant. The grievor told Chief Whitehorne about the incident at the Tim Hortons, recounted his views on the uniform policy, told him that the director had intimidated him, and mentioned that he felt like he had been harassed. The grievor further testified that Chief Whitehorne disagreed with him and said that he was a troubled employee and that he should look for work elsewhere.

[28] Chief Whitehorne testified that the grievor was considering making a harassment complaint against Director MacNaughton. The grievor was uncertain whether he would make one and wanted to discuss it and get the chief’s opinion. Chief Whitehorne advised the grievor that it was a serious allegation, that there is a specific definition of harassment, that he should think about it carefully, that he should put his allegations in writing if he wished to proceed, and that a process could be initiated. He did not suggest what the grievor should do. He felt that his role as manager was to provide guidance and the tools to make a complaint if an employee wished to proceed with one.

[29] Chief Whitehorne added that they also talked about the name tag requirement, as he knew that this had come up before. The chief explained that he had had a positive relationship with the grievor over the years and that he wanted to get him to focus on the work at hand. He was getting off-track with the name tag issue.

The chief testified, as follows:

I asked him to put himself in management's shoes, to always have to follow up about the name tag. I suggested if he's not in a good space at work that change can be a good thing — maybe an assignment — because the policy of the name tag is not within his control. I wanted to redirect him so he's not in a negative space and facing discipline over a name tag.

D. The investigation - prior warnings

[30] Director MacNaughton felt that he had to report the incident at the Tim Hortons to the CBSA's Labour Relations branch because it was clear that the grievor's name tag had not been covered inadvertently. As well, instead of complying with Director MacNaughton's request that he uncover it, he had challenged the director about the requirement. Director MacNaughton thought it should be reported so that corrective action could be taken; he stated, "It was clear that he didn't heed my comments."

[31] Director MacNaughton began working with Labour Relations with respect to what should be done. It was mutually decided to launch an investigation. Initially, Director MacNaughton planned to carry out the investigation himself, along with Labour Relations. However, when the grievor objected to his involvement, Director MacNaughton recused himself from the process.

[32] Mr. Asselin, the labour relations advisor, began the investigation by asking Chief Whitehorne whether there had been any previous issues with the grievor about his name tag. Indeed, there had been. Both Chief Whitehorne and Superintendent Marc-André Lapierre had had occasion to speak to the grievor about his name tag. They both made notes of these conversations, and they testified about them. They testified that other conversations had also taken place that had not been committed to writing or for which no notes could be found.

[33] Chief Whitehorne's note (Exhibit 1, Tab 3) reads as follows:

Ryan Lyttle - 09 Dec 2013 1300hrs

Name Tag Covered

- Ryan Lyttle - advised to change sides as name tag was completely covered - provided Ryan with an elastic pull tag.

...

- *advised the importance to follow the uniform policy in that it is a requirement to have name tag visible.*

[34] Chief Whitehorne testified that he had seen the grievor at the primary inspection booth with his name tag completely covered by his RAIC. He asked him to uncover it and advised him of the importance of following policy by keeping it visible. The grievor responded that the way the name tag was fixed to the vest caused the problem. Chief Whitehorne gave him an elastic pull tag and asked him to put his RAIC on the other side of his vest. The grievor responded positively, accepted the pull tag, and moved his RAIC to the other side.

[35] Chief Whitehorne recalled two other times when he had spoken to the grievor about uncovering his name tag but could not locate a note of either incident. He described the details of one incident, when he had made a hand motion to the grievor to uncover his name tag while the grievor was processing a delegation tour. He did so. Chief Whitehorne could not recall when it took place but did recall that it had involved a small flight and that it took place at a time of day that was not busy. He could not recall the details of the third incident; however, he was certain that there had been three in total, as he had advised Labour Relations at the time.

[36] Chief Whitehorne indicated that when the name tag policy arrived in early 2013, there had been some general, indirect lack of compliance at first, such as pens in the pocket somewhat obstructing the name tag. Managers advised the BSOs that their name tags needed to be visible, and the BSOs were always given a chance to correct such an issue. In general, once advised, the BSOs complied, without any further follow-up.

[37] Although the grievor's representative submitted that the name tag requirement was relatively new and that it was a time of transition, the grievor acknowledged in cross-examination that by the time of these incidents it was no longer new. The evidence indicated that the requirement had been in place for about one year.

[38] The grievor did not remember having three conversations with the Chief about his name tag. However, when asked in cross-examination if Chief Whitehorne had told him at least once of the importance of following the policy, the grievor responded, "During lunch, yes, I listened but didn't want to get into a discussion with him when I wasn't being paid."

[39] He then recounted how he and a colleague were on a lunch break and his

colleague needed to speak with the chief, so he accompanied him to the chief's office. After his colleague's discussion ended, the chief advised the grievor that his name tag was covered. It is notable that, although the grievor was on his lunch break, he did not challenge the chief about the policy or indicate that he could have his name tag covered because he was off-duty.

[40] Superintendent Lapierre stated that he has been with the CBSA since 2008 and was a superintendent at the Ottawa airport at the time of these events. He testified that as a superintendent, his job was to enforce all policies, including the uniform policy. He explained that the policy was important because when the uniform is worn, CBSA employees need to be accessible to the public and to be professional.

[41] Superintendent Lapierre's note (Exhibit 1, Tab 4) reads as follows:

Dec 10 2013

18:00

- *told BSO Ryan Lyttle to uncover his name tag (with his RAIC).*
- *I told him that we would start writing up people up for breaches to uniform policy.*
- *His answer was that the vest were poorly designed and that the name tag should be elsewhere.*

[Sic throughout]

[42] It is notable that that conversation took place the day after Chief Whitehome had advised the grievor about the importance of keeping his name tag visible. Superintendent Lapierre also recalled at least one other incident in which he had asked the grievor to uncover his name tag, but he had not made a note of it. The grievor did not remember a one-on-one conversation with Superintendent Lapierre about his name tag but did recall that the superintendent had held a staff briefing about the requirement.

[43] Chief Whitehome characterized his interactions with the grievor on this issue as counselling. Superintendent Lapierre indicated that the conversation recorded in his notebook had been an oral reprimand.

E. The fact-finding meeting

[44] Mathieu Lauzon has been a superintendent since 2013. He explained that the BSOs report directly to him and to the other six operational superintendents at the airport, who in turn report to the chief of operations. Their job is to make sure day-to-day operations run smoothly and that everything at the Port of Entry is done according to policy and law. There is one superintendent for every six BSOs.

[45] Superintendent Lauzon was assigned to replace Director MacNaughton, who had recused himself from this matter. He was to work with Mr. Asselin, the labour relations advisor, on a fact-finding investigation and to make the decision with respect to any discipline. He reviewed the fact-finding questions to ensure that they made sense to him and reviewed the uniform policy to refresh his memory. He read the notes that recorded the verbal warnings that the grievor had received about his name tag.

[46] The grievor was asked to come to the fact-finding session and was given the opportunity to attend with a union representative, which he did. Superintendent Lauzon explained the purpose of the fact-finding session and asked questions while Mr. Asselin noted down the grievor's responses. The primary object was to identify any aggravating or mitigating factors to consider when deciding on discipline.

[47] Superintendent Lauzon testified that during the fact-finding session, the grievor said that his name tag had been covered because he had not been on-duty at that time. He had also mentioned that sometimes the RAIC will inadvertently cover the name tag after the card is swiped. Superintendent Lauzon understood from the responses that essentially, the grievor felt that he was not in the wrong because the incident had occurred before he had started his shift, and he found justification for his stance in the policy.

[48] Neither the grievor nor his union representative raised any issue about Director MacNaughton's conduct.

[49] Superintendent Lauzon asked one question about the grievor's conduct. The grievor testified that he had understood the fact-finding session to be solely about the name tag issue and therefore felt that the question about conduct was an attempt at entrapment. He declined to answer.

[50] At the end of the fact-finding session, a document setting out the questions asked and Mr. Asselin's notes of the grievor's answers was given to the grievor

to review, to determine if they fairly represented his responses. He agreed that they did and initialled each page (Exhibit 1, Tab 7).

[51] Superintendent Lauzon testified that he and Mr. Asselin reviewed the uniform policy and considered section 2.12 which the grievor argued required that his name tag be visible only while actively exercising his duties. Superintendent Lauzon explained, however, that he understood section 2.12.1 to require that the name tag be visible at all times. He also referred to the *Code of Conduct*, which states as follows at page 13:

Clarification:

If we are on our way to work or on a lunch break, and can be visibly identified as a CBSA employee, e.g. in uniform or displaying an I.D., the public does not know that we are off-duty. Their confidence in the Agency depends upon our professionalism on and off-duty.

[52] Superintendent Lauzon recapped that clarification, as follows: "If you can be identified as a CBSA officer; that is, if you are wearing all the tools, you are probably perceived to be on-duty in the minds of the public. Therefore, you are accountable to the public."

[53] Superintendent Lauzon considered the grievor's policy justification but concluded that he had been in breach of the uniform policy. He commented that if the grievor had said it had been a mistake, it would have been different, but that the grievor still felt that what he had done was right. Superintendent Lauzon also took into account mitigating factors, such as the grievor's years of service and the fact that he was forthcoming with his answers. Based on these facts, Mr. Asselin looked at cases across the country and suggested a one-day suspension, which Superintendent Lauzon thought was reasonable. The grievor had been given several verbal warnings, and it was clear that the message was not getting through. A one-day suspension was necessary to get through to the grievor that he had to follow the policy.

[54] In cross-examination, Superintendent Lauzon was asked why he did not seek out or interview other witnesses during the fact-finding investigation. He responded that there had been no need; the grievor did not dispute the facts of what had occurred at the Tim Hortons. He sought only to justify his conduct by his interpretation of the policy. Superintendent Lauzon also noted that the Tim Hortons incident was the only one he knew about and considered when deciding the discipline. He had not been advised about the interactions in the customs hall.

[55] Following the investigation, the grievor was given a letter dated April 1, 2014, advising him of his one-day suspension, with the remainder of his 12-hour shift to be worked or taken as leave.

IV. The name tag requirement

A. Purpose

[56] Director MacNaughton testified that his direction to the grievor was based on the detailed uniform policy (Exhibit 1, Tab 11), which applies to all uniformed employees, including management. He said that the policy is in place because it is very important to be professional and accountable to the public.

[57] BSOs are the first representatives of the Government of Canada to all returning travellers and international visitors. As such, they should present and identify themselves with their names. The name tags make CBSA employees accountable by allowing the public to know the BSO they are dealing with should they wish to complain about any interaction or to make positive comments. In the past, the BSOs simply had a badge number that had to be provided if requested. The names give members of the public clear visual information identifying the BSO with whom they are interacting.

[58] Director MacNaughton explained that his understanding of the policy is that if a member of the public can identify someone as a CBSA officer (for example, if that person is in uniform and therefore displaying the flash), then that person must have a name tag visible. The grievor's focus on not being on-duty was concerning to Director MacNaughton because in the eyes of the public, when he wears the uniform, he is on-duty. The public is not in a position to know if a BSO is on-duty, and assumes that a BSO in uniform is on-duty.

[59] Chief Whitehorne, Superintendent Lapierre, and Superintendent Lauzon all expressed the same understanding of the name tag requirement and the reason for it.

B. Uniform Policy and Code of Conduct

1. Section 2.1

[60] Section 2.1 of the uniform policy sets out some general principles about the CBSA uniform and the importance of public recognition, as follows:

Uniformed officers are responsible for maintaining

*a professional and high standard of appearance. As the uniform fosters immediate recognition by the public in representing a Government of Canada (GC) agency official, **only approved apparel shall be worn while on duty** [sic] **and in the discharge of CBSA business**. The provision applicable to the wearing of the uniform at events and while off-duty is addressed in section 2.3 of this policy.*

...

The uniform shall be worn according to the requirements of the Agency

...

[Emphasis in the original]

2. Section 2.3

[61] Section 2.3 is titled, *Wearing of Uniform at Events and While Off-Duty*, and reads in part as follows:

While off-duty, uniform components that are issued with agency insignia shall not be worn in public unless the insignia is completely covered from public view.

The only exception is for when officers travel to and from work in a private vehicle as authorized by the Treasury Board Secretariat Uniforms Directive.

To protect the integrity of the uniform as an important symbol, CBSA management continues to apply discretion in approving, on a case by case basis, individual requests from uniformed officers to wear the CBSA uniform at events and while off-duty.

...

[62] Director MacNaughton outlined that a typical example of an off-duty situation is when BSOs ask to attend, in uniform, an off-duty event of some kind, perhaps with their alma mater or to help with fundraising. There are strict guidelines for approving such a request. Management must consider the nature of the event, where the BSO will go, and so on. The request is reviewed, and a positive response typically has certain criteria; for example, attendance is approved, but with no firearm. Although he or she is off-duty at such an event, the BSO is expected to be in full uniform, as approved.

[63] Therefore, as I read section 2.3, if the grievor was considered off-duty, as he argued, when he went to the Tim Hortons, then he should not have been in uniform. Had he arrived at the airport in street clothes and gone for a coffee before changing

into his uniform, the policy would not have been breached. In street clothes, he could not have been identified as a BSO. As Superintendent Lauzon advised, that is why every location has a changing room.

3. Section 2.7.1

[64] Section 2.7.1, entitled *Appearance Standards*, states in part as follows:

... Uniforms shall not be without any required buttons, flashes etc...

Uniformed officers must recognize that the public will often judge the effectiveness of the CBSA based on its first impression. Officers shall establish and maintain a professional image that is consistent with the operational needs of the Agency and the expectations of the Canadian public. A good personal appearance enhances integrity and is an essential part of "officer presence." When a uniform is worn, it shall be worn in its entirety

...

[65] The grievor was in uniform. Therefore, section 2.7.1 required that his uniform be "worn in its entirety" and that it "not be without any required buttons, flashes, etc.." I find that this language applies to the name tag.

4. Section 2.12

[66] Section 2.12 is entitled, *Breast Badge, Metal Name Tags and Fabric Name Tags*, and it states as follows:

...

Badges, metal name tags and fabric name tags are issued to identify officers who are actively exercising their duties and authorities in the administration and enforcement of CBSA legislation and legislation of other federal departments, agencies and international agreements....

...

[67] The grievor interpreted this section to mean that the name tag need be worn only when BSOs **actively exercise their duties**, which he stated he was not doing while standing in the Tim Hortons line. I do not read this section that way. This language appears in the initial general statement about name tags and refers to issuing them, not wearing them.

[68] I believe that the intent of this section is to identify the purpose of the name

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tags (public accountability) by indicating those positions to which the policy applies, i.e., to BSOs and other uniformed employees who administer and enforce CBSA and other legislation. Other CBSA employees who do not carry out duties of that nature would not need to be identified to the public and would not be issued name tags.

[69] In my view, this section does not address how or when the name tags are to be worn. Those more specific matters are dealt with in the following sections.

5. Section 2.12.1

[70] Section 2.12.1 is entitled *Wearing* and states as follows:

The name tags are to be worn on the outer most garment.

Fabric Name Tag

The fabric name tag shall be worn in the designated location on the outermost uniform garment at all times.

...

[71] The employer primarily relies on this section to show that the policy requires the name tag to be worn and to be visible, not just when a BSO is on-duty, but rather “at all times”.

[72] Although the grievor relied on section 2.12 to make his argument, he also testified that he now keeps his name tag visible because the policy’s wording has changed. However, section 2.12 has not changed. The uniform policy was revised in April 2018 and contains identical language, namely, “... fabric name tags are issued to identify officers who are actively exercising their duties and authorities in the administration and enforcement of CBSA legislation ...” (Exhibit 7).

[73] Section 2.12.1 has changed. It used to read as follows: “The fabric name tag shall be worn in the designated location on the outermost uniform garment **at all times** [emphasis added], and now reads: “The name tag shall be worn on the outermost garment **and must be visible and unobstructed at all times** [emphasis added].”

[74] However, suggesting that the earlier wording meant only that the name tag had to be worn at all times but not necessarily be visible, as the grievor did in his evidence, makes little sense. The requirement to wear the name tag on the outermost garment is to ensure that it will be visible. It would clearly serve no purpose for the CBSA to insist that its BSOs wear a name tag “on the outermost uniform garment ... at all

times” only to allow them to keep it covered at certain times.

6. Code of Conduct

[75] The uniform policy must also be read in conjunction with the *Code of Conduct* (Exhibit 1, Tab 12).

[76] Chapter 1 is entitled, *Our Values and Expected Standards of Conduct*. Subheading D, entitled *Expected Standards of Conduct*, section 2, entitled *Appearance and Hygiene*, states as follows:

...

*The CBSA Uniform Policy and Standards of Appearance outlines a very high standard of dress and appearance for our **uniformed staff**. It describes appearance standards consistent with the operational needs of the Agency and the expectations of the Canadian public.*

...

[Emphasis in the original]

[77] Under the same chapter and subheading, section 4, entitled *Private, Off-Duty Conduct and Outside Activities*, has a sidebar entitled *Clarification*, which reads as follows:

If we are on our way to work or on a lunch break, and can be visibly identified as a CBSA employee, e.g. in uniform or displaying an I.D., the public does not know that we are off-duty. Their confidence in the Agency depends upon our professionalism on and off-duty.

[78] That is the closest either the uniform policy or the *Code of Conduct* comes to spelling out, by way of example, the difference between being on-duty and being on-duty in the eyes of the public. Superintendent Lauzon specifically referenced this section to explain his understanding of the policy.

C. What the Uniform Policy and the *Code of Conduct* Requires

[79] In my view, the uniform policy in place at the time of these events required a BSO to wear a visible name tag on the outermost garment of the uniform whenever the BSO was in uniform displaying the CBSA insignia and therefore on-duty in the eyes of the public. I believe that that is the meaning of section 2.12.1. The phrase “on the outermost garment” is intended to convey that the name tag must be visible, and the phrase “at all times” means at all times the uniform is worn.

[80] Accountability to the public begins as soon as a BSO is in a public place wearing the uniform. Requiring a visible name tag to be worn only when actually on-duty in the usual sense would lead to an absurd result. The policy is very clear that a BSO can wear a uniform only when on-duty. However, a uniform cannot be removed every time a BSO takes a rest break, goes to lunch, or stops for coffee on the way to begin a shift. At a minimum, a BSO has to walk to and from the changing room in uniform, before and after a shift. Therefore, whenever a BSO is in uniform and displays the CBSA insignia, the name tag must be visible.

D. Ambiguity and lack of clarity

[81] However, the uniform policy is not as clear as it could be. On reading all the sections outlined earlier, including the clarification found in the *Code of Conduct*, the meaning is reasonably clear. However, in my view, an employee should not have to read several different sections, in two different documents, to deduce what should be a very simple concept. The policy refers to being on-duty and off-duty but does not directly address the crux of the matter, which is the concept of being identifiable to the public while in uniform. It would be helpful if the policy clearly spelled that out instead of using the somewhat general phrase, “at all times”.

[82] Additionally, as indicated, I believe that the intent of section 2.12 is simply to identify the purpose of the name tag and the employees to whom they will be issued and not to address how or when a tag must be worn. However, it does seem possible that the somewhat awkward wording (“actively exercising”) could mislead a BSO into believing that his or her name tag had to be visible only while actively working.

[83] Concluding that there is some lack of clarity in the policy, however, does not mean that I find the grievor’s conduct to be justified. Nor do I find credible the suggestion that he was acting on his good-faith interpretation of an unclear policy. While he might have genuinely misunderstood the policy at some point in the past, by the time Director MacNaughton told him to uncover his name tag, the policy had been in place for a year, and the grievor had been advised several times exactly how the employer interpreted and applied it.

[84] The grievor’s representative sought to rely on the PSLRB’s decision in *Christenson v. Deputy Head (Canada Border Services Agency)*, 2013 PSLRB 25, which upheld the grievances of three CBSA firearms trainers against their five-day

suspensions for breaching a firearms policy. In that case, the PSLRB held that the text of the policy was unclear as to whether it applied to trainers and further that it had been applied inconsistently. No one had warned or directed the grievors that the policy applied to them, even when members of management knew that they were not following it.

[85] However, in this case, there was no inconsistent application of the policy. All members of management who had spoken to the grievor about this issue had the same understanding of the policy and had conveyed it to him repeatedly. The grievor testified that he was on lunch when Chief Whitehorne told him to make his name tag visible. He complied on that occasion and did not argue that he was off duty and that, therefore, the policy did not apply. I find that the grievor knew the employer's interpretation of the policy and that he simply disagreed with it.

[86] A good-faith disagreement could have been dealt with by complying and then grieving later. The grievor never asked his union to ask for clarification, to file a policy grievance or to otherwise challenge the employer's interpretation of the policy. Nor did he discuss it with any of the superintendents or with the chief of operations. In fact, each time they directed him to uncover his name tag, he complied, even when he was at lunch and not on-duty.

[87] I asked the grievor why he did not just comply with the director's request, despite his interpretation of the policy, and take it up later with his superintendent. Indeed, he had testified that the BSOs were supposed to deal with their superintendents, and he had described how they often questioned interpretations of laws or policies with them. The grievor candidly described his thinking at the time as follows: "I wasn't on the government dime, so why would I report to you? [MacNaughton] I report to my superintendent. McNaughton doesn't deal with us. He was out of place by telling me what to do and how to do it, and I wasn't being paid."

[88] Clearly, the grievor's response to the director was more about challenging his authority and less about any good-faith disagreement about policy interpretation. Simply put, the grievor is in no position to rely on any lack of clarity in the policy to mitigate his deliberate breach of it.

V. Allegations about Director MacNaughton's conduct

[89] Much of the grievor's evidence focused on allegations about *Federal Public Sector Labour Relations and Employment Board Act* and *Federal Public Sector Labour Relations Act*

Director MacNaughton's conduct. No grievance or complaint was filed with respect to these allegations; nor had they been previously argued as an issue in this grievance. However, I allowed that evidence, to have a full picture of what had occurred.

[90] This evidence amounted to nothing more than different witnesses telling the same story with a different emphasis as to the tone of the interactions. More importantly, I heard no credible explanation as to why or how these allegations could be relevant, in any event. The grievor had engaged in the misconduct for which he was disciplined before he and Director MacNaughton had any interaction, by deliberately having his name tag covered after he had been warned about it. It is of no import whether he was directed to uncover it from 1 foot or 10 feet away or whether the director appeared calm or angry when he gave the direction. The encounter in the customs hall was entirely irrelevant, in that, the grievor's suspension was based only on the Tim Hortons incident. Superintendent Lauzon testified that he was unaware of the customs hall interaction when he decided the discipline to impose.

[91] The grievor's representative argued that that evidence showed that the grievor, in good faith, had sought clarification about the policy and that he was denied the opportunity to discuss it with Director MacNaughton. I do not accept that submission. The evidence established that the grievor had already received ample clarification of the policy. On his own testimony, it was clear that he was not seeking clarification but rather was trying to insist that the director listen to and accept his interpretation of the policy.

VI. Findings

[92] The questions to be determined in this matter are as set out in *Wm. Scott & Co. v. Canadian Food and Allied Workers Union, Local P-162*, 1977 1 CLRBR 1, and confirmed in *Basra v. Attorney General of Canada*, 2010 FCA 24 at para. 24.

A. Was there misconduct such that discipline was warranted?

[93] The grievor deliberately breached the uniform policy and the *Code of Conduct*. Given the importance of the name tag requirement to the CBSA and his deliberate refusal to follow it, even when specifically directed to, I find that misconduct occurred that warranted discipline.

B. Was the discipline excessive?

[94] The grievor's representative argued that a one-day suspension was excessive, primarily because the grievor had not previously received a written reprimand for this conduct. Therefore, it was suggested that the principle of progressive discipline, as outlined in the *Government of Canada Guidelines for Discipline* (Exhibit 3), had not been followed. However, that principle does not mean that discipline must always follow a specific number of steps; it depends on the context. Furthermore, those guidelines are just that — guidelines.

[95] In *Madden v. Canada Customs and Revenue Agency*, 2000 PSSRB 93, the Public Service Staff Relations Board (PSSRB) dealt with a situation in which a grievor's discipline went from an oral reprimand directly to a one-day suspension. A 23-year employee with no prior discipline sent an insulting memo to an assistant director. His supervisor advised him that that was inappropriate, but he then sent another one. The grievor had also received an oral reprimand, a year earlier, for similar conduct. The union argued that the discipline imposed ought to have been considered a first discipline, and as such, a written reprimand would have been in order. At paragraph 34 and 36 of the decision, the PSSRB states as follows:

34 ... I see nothing unreasonable nor wrong in the one-day suspension issued to Madden. Madden had shown similar inappropriate conduct in 1996 at which time he was warned that his employer did not approve. Again, in September of 1997, he chose to conduct himself in a same manner. He ought to have known that management would not approve. He was warned again that such conduct would not be tolerated, and was issued an oral reprimand.

...

36 For Madden to persist in his misconduct just a few days after receiving the second warning was surprising. He either got the message that his conduct was unacceptable and he did not care what happened to him when he persisted - or - he did not get the message and simply continued to act in this way. In either scenario, Madden ought to have been disciplined...

[96] A similar conclusion could be drawn in this case. The grievor either got the message and did not care or he did not get the message. He had received several verbal warnings and one oral reprimand. Superintendent Lauzon was very specific about the need for a one-day suspension rather than a written reprimand or some lesser form of discipline. He said that despite several warnings, the message was not getting through to the grievor.

[97] I find that the principle of progressive discipline was appropriately considered and applied and that the one-day suspension was not excessive in the circumstances.

[98] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

VII. Order

[99] The grievance is dismissed.

April 12, 2019.

**Nancy Rosenberg,
a panel of the Federal Public Sector
Labour Relations and Employment Board**