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**File:** 566-02-13725, 13726 and 13727

**Citation:** 2019 FPSLREB123

*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

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BETWEEN

**DANIELLE CAMPEAU**

Grievor

and

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

Respondent

Indexed as  
*Campeau v. Deputy Head (Canada Border Services Agency)*

In the matter of individual grievances referred to arbitration

**Before:** Linda Gobeil, a panel of the Federal Public Sector Labour Relations and  
Employment Board

**For the Grievor:** Goretti Fukamusenge, Public Service Alliance of Canada

**For the Respondent:** Zorica Guzina, counsel

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Heard at Québec, Québec  
April 26 to 29, 2019.

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## REASONS FOR DECISION

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### I. Individual grievances referred to adjudication

[1] Danielle Campeau (“the grievor”) filed three grievances against decisions of her employer, the Canada Border Services Agency (CBSA).

[2] The first grievance was signed on April 18, 2016. It contested the employer’s decision to suspend her indefinitely without pay once her security clearance was suspended (file no. 566-02-13725). Her second grievance, signed on August 16, 2016, contested the employer’s decision dated August 9, 2016, to again suspend her indefinitely from July 18, 2016, pending an investigation (file no. 566-02-13726). Finally, her third grievance, signed on September 27, 2016, contested the employer’s decision to terminate her employment on September 20, 2016, retroactive to July 18, 2016 (file no. 566-02-13727).

[3] At the beginning of the hearing, the grievor’s representative withdrew the first grievance (file no. 566-02-13725). For that reason, this decision is only about the other two grievances, which deal with her second indefinite suspension without pay and her termination, respectively.

[4] 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 Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* and the *Public Service Labour Relations Act* to, respectively, the *Federal Public Sector Labour Relations and Employment Board* (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act* and the *Federal Public Sector Labour Relations Act* (FPSLRA).

### II. Summary of the evidence

#### A. For the employer

[5] At the start, counsel for the employer provided a brief outline of the employer’s case. She started by acknowledging that the first grievance (about the suspension of the grievor’s security clearance) was withdrawn. She then indicated that the grievance about the indefinite suspension during the investigation was either moot or administrative in nature and that therefore, I had no jurisdiction over it. She also

argued that ultimately, the evidence would demonstrate that the termination was warranted because the grievor committed a serious breach of trust. In the circumstances, the employer had no choice but to terminate her employment.

[6] Nine witnesses testified for the employer. Their testimonies are reported in the same order as they appeared at the hearing.

[7] Again at the start, counsel for the employer, with the consent of the grievor's representative, tabled a binder that included 25 exhibits. Later, she filed 7 more exhibits.

### **1. Alain Surprenant**

[8] Mr. Surprenant is the CBSA's assistant director of enforcement and intelligence operations. He has held that position for eight years. In his duties, he is responsible for supervising border services officers and establishing and maintaining contact with partners such as the Royal Canadian Mounted Police (RCMP) and the Sûreté du Québec (SQ). His role includes among other things sharing information with those partners, particularly about activities at different ports of entry for goods.

[9] Mr. Surprenant testified that on February 26, 2016, he was advised that a Mr. Denis Blanchard of the RCMP would contact him about an incident that had allegedly recently occurred involving a CBSA border services officer. On Monday, February 29, 2016, he called Mr. Surprenant to inform him that the grievor, who was then a CBSA border services officer based in Sept-Îles, Québec, had gone to a local post office on February 5, 2016, to pick up a package sent to her personal address. The post office employee refused to give her the package because it smelled of drugs. The grievor then appeared nervous and left the premises. According to Mr. Blanchard, she contacted the SQ the same day. In that respect, Mr. Blanchard told Mr. Surprenant that SQ Officer Monger could give him more information. On March 1, 2016, Mr. Blanchard emailed Mr. Surprenant, detailing the incident on February 5, 2016 ("the February 5, 2016, incident"), involving the grievor. In particular, the email indicated that a criminal investigation had been launched (Exhibit E-1, tab 1). On March 7, 2016, Mr. Surprenant submitted a formal request to the SQ to obtain the report of the February 5, 2016, incident (Exhibit E-1, tab 3). I note that after the investigation, no criminal charges were laid against the grievor.

[10] Mr. Surprenant testified that the investigation had revealed that the package sent to the grievor's address and held by the post office contained 12 g of hashish, which the grievor did not contest at the hearing.

[11] On March 3, 2016, Mr. Surprenant wrote to his CBSA colleagues, including Eric Lapierre, asking them to organize a meeting with the grievor and the RCMP. As the grievor carried a weapon as part of her border services officer role, Mr. Surprenant indicated that in accordance with procedures for such a situation, he asked that her weapon be taken from her (Exhibit E-1, tab 2).

## **2. Mr. Lapierre**

[12] Mr. Lapierre has been the executive director of the CBSA's Rigaud college since November 2016. In that role, he indicated that he handles training in Canada for all recruits who want to become border services officers.

[13] To start, Mr. Lapierre explained that the recruitment process first consists of 4 weeks of online training. Those who complete that training successfully are invited to another 18-week training session at the Rigaud college. When that training is successfully completed, they then undergo a probationary period of 12 to 18 months, during which they are evaluated.

[14] In his testimony, Mr. Lapierre specified that when recruits receive their training, they learn about the CBSA's "Code of Conduct" (Exhibit E-1, tab 25) and about the "Values and Ethics Code for the Public Sector" (Exhibit E-4). Recruits are also informed about how to respond to certain situations and take part in roleplaying, in which they are exposed to situations that test their integrity. Several stakeholders also come to speak to them about using drugs and alcohol during and outside work hours.

[15] Testifying about his involvement in the grievor's case, Mr. Lapierre indicated that on March 2, 2016, Mr. Surprenant informed him about the February 5, 2016, incident. He affirmed that he did not know the grievor, who reported to Superintendent Louis Berberie at that time. Mr. Lapierre indicated that as of the February 5, 2016, incident, the grievor was posted to Sept-Îles with a colleague and that their superior, Mr. Berberie, was located in Québec. Mr. Lapierre stated that Mr. Berberie reported to Marc Banville, who in turn was under his supervision.

[16] Mr. Lapierre testified that he met with the grievor in Québec on March 10, 2016, to discuss the February 5, 2016, incident (Exhibit E-1, tabs 10, 11, and 12). That meeting followed her earlier meeting with Mr. Banville on March 4, 2016 (Exhibit E-1, tab 9). I note that Mr. Banville did not testify in this case.

[17] At the meeting, Mr. Lapierre returned to the grievor's discussion on the morning of March 4, 2016, with Mr. Banville. That meeting had been followed by another meeting in the afternoon with her and a Mr. Simon Côté of the RCMP (Exhibit E-1, tab 11).

[18] In his testimony, Mr. Lapierre recounted what happened at the March 10, 2016, meeting, beginning with a review of what the grievor and Mr. Banville said on March 4, 2016. As he was not present on March 4, 2016, he wanted to confirm with the grievor what she and Mr. Banville said on that day. Thus, he returned to the fact that on March 4, 2016, Mr. Banville took the opportunity to retrieve the grievor's weapon and advise her that she would be assigned to administrative duties pending the outcome of the investigation. According to Mr. Lapierre, the grievor's March 4, 2016, meetings, in the morning with Mr. Banville and in the afternoon with the RCMP, had been inconclusive. He said that the grievor did not wish to cooperate. Essentially, she had remained silent.

[19] Mr. Lapierre testified that only on March 10, 2016, did the grievor "[translation] truly" provide her version of what happened on February 5, 2016 (Exhibit E-1, tab 11). According to him, she revealed then that on or about February 2, 2016, her friend, "N.", who was her sporadic boyfriend and with whom she had previously lived, was living in Montreal. He told her by phone that he had mailed a package to her home in Sept-Îles. He is not a CBSA employee. She affirmed that initially, she had doubts about the package's contents. She then admitted to Mr. Lapierre that on the morning of February 5, 2016, she was aware of the contents of the package that her friend, N., had sent. She said that N. was preparing to move and that he did not want his parents, who were visiting Montreal, to see the hashish, so he chose to send it to her in Sept-Îles. According to her, he intended to retrieve the package's contents the next time he joined her in Sept-Îles.

[20] Mr. Lapierre went on to state that the grievor had told him that when the post office employee withheld the package because it smelled of drugs, she panicked and went to the SQ station to tell them what had just happened.

[21] On March 10, 2016, the grievor told Mr. Lapierre that SQ Officer Monger had assured her that what she had said was confidential. He also gave her a brochure on suicide prevention and suggested that she contact a lawyer, which she did the following Monday. The grievor informed Mr. Lapierre that her lawyer's advice had been to say and do nothing on the grounds that it might help N. (Exhibit E-1, tab 12, page 2). The grievor chose not to talk to the RCMP for fear that it would harm N. The grievor stated that it would have been like "[translation] stabbing him in the back" (Exhibit E-1, tab 10).

[22] Mr. Lapierre testified that he asked the grievor why she had not wanted to say anything in her meetings with Mr. Banville and the RCMP on March 4, 2016 (Exhibit E-1, tab 12, page 2). She allegedly told him that she wanted to talk to N. first to protect him; she did not want to betray him. Her lawyer had also advised her not to say anything as doing so could also help N. (Exhibit E-1, tabs 11 and 12). On the morning of February 5, 2016, N. allegedly told her in effect that if they did not retrieve the package's contents, "[translation] they would be in trouble" (Exhibit E-1, tab 12).

[23] The grievor also argued that she did not raise it with her superiors because she was depressed, was alone in Sept-Îles far from family and friends, and did not want to damage the Agency's credibility (Exhibit E-1, tab 11).

[24] According to Mr. Lapierre, during the March 10, 2016, meeting, the grievor acknowledged that it was problematic for her to be a CBSA employee and for her friend, N., to use an illicit drug. She also said that it was the first time she had received such contents, which was one of the reasons she had since broken up with N.; she was in a conflict of interest. She affirmed that in the past, she had seldom used illicit substances, and not since entering the Rigaud college as a recruit in 2013.

[25] At the March 10, 2016, meeting, the grievor also indicated that she confided in her only work colleague, Jenny Blais, on March 7, 2016, after her meeting with Mr. Banville.

[26] At the March 10, 2016, meeting, the grievor agreed to provide a written statement (Exhibit E-1, tab 12). That statement, along with the notes from her meeting with Mr. Lapierre that day, were then sent to Hervé Dominique at the CBSA's Professional Standards Investigations section and to Pierre Provost, a CBSA executive director (Exhibit E-1, tabs 8 and 12).

[27] Mr. Lapierre testified that he consulted with the CBSA's Professional Standards division and its Labour Relations division on the position to take in this matter. He then went to Sept-Îles with Mr. Banville on April 18, 2016, to meet again with the grievor, who this time was accompanied by her union representative. The purpose was to inform her that her reliability status had been suspended and that as a result, she no longer met the conditions of employment required for the border services officer position. Mr. Lapierre explained that until April 18, 2016, the grievor had been either on vacation or on light duties because of a medical certificate.

[28] Mr. Lapierre testified that on April 18, 2016, he gave the grievor letters from Pierre Giguère, the CBSA's director general of security, and Benoit Chiquette, a CBSA regional director general, informing her of the suspension of her reliability status and of her suspension without pay effective April 18, 2016 (Exhibit E-1, tab 6).

[29] As for his next involvement, Mr. Lapierre testified that he attended the disciplinary meeting on July 25, 2016. The purpose was to inform the grievor that although her reliability status had been reinstated (Exhibit E-1, tab 18), the investigation by Mr. Dominique of Professional Standards Investigations had shown that three allegations were founded, which were attempting to collect the package containing 12 g of hashish, failing to report that incident to her superiors, and failing to demonstrate honesty and sincerity. Under the circumstances, Mr. Lapierre and his colleagues wanted to allow her to comment on those three allegations and to provide additional information as mitigating factors.

[30] Referring to his notes, Mr. Lapierre testified that at the July 25, 2016, meeting, the grievor acknowledged that she had lacked judgment by placing herself in a difficult position and by involving the CBSA. She reiterated that she was alone and with no family in Sept-Îles, that her father was then very ill, and that although her answers might have seemed contradictory at times, it was because she was suffering from panic attacks and was vulnerable to stress. She also maintained that by going to the SQ on February 5, 2016, after trying to pick up the package, she believed that she had met the duty of disclosure (Exhibit E-1, tab 20).

[31] When he was asked why the employer decided to reinstate the grievor's reliability status on July 18, 2016, Mr. Lapierre was unable to answer and left it to Mr. Giguère, the CBSA's director general of security, to explain that decision.

[32] Mr. Lapierre reported that after the disciplinary meeting of July 25, 2016, the employer consulted Labour Relations. On August 9, 2016, Mr. Provost sent a letter to the grievor to advise her that following Mr. Dominique's investigation, and despite the fact that her reliability status had been reinstated, she had been suspended without pay retroactive to July 18, 2016, the date on which her reliability status had been reinstated (Exhibit E-1, tab 21). She did not provide any new information or comments after receiving that letter (Exhibit E-1, tab 22).

[33] In cross-examination, Mr. Lapierre acknowledged that the grievor's immediate supervisor, Mr. Berberie, was not involved in the disciplinary process because the intent was to keep everything as confidential as possible and because the grievor did not want it to be public. Moreover, given the seriousness of the act and the fact that partners such as the RCMP and SQ were involved, he had to be involved, not Mr. Berberie.

[34] When he was asked how the grievor had not been honest, Mr. Lapierre explained that at the March 4, 2016, meeting, she should have cooperated and given her version of the facts. She preferred to not cooperate; and on that afternoon, she did not wish to provide any details to the RCMP. According to Mr. Lapierre, she simply refused to disclose what she knew. She preferred to remain silent rather than cooperate. As for the explanations she provided after the July 25, 2016, disciplinary meeting, Mr. Lapierre concluded by stating that the facts were known in July 2016. However, he acknowledged that the grievor had regrets and that she admitted several times that she was sorry.

### **3. Mr. Dominique**

[35] Mr. Dominique is a senior advisor in the CBSA's Intelligence division. He has worked at the CBSA for 30 years. In 2016, he was a senior investigator in the Professional Standards division, and his duties consisted of conducting administrative investigations when allegations were made about CBSA employees.

[36] On March 4, 2016, Mr. Dominique was informed that a postal package containing hashish had allegedly been sent to a border services officer. Therefore, he began to contact the individuals involved, namely, Mr. Lapierre, Mr. Banville, employees of the post office in Sept-Îles, Mr. Côté of the RCMP, and SQ Officer Monger, to determine whether there was a basis for an investigation. He also obtained the reports



of Mr. Banville and Mr. Lapierre as well as a document from the SQ (Exhibit E-1, tabs 9, 10, 12, and 13). He also checked Facebook to verify certain links. And he obtained a statement from the grievor dated March 31, 2016 (Exhibit E-1, tab 12). Therefore, on that same day, Mr. Dominique decided that he had enough information to launch an investigation.

[37] In his investigation, Mr. Dominique met with the grievor, Jenny Blais (the grievor's co-worker in Sept-Îles), SQ Officer Monger, Mr. Côté of the RCMP, Mr. Banville, and Mr. Lapierre. Mr. Dominique also met with N., the grievor's friend.

[38] Mr. Dominique indicated that he invited the grievor to a meeting on April 11, 2016. She chose not to come with an observer and appeared nervous, stressed, and emotional. The notes from that meeting were filed in evidence (Exhibit E-1, tab 14).

[39] Mr. Dominique explained that after gathering the facts and after his meetings with those involved, he retained two allegations against the grievor, which were attempting to pick up the package containing an illegal substance (12 g of hashish) and failing to promptly report the February 5, 2016, incident to her superiors, which contravened the Code of Conduct.

[40] According to Mr. Dominique, the grievor's version provided at the April 11, 2016, meeting was sometimes contradictory. He testified that initially, she said that she did not know what the package contained. She then changed her story, stating that she had had doubts and that she had thought that it might be flowers because February 5, 2016, was just a few days before Valentine's Day. However, according to Mr. Dominique, she apparently finally acknowledged that she was aware of the package's contents that she wanted to pick up, after he referred her to her statement to Mr. Banville of March 10, 2016, in which she admitted to knowing of the package's contents.

[41] According to Mr. Dominique, the grievor was also evasive with respect to the dates on which she had used drugs. She allegedly first said that she had never used drugs and then said that she had used them a couple of times in high school and that the last time was in 2008-2009. As for N., whom she had been seeing since 2012 and with whom she was still in contact, she knew that he used illicit substances from time to time. When she was asked if she had disclosed that fact when the CBSA hired her,

she replied that she had probably not disclosed anything. In the April 11, 2016, interview, she admitted that it did not reflect well on the CBSA that she was seeing someone who used illicit substances and that she was in a conflict of interest (Exhibit E-1, tab 14, page 4). She also allegedly said that although N. used drugs, he never used them in front of her because he knew that she would not approve.

[42] Mr. Dominique found her version of the facts contradictory with respect to the number of times she tried to pick up the package on February 5, 2016. On that matter, the statement of SQ Officer Monger is that she stated that she went to the post office twice, in the morning and afternoon of February 5, outside her working hours (Exhibit E-1, tab 13).

[43] Mr. Dominique also testified that at the same meeting on April 11, 2016, the grievor allegedly stated that she had panicked when the postal employee refused to give her the package in the afternoon of February 5, 2016, that she absolutely had to talk to someone, which was why she voluntarily went to the SQ on that day, and that the officer had allegedly told her that her statement was confidential. Her lawyer, contacted the following Monday, February 8, 2016, allegedly advised her not to say anything and stated that she did not need to worry because her name was not on the package, just her address.

[44] The grievor reportedly admitted that she did not want the incident to be known and that she was ashamed. She apparently said that she did not want the CBSA to know but that at the same time, she would have informed it had she thought of it. She indicated that she did not say anything at the meeting with Mr. Banville on March 4, 2016, because she was still in shock and did not want to throw N. “[translation] under the bus”. Apparently, she wanted to clarify the entire matter with N. and give him a heads-up before speaking with Mr. Banville on March 4, 2016. She had asked at the meeting if she would be able to meet later with CBSA to explain everything and she had been assured that she could. (Exhibit E-1, tab 14, page 6).

[45] Mr. Dominique also maintained that the grievor told him that had the RCMP not reported the February 5, 2016, incident to the employer, she would not have raised it on her own (Exhibit E-1, tab 14, page 6). In short, he affirmed that he had found that at the April 11, 2016, meeting, she provided evasive and contradictory answers and that she had not shown honesty and sincerity. Under the circumstances, he decided to add

a third allegation against her, which was not being honest and sincere during the investigation. Accordingly, he concluded that she had not respected the commitments to candour and honesty set out in the Code of Conduct in section 8.1 on page 18 (Exhibit E-1, tab 25).

[46] In his investigation, Mr. Dominique stated that he had taken into account the Code of Conduct (Exhibit E-1, tab 25), including Chapter 4, page 13, which refers to the conduct of an employee outside working hours and provides several examples of things not to do, such as participating in criminal activities. He also stressed that the code clearly specifies that if an employee is arrested, detained, or charged, the employee must immediately report the incident to his or her superior, even for minor violations. I note that none of these situations apply here. The code also states that the employee must report any contact or association with persons suspected of criminal activity (Exhibit E-1, tab 25, page 13). Therefore, according to him, the grievor should have also reported her relationship with N. as he was consuming illicit substances (Exhibit E-1, tab 25, page 13).

[47] According to Mr. Dominique, the grievor's situation was even more serious given that she had peace officer status and that her job as a border services officer with the CBSA was to seize illegal substances such as hashish.

[48] According to Mr. Dominique, the standard of conduct is higher in cases in which the employee's role is to enforce the law. In this case, the grievor's actions contravened the Code of Conduct (Exhibit E-1, tab 25, page 9).

[49] Mr. Dominique concluded his investigation report by essentially finding that the grievor had attempted to pick up the package containing an illicit substance, that she failed her duty to immediately inform her superiors, and that she had not been honest and sincere about the February 5, 2016, incident, which breached the Code of Conduct. The investigation report was submitted to Benoit Chiquette, a CBSA regional director general, on June 10, 2016 (Exhibit E-1, tab 15).

[50] In cross-examination, Mr. Dominique specified that he had personally prepared the three allegations against the grievor, noting that the requirement to report an offence without delay, like the one on February 5, 2016, to the CBSA meant that her employer had to be notified immediately. He testified that although on that day, February 5, 2016, she made a statement with the SQ, doing so did not eliminate her

duty of disclosure to her employer. In his view, the fact that she insisted with SQ Officer Monger on asking if her statement would remain confidential clearly demonstrated her desire to conceal the incident from her employer because she understood the seriousness of her actions (Exhibit E-1, tab 10, page 3).

[51] When he was asked about that discussion with SQ Officer Monger, Mr. Dominique agreed that the officer had described the grievor as appearing traumatized when she came to see him at the station on February 5, 2016, to the point that the officer felt the need to give her a pamphlet on suicide prevention. Mr. Dominique replied that he was unable to determine whether stress had prevented her from confiding in her employer.

[52] In his testimony, Mr. Dominique was unable to confirm whether N. had a criminal record.

[53] In his meeting with N., Mr. Dominique confirmed that N. had told him of a difficult relationship with the grievor, particularly because he was using illicit substances, with which she disagreed.

[54] Mr. Dominique agreed that to his knowledge, the February 5, 2016, incident did not make headlines. He did not know whether CBSA employees had discussed it. He concluded that throughout his interview with the grievor, he did not have the impression that she was sincere with respect to this matter.

#### **4. Mr. Provost**

[55] Mr. Provost retired from the federal public service in July 2018 after 31 years of service. As of the February 5, 2016, incident, he had been an executive director at the CBSA for its Québec Region since 2013. In particular, he was a liaison between that region and the CBSA's Professional Standards Investigations section for any professional misconduct in Québec.

[56] Mr. Provost also explained that in this case, he was not only the executive director for the Québec Region on an acting basis but also, in July 2016, the regional director general on an acting basis, as he had to make a decision while temporarily replacing Mr. Chiquette.

[57] At this point, it is appropriate to explain that another witness for the employer, Mr. Giguère, who was a director general at the CBSA at the time in question, rescinded the grievor's reliability status in an undated letter (Exhibit E-1, tab 6). (I note that in his testimony, Mr. McCarthy clarified that the letter was dated April 18, 2016, and note that he was the director of the Security and Professional Standards division in 2016.) After Mr. Dominique issued his investigation report, Mr. Giguère asked the grievor, in another undated letter, to comment on the statements and findings on "[translation] security concerns" in Mr. Dominique's report (Exhibit E-1, tab 16). She did so in an undated letter received by Mr. Giguère's office on July 18, 2016. Satisfied with her explanations, he decided to reinstate her reliability status as of July 18, 2016 (Exhibit E-1, tabs 6, 7, and 18).

[58] However, I note that although the grievor's reliability status was reinstated, Mr. Giguère's letter stated that the decision to reinstate it was independent of any decision that management might make given the disciplinary nature of the matter (Exhibit E-1, tab 18).

[59] Referring to Mr. Giguère's decision to reinstate the grievor's reliability status in July 2016, Mr. Provost testified that nevertheless, he decided to suspend the grievor without pay for an indeterminate period as of July 18, 2016, the date on which Mr. Giguère had reinstated her security clearance. Mr. Provost's letter stated that she was suspended pending the outcome of the disciplinary investigation, which, like the security aspect of this matter, was based on Mr. Dominique's Professional Standards report.

[60] Mr. Provost justified his decision to suspend the grievor without pay on August 9, 2016, by the fact that although the security aspect had been settled for the CBSA, the disciplinary investigation had not completed. Since he had Mr. Dominique's Professional Standards report in hand, he felt that the February 5, 2016, incident was serious enough to suspend her until the disciplinary investigation was complete.

[61] In his testimony, Mr. Provost specified that the process for suspending reliability status and the disciplinary process are two separate and independent exercises. They are conducted in parallel. For example, the Security and Professional Standards division is responsible for ruling on the rescission of a reliability status. However, for the disciplinary aspect, it falls on the manager in authority, in this case

the regional director general, who was Mr. Chiquette, to decide and to take the appropriate steps.

[62] When he was asked about the seriousness of the February 5, 2016, incident, Mr. Provost explained that first and foremost, the CBSA's mandate to enforce the law and ensure the safety of Canadians, particularly with respect to the flow of goods in the country. According to him, if illicit goods are circulating in the country, the CBSA must act. Thus, any misconduct incompatible with its mandate must be penalized, as it undermines the CBSA's credibility, particularly when it consists of drugs prohibited under the *Criminal Code*.

[63] Mr. Provost specified that the border services officers' role is precisely to intercept the flow of illicit drugs and that they are responsible for reporting such transactions immediately. In this case, not only did the grievor try to take part in an illegal activity, but also, she did not immediately inform her superiors of the situation, as she should have done. Therefore, he felt that he should suspend her from her duties until a decision was made on her actions.

[64] According to Mr. Provost, the grievor tarnished the CBSA's reputation through her actions. He explained that the CBSA is part of a public safety portfolio that includes organizations such as the Correctional Service of Canada, the Canadian Security Intelligence Service (CSIS), and police forces such as the RCMP and SQ. The CBSA must work and collaborate with those organizations. It is a matter of reputation and professional integrity. Therefore, it is normal for expectations to be higher for CBSA officers, as it is a matter of the employer's reputation with partners and with Canadians. Under the circumstances, according to Mr. Provost, there is zero tolerance.

[65] According to the witness, the grievor's actions had a direct impact on the CBSA's bond of trust with her. In this case, she tried to intercept the package, knowing full well that it contained narcotics. She knowingly acted to protect her friend who was committing an illegal act, which also made her vulnerable to future corruption attempts.

[66] Mr. Provost explained that he decided to suspend the grievor on August 9, 2016, retroactive to July 18, 2016. As her reliability status had been reinstated, he did not want her to return to her duties before the disciplinary investigation was completed and a decision was made about her.

[67] In cross-examination, Mr. Provost indicated that before suspending the grievor, he consulted not only Mr. Dominique's investigation report but also the notes from her meeting with Mr. Lapierre, the Code of Conduct, the Human Resources division, and the Professional Standards division. He did not consult Mr. Berberie, her immediate supervisor, or her colleague, Ms. Blais.

[68] When he was asked why the grievor's reliability status had been reinstated in July 2016, but, still based on the February 5, 2016, incident, it was determined that she would be suspended without pay on August 9, 2016, Mr. Provost maintained that it was a matter of two different processes with different assessment criteria. However, he was unable to specify the stricter criteria, i.e., those related to security or those applied to disciplinary standards.

## **5. Ms. Blais**

[69] At the time in question, Ms. Blais, who has about 30 years' service in the public service, was the grievor's only colleague as a border services officer in Sept-Îles. Ms. Blais recalled that her duties included, among other things, searching ships and aircraft for contraband or illicit materials and that the work was done by two officers. In their duties, border services offices must work with members of the RCMP and the SQ.

[70] Ms. Blais confirmed that she was also an Employee Assistance Program representative but that she had made it clear in her discussions with the grievor that she was not acting under that program but rather as a colleague and employee. Ms. Blais also stated that she had been asked "[translation] a large amount of" questions by all kinds of people about the February 5, 2016, incident and the grievor's involvement but that she never answered those questions. She found that the grievor was a good colleague, that she was excellent at administration and searching in general, and that she "[translation] had nothing to say against the grievor".

[71] Ms. Blais has known the grievor since the grievor joined the CBSA in 2015.

[72] Ms. Blais recounted that on Sunday, March 6, 2016, a month after the February 5, 2016, incident, the grievor contacted her at home to ask her to come in earlier the next day because the grievor wanted to speak with her. On Monday morning, the grievor was in state of panic and told her she was not proud of herself,

and she cried. She told Ms. Blais her version of what happened on February 5, 2016, and specified that her lawyer had told her that she should say nothing and that she should meet with the RCMP only in the presence of a lawyer. Ms. Blais related her meeting with the grievor on March 7, 2016, in a note prepared at Mr. Banville's request (Exhibit E-1, tab 7).

[73] Ms. Blais testified that on March 9, 2016, having not heard from the grievor, she contacted Mr. Banville because she was very worried about the grievor's safety. She agreed with Mr. Banville that she should check on the grievor at her home. She went there that same day. Ms. Blais indicated that N. opened the door for her. Although initially, she was angry at his presence, she said that at the same time, she was reassured to see that the grievor was not alone, because Ms. Blais was very worried about her personal safety, given the grievor's emotional state when they met on March 7.

## **6. Mr. Chiquette**

[74] In February 2016, Mr. Chiquette was the CBSA's regional director general in Québec, which he remained until the end of October 2016. Thus, he held the CBSA's highest position in Québec. He explained that as such, he had the delegation of authority with respect to terminations in the Québec Region. He explained that he was involved in several cases. As for the grievor's case, he was involved quite early, given that her alleged actions were serious.

[75] As for Mr. Giguère's letter informing the grievor that her reliability status was suspended (Exhibit E-1, tab 6), Mr. Chiquette testified that the CBSA had no choice then but to suspend her from her duties without pay during the review period, as she no longer met an essential condition of her employment, which was holding reliability status.

[76] Mr. Chiquette maintained that although later on, the grievor's reliability status was reinstated, on July 18, 2016, the CBSA had to consider the disciplinary aspect of the case, which led to the suspension without pay for an indefinite period as of July 18, 2016.

[77] In testifying about the reasons behind his decision to terminate the grievor, Mr. Chiquette stressed the seriousness of the allegations against her. According to him, it



was clear that when she went to pick up the package on February 5, 2016, she knew that it contained an illegal substance — hashish. However, her duties were precisely to seize illegal substances, such as hashish. Therefore, the alleged offence was very serious, and it undermined the CBSA's credibility.

[78] According to Mr. Chiquette, the actions on February 5, 2016, broke the bond of trust between the grievor and her employer. It was not a grey area. He also noted that she took time before admitting her fault. Although she had first admitted her fault to SQ Officer Monger, she was then reluctant to share what had happened with her employer. In his view, she seemed more concerned with protecting her friend, N., than with speaking with her employer.

[79] In addition to the SQ and the RCMP, who were now aware of the grievor's offence, Mr. Chiquette pointed out that the employees at the Sept-Îles post office were also aware of it and that the CBSA worked with them in all matters related to intercepting illegal substances, such as drugs. Under the circumstances, the CBSA had to act with respect to the grievor to conserve its credibility and collaboration with its partners. Mr. Chiquette also mentioned that an occurrence like the February 5, 2016, incident quickly becomes public knowledge; thus, it still discredited the CBSA's work, even though no criminal charges were laid against the grievor.

[80] Mr. Chiquette explained that for those reasons, the CBSA must have complete trust in its employees, particularly since in this case, the grievor was in a remote region, and her immediate supervisor was in Québec. Therefore, it was important that she could be trusted.

[81] When he was asked whether he considered mitigating factors when he decided to terminate the grievor, Mr. Chiquette replied that he had understood that she had expressed regrets but that it was too late; the bond of trust was broken. First, she should never have associated with someone like N., who used illicit substances. In addition, she always sought to protect him instead of being transparent with her employer. In Mr. Chiquette's view, through her actions, she placed herself in a position of vulnerability to third parties, which could have had consequences for her employer. According to him, although he acknowledged that she had contacted the SQ on the day of the offence, she should have advised Mr. Banville of what happened on the day of the incident, even a month later, on March 4, 2016. She preferred to not cooperate. She

also preferred not to say anything to the RCMP that same day. In doing so, she failed the obligations set out on pages 9 to 13 and 18 of the Code of Conduct (Exhibit E-1, tab 25).

[82] In cross-examination, Mr. Chiquette explained that he had to suspend the grievor without pay because, by losing her reliability status, she no longer met her conditions of employment. Moreover, since reliability status is mandatory for all public service jobs, he could not assign her to other duties. He also mentioned that the allegations against her were serious enough to not pay her during the investigation.

[83] To justify his decision to suspend the grievor without pay and then terminate her employment, Mr. Chiquette maintained that he kept to the facts and that he considered the essentials, such as honesty and integrity. He also stated that he adhered to the findings set out in Mr. Dominique's investigation report received on June 10, 2016, according to which the bond of trust between the grievor and her employer was broken (Exhibit E-1, tab 15).

[84] Mr. Chiquette was asked why the CBSA decided to proceed with the indefinite suspension and, in September 2016, with the termination, considering that the CBSA had considered it appropriate a few months earlier, on July 18, 2016, to reinstate the grievor's reliability status. He replied that he had primarily considered her actions from the standpoint of misconduct and that the security aspect is different from the disciplinary aspect. However, he did not explain that difference (Exhibit E-1, tab 18).

[85] In cross-examination, the grievor's representative sought to understand why, considering the factors of honesty and integrity, the employer decided on one hand to reinstate the grievor's security clearance, while the on the other hand, based on those same two factors, ultimately, it decided to terminate her. Mr. Chiquette replied that he did not know the criteria that Mr. Giguère had considered when he restored her reliability status in July 2016 and that for his part, he decided to terminate her on September 20, 2016, based on the information available to him. Mr. Chiquette stated that he decided to make the termination retroactive to the date on which she had been suspended without pay a second time, on July 18, 2016.

[86] Mr. Chiquette agreed that the grievor had no other discipline on her file apart from that related to the February 5, 2016, incident. In his view, while it might have been be a mitigating factor, the fact remains that the seriousness of her action and her

lack of transparency with management meant that termination was the appropriate disciplinary measure under the circumstances. He insisted that only indirectly through the RCMP did the CBSA learn of the February 5, 2016, incident. And she should have cooperated with her superiors or the RCMP, who met with her on March 4, 2016. Instead, she preferred to protect her friend N., with the consequence that the bond of trust is now broken. For Mr. Chiquette, her management of the events following the February 5, 2016, incident, namely, her lack of transparency or cooperation, weighed heavily in his decision to terminate her.

## **7. Érik Paradis**

[87] Mr. Paradis explained that he replaced Mr. Lapierre on an acting basis in September 2016 and that in that role, he invited the grievor to a meeting on September 26, 2016. The purpose was to inform her of the decision that had been reached after the July 25, 2016, disciplinary hearing. Mr. Paradis attended the meeting with a representative from Human Resources, the grievor, and her union representative. The termination letter that Mr. Chiquette signed and that was dated September 20, 2016, was then given to the grievor, who read it (Exhibit E-1, tabs 23 and 24). She did not ask any questions at the meeting. When he was asked whether the decision to terminate her had already been made on September 26, 2016, given that the letter had been signed on September 20, 2016, Mr. Paradis replied that his role on that day was merely to give her the letter; he did not comment.

## **8. Mr. McCarthy**

[88] As the director of the Security and Professional Standards division, in 2016, Mr. McCarthy managed a team that included Mr. Dominique. Mr. McCarthy has 30 years of service in the public service. In his testimony, he explained that among other things, he is responsible for screening employees at the CBSA and for investigations involving security matters. He explained that over the years, he and his team have developed a training package on professional integrity awareness. It is delivered to CBSA recruits in Rigaud. He once led the related courses, which were held in February and August 2013, the year in which the grievor joined the CBSA. He indicated that on August 22, 2013, an English awareness session was delivered at Rigaud as part of the 18-week training module. The session normally last 2 hours, and it is mandatory for all recruits. No recruit has ever missed it.

[89] Mr. McCarthy explained that the training package drew from lessons learned and from CBSA employees' experience. Hundreds of employees, including recruits, have been instructed in the package; basically, its purpose is to teach them how to stay out of trouble.

[90] Mr. McCarthy explained that at those instruction sessions, recruits and employees receive an explanation of what values and ethics mean to the CBSA. Discussions are held on disrespectful conduct, criminal associations, misusing information, etc. Employees and recruits are also reminded that their conduct outside work hours could also be an issue, and they are told about the risks of criminal associations that could result in blackmail. Mr. McCarthy explained that the recruits are exposed to several examples in which, for example, family members could be part of the issue. But even when family members are involved, employees have no choice but inform their managers.

[91] Mr. McCarthy mentioned that for example, recruits are reminded of the necessity of informing their superiors immediately when an issue arises. According to him, recruits are clearly reminded of the importance of self-disclosure to management when they face a situation that may affect them, their families, or any members of their entourages. For instance, if a family member is arrested, the employee has the obligation to let his or her supervisor know about it.

[92] Mr. McCarthy also indicated that the awareness sessions stress that there is real danger in associating with people involved in criminal activities and that it is always difficult to exit those associations. In his testimony, he referred to the Values and Ethics Code for the Public Sector at paragraph 3, page 5 (Exhibit E-4). In addition, the Code of Conduct (Exhibit E-1, tab 25, pages 7 to 9, 13, and 18) clearly states at section 8.1 that employees have to be forthright and speak with candour when they become involved in a situation. In this case, Mr. McCarthy pointed out that the grievor did not cooperate when she met with management and with Mr. Dominique during his investigation.

[93] Mr. McCarthy explained that he was made aware of the present matter when his team became involved in its role to investigate the February 5, 2016, incident. On March 31, 2016, based on information provided by Mr. Dominique, he prepared a note for Mr. Giguère, who was then the departmental security officer. Thus, he had the

authority to decide whether the grievor's security status should be suspended. In his note, Mr. McCarthy recommended to Mr. Giguère that her reliability status be suspended during Mr. Dominique's investigation (Exhibit E-1, tab 4). On April 18, 2016, Mr. McCarthy prepared a letter for Mr. Giguère's signature that informed the grievor that her reliability status was suspended while Mr. Dominique's investigation was underway (Exhibit E-1, tab 6).

[94] On the matter of security screening, Mr. McCarthy explained that to occupy their positions, federal public service employees must hold reliability status clearance. That is the basic requirement. More simply, without it, no federal public service position can be held.

[95] Mr. McCarthy received a copy of Mr. Dominique's investigation report, which was then sent to Mr. Chiquette on June 10, 2016. The grievor was provided with a copy and then provided her comments on July 18, 2016 (Exhibit E-1, tabs 15 to 17). As indicated in the other testimonies, once he received her comments, Mr. Giguère decided to reinstate her reliability status (Exhibit E-1, tab 18).

[96] Mr. McCarthy testified that the risks that were identified when it was decided to suspend the grievor's reliability status on April 18, 2016, were the fact that she had not been forthright with management about the February 5, 2016, incident, that at some point, she had said that she had not known what was in the package that N. had sent, and that she had associated with N., who was involved in criminal activities. There was also the fact that she had been inconsistent about when she had used drugs. Finally, she had acted contrary to the good behaviour expected from a CBSA agent.

[97] In his testimony, Mr. McCarthy pointed out the standards that the CBSA considers when assessing someone and deciding whether that person should be granted reliability status (Exhibit E-1, tab 5).

[98] When he was asked why, on July 18, 2016, after receiving the grievor's comments, it was decided to reinstate her reliability status, Mr. McCarthy admitted that while the decision belonged to Mr. Giguère, nevertheless, he recommended to Mr. Giguère that he reinstate it subject to her successfully completing a training session. Mr. McCarthy explained that he considered the facts that as of the incident, the grievor lived far from home, in Sept-Îles, and that she had expressed regret and remorse. However, he stressed that he considered only the security aspect of the problem. He

did not pronounce himself from a disciplinary point of view (Exhibit E-1, tabs 6 and 18).

## **9. Mr. Giguère**

[99] Mr. Giguère retired from the federal public service in 2017 and now works in the private sector.

[100] In February 2016, Mr. Giguère had been the director general of professional standards and security since 2012. Before that, he had been a member of the RCMP.

[101] Notably, in 2016, he was responsible for employee security screening, reviewing applications for reliability status for CBSA applicants, administrative investigations related to the Code of Conduct, and the physical safety of employees and CBSA buildings. He was also responsible for computer security at the CBSA.

[102] Mr. Giguère testified that he was informed of the February 5, 2016, incident involving the grievor in April 2016. He indicated that he suspended her reliability status based on the information provided by Mr. McCarthy, possibly on Mr. Banville's notes (Exhibit E-1, tabs 4 and 9), and on a briefing from his employees.

[103] Mr. Giguère explained that every federal public service employee must obtain reliability status; federal public service employment cannot be obtained without it. He distinguished reliability status from security clearance. Reliability status is granted following a consultation with the RCMP and an assessment of factors such as a person's credit rating, associations, etc. For a security clearance, such as the secret level, CSIS is responsible for conducting the necessary assessment, primarily considering national security. Mr. Giguère testified that he had received the necessary delegation from his deputy minister to suspend the grievor's reliability status. However, a deputy minister cannot delegate the authority to suspend or revoke a security clearance.

[104] Mr. Giguère explained the three factors that are considered when granting or suspending reliability status, which are honesty and integrity and whether the person is trustworthy. He explained that he decided to suspend the grievor's reliability status in April 2016 on the grounds that the CBSA's primary mandate is to enforce the law. When he considered the February 5, 2016, incident, without knowing her explanations at the time, he found that there was a risk to the CBSA. He explained that at that time,

he thought that she might be vulnerable because of her association with a person who used illegal substances, given that a border services officer's role is precisely to monitor and control the circulation of drugs. Moreover, she did not advise her employer of the situation on her own. She chose not to say anything, to protect her friend. In Mr. Giguère's view, by doing so, she potentially became an internal threat to CBSA security. Fearing for CBSA security, and based on the fact that she had to interact with the RCMP and SQ in her duties and thus on the importance of being credible with those partners, he decided to suspend her reliability status after consulting the "Standard on Security Screening" (Exhibit E-5, page 5).

[105] After suspending the grievor's reliability status in April 2016, Mr. Giguère testified that he received Mr. Dominique's investigation report, which he sent to her in an undated letter. In it, notably, he asked her to respond to concerns raised in Mr. Dominique's investigation report (Exhibit E-1, tab 16).

[106] Mr. Giguère explained that he received the grievor's comments on July 18, 2016 (Exhibit E-1, tab 17). He stated that he understood from those comments that on February 5, 2016, she had been alone, away from her family and without friends. Her father was also very ill during that period, which, according to Mr. Giguère, added to her stress. In addition, he explained that since her relationship with her friend was unsustainable, the negative influence from her friend that had initially raised concerns that she was in a vulnerable position and that had led to the suspension of her reliability status was no longer a factor. Mr. Giguère also explained that he had read Mr. Banville's notes, who had discussed the grievor's fate with her direct supervisor, Mr. Berberie. He had showed sadness about the situation, as the grievor had been experiencing difficulties at the relevant time, and, after all, she was a good employee and a good person (Exhibit E-1, tab 9, page 8).

[107] Mr. Giguère said that he considered all those factors, including the fact that according to him, the grievor did not have to cooperate with the RCMP on March 4, 2016, as she was under no obligation to incriminate herself. On that point, he noted that in his opinion, she was not required to talk to the RCMP on the afternoon of March 4, and she was not required to drop by the SQ on that day. He then indicated that he asked himself if he would be willing to include someone like her in his team. He determined that although she had certainly showed a lack of judgment in his opinion,

she did not necessarily represent a risk to CBSA security. Under the circumstances, he testified that he would have no problem having her as part of his team.

[108] While Mr. Giguère stated that he was satisfied that the grievor did not represent a risk to the CBSA, he specified that he did not rule on the disciplinary aspect of this case. On one hand, he pointed out that his undated letter to her indicated that although she had again been granted reliability status, this issue was separate from any decision that management might make about whether discipline could be imposed (Exhibit E-1, tab 18).

[109] Mr. Giguère was asked why, based on the same factors expressed in the letters suspending her reliability status and terminating her, it was concluded that the grievor was reliable, honest, had integrity and was trustworthy from a security perspective but not from a labour relations standpoint (Exhibit E-1, tabs 6 and 24). He stressed that he had made his decision by considering the integrity factor in light of the risk that she might or might not have represented to the CBSA, while his colleagues who had to decide whether to terminate her had to consider whether she was suitable for a border services officer position.

#### **B. For the grievor**

[110] Before calling her only witness, the grievor, her representative made an opening statement.

[111] The representative argued that the question to be asked in this case was whether the penalty imposed on the grievor for the February 5, 2016, incident was too severe. In fact, the representative stated that the allegations against the grievor were not contested. She noted that instead, it was a matter of determining whether this entire matter warranted termination or whether, as Mr. Giguère did, concluding that the grievor simply lacked judgment, that the termination was unreasonable, and that it was much too severe a penalty in the circumstances.

[112] As noted, at the hearing, the grievor's representative withdrew the first grievance, on the grievor's indefinite suspension following the suspension of her reliability status on April 18, 2016. Her representative argued that as of July 18, 2016, the date on which the grievor's reliability status was reinstated, no further discipline should have been taken against her.



[113] The representative maintained that on July 18, 2016, when Mr. Giguère concluded that the grievor did not represent a risk to the CBSA and that the concerns about her honesty and reliability were resolved, the employer had no reason to suspend her again or, clearly, to terminate her.

**1. Ms. Campeau**

[114] Ms. Campeau was the union's only witness. She briefly testified.

[115] She explained that presently, she is 27 years old and that she was 24 on February 5, 2016. She still lives in Sept-Îles. Since her discharge from the CBSA in September 2016, she has worked full-time since 2017 as a youth counsellor in a shelter for women who are victims of violence. Before that, she worked as an educator at a childcare centre for a while, as a server in a restaurant, and as a beneficiary attendant. She testified that after being terminated, she had to sell her house in November 2017.

[116] She indicated that she arrived in Sept-Îles to work for the CBSA in 2014 following a probationary period of 14 months at the Jean Lesage airport in Québec city. She graduated from the CBSA's Rigaud college in December 2013.

[117] When she was asked why she did not inform her superiors of the February 5, 2016, incident, the grievor stated that even if she apologized 100 times, nothing could explain her state of mind during that period. She testified to having suffered from chronic anxiety since high school. She indicated that she was alone at the time in Sept-Îles, that she felt isolated, and that she had no one to talk to. She said that while SQ Officer Monger and her lawyer had advised her, she was confused as to what to do. The written declaration of March 31, 2016, was made on the advice of her lawyer (Exhibit E-1, tab 12).

[118] When she was questioned as to why she risked her job by collecting the package containing hashish on February 5, 2016, she responded that "[translation] at the time, [she] was not thinking straight", and that she did not think about the Code of Conduct or the training she had received.

[119] In her testimony, the grievor stressed that she wants her job back, that she was a proud employee who made a mistake and a judgment error, and that she feels that she already paid the price for her action.

[120] In cross-examination, she acknowledged that in 2015, she received an offer letter that stressed the obligation for any CBSA employee to adhere to the Values and Ethics Code for the Public Sector (Exhibit E-7). However, she did not recall seeing her job description (Exhibit E-8). She indicated that in 2013, she probably attended the awareness session that Mr. McCarthy described in his testimony. She also reiterated that she stood by the statement made on July 18, 2015, and she added that as of the February 5, 2016, incident, she was dealing with a significant number of external factors, such as her father's illness. Her situation had been unstable, and she had trouble recalling details. She was stressed (Exhibit E-1, tab 17). She explained that she had been diagnosed as suffering from anxiety in the preceding months. She indicated that she consulted her union in mid-April 2016.

[121] In response to my questions, the grievor testified that she still lives in Sept-Îles and that she has "[translation] remade her life". She also acknowledged that she found out on the morning of February 5, 2016, what was in the package that N. had sent her. She specified that she consulted her lawyer in Sept-Îles and that she did not think about talking to a union representative when things started to unravel. She did not know to whom to turn.

### **III. Summary of the arguments**

#### **A. For the employer**

[122] Counsel for the employer started with the second grievance, about the grievor's suspension without pay pending the investigation from July 18 until her termination on September 20, 2016. Counsel maintained that this grievance is moot because the termination was retroactive to the original suspension date, in this case, July 18, 2016, and that the employer could retroactively terminate her employment. Alternatively, counsel argued that if I do not agree that it is moot, I should conclude that it is of an administrative nature and that therefore, I still do not have jurisdiction over it. Counsel referred to Mr. Provost's testimony, in which he explained that in July 2016, the grievor represented a risk for the employer; therefore, it had no choice but to suspend her without pay while determining the outcome. Counsel referred me to ss. 7(1)(e) and 12(1)(c) of the *Financial Administration Act* (R.S.C., 1985, c. F-11) and to the following decisions: *Gravelle v. Deputy Head (Department of Justice)*, 2014 PSLRB 61, *Bahniuk v. Canada Revenue Agency*, 2012 PSLRB 107, *Brazeau v. Deputy Head (Department of Public Works and Government Services)*, 2008 PSLRB 62 at para. 154,

*Shaver v. Deputy Head (Department of Human Resources and Skills Development)*, 2011 PSLRB 43 at para. 80, *Lapostolle v. Deputy Head (Correctional Service of Canada)*, 2011 PSLRB 134 (upheld in 2013 FC 895), *Richer v. Deputy Head (Correctional Service of Canada)*, 2012 PSLRB 10, and *Dionne v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2003 PSSRB 69.

[123] Addressing the grievor's termination, counsel asked whether misconduct had occurred, and if so, whether the discharge had been appropriate. Counsel reviewed the facts of the case, starting with the grievor presenting herself at the post office in Sept-Îles twice to retrieve the package that she knew contained an illegal substance. Counsel then went over her meetings with management, namely, on March 4 and 10, 2016, along with one with the RCMP and one with the investigator, Mr. Dominique, on April 11, 2016. Counsel concluded that she had never been transparent and that she had preferred covering for her boyfriend, N.

[124] Counsel stressed the fact that not only did management find out about the February 5, 2016, incident through one of its partners almost a month after it happened, but also, the grievor was not forthcoming and basically refused to collaborate. Thus, counsel concluded that all three reasons invoked for the discharge in Mr. Chiquette's letter dated September 20, 2016, were clearly proven, namely, the grievor tried to retrieve the package containing drugs, she did not inform management immediately, and she was dishonest (Exhibit E-1, tab 24).

[125] Counsel insisted that despite her initial claim that she did not know, the grievor knew very well what she was asked to do on February 5, 2016, which was to retrieve the package containing an illegal drug. She went ahead with it and failed to inform management. Therefore, the CBSA was justified in terminating her employment; the employer's bond of trust with her was broken.

[126] Counsel then asked whether discharge was the appropriate penalty in the circumstances. Counsel stated that it was and justified management's decision by insisting on the fact that the CBSA is responsible for the movement of people and goods into and out of the country. Intercepting illegal goods is the core of its mandate. As a border services officer and a peace officer, as Mr. Dominique explained, the grievor was responsible for searching for and retrieving illegal substances, not helping circulate them. Counsel referred me to *Newman v. Deputy Head (Canada Border*

*Services Agency*), 2012 PSLRB 88 at para. 728, *Stokaluk v. Deputy Head (Canada Border Services Agency)*, 2015 PSLREB 24, *Stead v. Deputy Head (Correctional Service of Canada)*, 2012 PSLRB 87 at para. 67, and *McKenzie v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 26 at paras. 75 to 81.

[127] Counsel argued that it was more than just a lack of judgment; it was a very serious breach of trust. She insisted that like any border services officer, the grievor was held to a higher standard, given her enforcement role while ensuring public safety. Her action on February 5, 2016, could not be tolerated, and it was completely inconsistent with her duties. She simply failed to uphold her responsibilities. According to the employer's counsel, it is inadmissible for a border services officer who is also a peace officer and whose main responsibility is to search for drugs and contraband, to help a friend by collecting his drugs. See *Richer*.

[128] For counsel, not only did the grievor demonstrate a lack of integrity in the performance of her work, but also, the fact that she did not come forward to management aggravated the matter. Counsel argued that what the grievor knowingly did on February 5, 2016, went against the employer's core mandate. Therefore, the penalty should have been a deterrent.

[129] Counsel insisted that the fact that the CBSA found out not from the grievor but through its partner, the RCMP, is also worrisome and adds to the embarrassment of the entire affair. Counsel maintained that the grievor's action had an effect on her employer's reputation with its partners and that it had no choice but to take serious action if it wanted to maintain its credibility and reputation with other law enforcement entities. Counsel referred me to *Simoneau v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2003 PSSRB 57. For counsel, the employer must be able to rely on its employee and should not have to wonder whether in the future, the employee will act against its interests. Counsel maintained that in this matter, the bond of trust between the employer and the grievor was irrevocably broken; see *Yarmolinsky v. Canada Customs and Revenue Agency*, 2005 PSSRB 6. Counsel for the employer stated that not only did the grievor occupy a position of trust, but also, she was bound by the obligations in the Code of Conduct (Exhibit E-1, tab 25). Counsel argued that she had been a recent recruit, well aware of her obligations, and that she had received the necessary training. Counsel stated that for example, it is clear that a recruit or employee cannot, pursuant to that code, associate with people involved in

criminal activities. In this case, in addition to being involved directly in the February 5, 2016, incident, the grievor chose to remain associated with N. while she knew perfectly well that he was using illegal substances. According to counsel for the employer, this directly contravened the code, which commands that employees conduct themselves at work or outside it in a manner that reflects the employer's values and ethics. Specifically, the code prohibits illegal activities or associating with individuals involved in illicit activities, and it clearly imposes on employees the duty to report without delay any questionable actions or behaviours (Exhibit E-1, tab 25, pages 7, 8 (paragraph 13), 9, 13, and 18).

[130] Counsel also stressed the fact that the grievor's behaviour remained questionable even after the employer knew of the February 5, 2016, incident early in March 2016, almost a month later. Counsel maintained that she remained almost silent at the March 4, 2016, meetings, first with Mr. Banville and then with the RCMP in the afternoon. She did so to protect her friend, N. And the fact that several times, including on March 4, 2016, in her statement, and when she met with Mr. Dominique during the investigation, she first said that she did not know the package's contents before trying to retrieve it and then later changed her mind and admitted that she had known. This all suggests a serious penalty since obviously, she remained evasive and not transparent. Counsel referred me to *Hughes v. Parks Canada Agency*, 2015 PSLREB 75 at paras. 142 and 143. Counsel also pointed out that the grievor never intended to be straightforward; she admitted to Mr. Dominique that she would have not informed management had the RCMP not done so. As a matter of fact, she admitted that she did not want the CBSA to be made aware of the February 5, 2016, incident (Exhibit E-1, tab 15, page 11, paragraph 23(h)). She began to admit to it only when she was backed into a corner, and counsel argued that even then, she often offered contradictory and incomplete information.

[131] Counsel referred me to Mr. Chiquette's testimony in which he expressed serious concerns about the fact that it took almost a month for the grievor to admit to the incident and that the passage of time in this case seriously eroded the trust in her. Counsel explained that Mr. Chiquette is right to think that the CBSA can no longer have faith in her and that it would be difficult to trust her again, especially with her supervisor being distant, in Québec. Counsel agreed with Mr. Chiquette that while the grievor did the right thing when she went to the SQ on February 5, 2016, the way she

managed the situation after that by not being transparent makes her future rehabilitation doubtful.

[132] Counsel argued that even when she went to the SQ right after the February 5, 2016, incident, the grievor was more preoccupied with keeping things confidential than with being straightforward with her employer. She wanted to talk to N. before speaking with the RCMP on March 4, 2016; again, she was more interested in protecting her friend than in explaining herself to her superiors even though she knew then that her action could lead to discharge (Exhibit E-1, tab 9, page 4).

[133] Counsel also pointed out another area of concern. Even when she knew she was in trouble, the grievor did not sever her ties with N., who again was using illegal substances. He visited her in March 2016 in Sept-Îles and was present when Ms. Blais showed up unexpectedly at the grievor's residence. According to counsel, this is another area of concern that clearly contravened the Code of Conduct, which stipulates that CBSA employees have to avoid and disclose to management those associations (Exhibit E-1, tab 25, page 9).

[134] Addressing the grievor's explanation that she suffers from chronic anxiety, counsel argued that it was diagnosed only last year and that there was no medical evidence that it existed as of the February 5, 2016, incident. Counsel stressed that management made its decision in September 2016 based on the information then available.

[135] In her submission, counsel drew a distinction between the security aspect of the infraction and its disciplinary consequences. They are two different areas. Counsel explained that Mr. Giguère examined the security aspect for the CBSA from a reliability perspective, taking into account specific policies. He did not examine it from a suitability perspective; i.e., whether the person was suitable for the work. Counsel argued that as for Mr. Chiquette, he took into account the Code of Conduct and concluded that the grievor had breached many aspects of it.

[136] As to whether termination was the appropriate disciplinary measure, counsel argued that due to the seriousness of the offence, the grievor's lack of transparency, the fact that she was a border services officer, and the impact on the CBSA's reputation and its future collaboration with its partners, termination seems appropriate, in the circumstances. Counsel suggested that any other form of discipline would only

trivialize this case and concluded by asking me to dismiss both grievances. Counsel urged me not to mitigate the penalty, since it is reasonable, given the circumstances. See *Ranu v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 89, and *Cooper v. Deputy Head (Correctional Service of Canada)*, 2013 PSLRB 119.

## **B. For the grievor**

[137] Following her opening remarks before the grievor testified, her representative initially challenged the characterization of the second indefinite suspension imposed on the grievor as moot or administrative in nature. It was imposed in a letter from Mr. Provost dated August 9, 2016, after the decision was made to reinstate her reliability status on July 18, 2016. The representative insisted that it was clearly disciplinary in nature and that as a result, under s. 209(1)(b) of the *FPSLRA*, I have jurisdiction to decide this grievance. She then insisted that the suspension was clearly punitive, that Mr. Dominique's report had already been issued as of that date, and that the employer was already aware of the disciplinary findings and recommendations in that report. The representative submitted that this suspension was not moot or administrative in nature just because the CBSA decided it was. She referred me to *Baptiste v. Deputy Head (Correctional Service of Canada)*, 2011 PSLRB 127, *Canada (Attorney General) v. Basra*, 2010 FCA 24, *Canada (Attorney General) v. Frazee*, 2007 FC 1176, *Bétournay v. Canada Revenue Agency*, 2017 FPSLREB 37, and *Féthière v. Deputy Head (Royal Canadian Mounted Police)*, 2016 PSLREB 16.

[138] The representative also argued that the case for a disciplinary suspension did not exist in July 2016, as the employer had decided to reinstate the grievor's reliability status. Therefore, the representative questioned how discipline could have been imposed on the grievor retroactively if there was no reason to. The representative maintained that discipline must be justified when it is imposed. In support of her claims, she referred me to *Bétournay*.

[139] With respect to the grievor's termination on September 20, 2016, the representative argued that the grievor had explained the circumstances of the February 5, 2016, incident, including her mindset and the facts that she was isolated and her father was ill. According to the representative, it must be retained from Mr. Giguère's testimony that it was a lack of judgment. In the representative's view, the grievor should not be faulted, as Mr. Chiquette did, for not advising the CBSA immediately. She was overwhelmed by the events at the time; she was traumatized. In addition,

according to the representative, there is no normal deadline for advising the employer of a given situation. All this is subjective; the circumstances must be taken into account. In hindsight, it is easy to say what a person in a similar situation should have done; however, no one was in that person's place. According to the representative, one need not be a doctor to understand that a person facing a situation such as the one on February 5, 2016, may make a mistake. For the grievor, given her condition and her difficult family situation, the situation was too complicated, and she misjudged it. According to the representative, if Mr. Dominique's investigation report is examined, it states that the grievor talked about everything and clearly was overwhelmed by the events. The fact that some of her comments appear contradictory shows that she was overwhelmed instead of trying to conceal things.

[140] The representative insisted that the grievor immediately reported to the SQ after the incident and that at the time, her lawyer advised her to remain silent. Although she did not inform the CBSA in the first three weeks, there is no evidence that she attempted to conceal information.

[141] The representative argued that the grievor should not have been terminated and that the employer's position in the entire matter was contradictory. According to the representative, on July 18, 2016, after reflection, the CBSA decided to reinstate the grievor's reliability status after considering factors such as her reliability and her honesty. However, in September 2016, the employer decided to terminate her, based on the same factors. The representative referred to Mr. Giguère's testimony when he stated that the grievor was a good person and that he was prepared to reinstate her with training, as set out in his July 2016 letter (Exhibit E-1, tab 18). The representative questioned how on one hand, the employer was prepared to reinstate the grievor, and on the other hand, it decided to terminate her. In the representative's view, the employer's reasoning that the two decisions must be separated cannot be agreed with as both were based on the same facts and criteria.

[142] The representative reiterated that although the facts are not really in dispute in this case, the fact remains that the measure imposed was far too severe and that several factors must be considered before terminating someone. Reiterating the factors set out in *Baptiste*, at para. 312, the representative stressed that the grievor had no discipline in her file in February 2016, that she had shown remorse as demonstrated in her note to Mr. Giguère on July 18, 2016 (Exhibit E-1, tab 17), that it was an isolated



incident that had an economic impact on her, and that her supervisor considered her a good employee. According to the representative, the employer should have considered these mitigating factors and should not have terminated her. She referred me to *Ville de Sorel-Tracy c. Syndicat des pompiers du Québec, section locale de Sorel*, 2002 LNSARTQ 52, and to *La Fraternité des policiers et policières de la Régie de police Thérèse de Blainville c. Régie intermunicipale de police Thérèse de Blainville*, 2006 QCCRT 76.

[143] Considering termination excessive in this case, the representative argued that instead, the CBSA should have applied the principle of progressive discipline and imposed an appropriate measure aimed at correcting, not punishing. She referred me to *Grant v. Deputy Head (Canada Border Services Agency)*, 2016 PSLREB 37 at para. 145, and *Pronovost v. Canada Revenue Agency*, 2017 PSLREB 43 at paras. 57, 99, and 100.

#### **IV. Reasons**

[144] Although the facts of this case as such are not in dispute, I feel that it is best to provide a brief chronology of the events that led to the grievor's termination.

[145] On February 5, 2016, the grievor, who was a border services officer in Sept-Îles, went twice to the local post office, outside her working hours, to pick up a package sent by her boyfriend, who lived in Montreal. It contained an illegal substance, which was 12 g of hashish. After some time, she acknowledged that on the morning of February 5, 2016, she learned of the package's contents before going to claim it. When the postal employee refused to give her the package, she panicked and went to the SQ police station to report what she had done. However, she decided not to inform her employer of this incident.

[146] The employer was made aware of the incident a month later through its RCMP contacts. After initiating two meetings with the grievor, the CBSA decided to rescind her reliability status in April 2016. The result was that she could no longer hold a public service position as reliability status is an essential employment condition for all federal public service positions.

[147] After receiving the grievor's explanations on July 18, 2016, the person in charge of security at the CBSA was satisfied and decided to reinstate her reliability status.

[148] However, on August 9, 2016, the CBSA representatives responsible for determining whether the February 5, 2016, incident constituted a breach of discipline felt it was appropriate to impose (Exhibit E-1, tab 21) an indefinite suspension without pay to ensure that the grievor did not return to work before a final decision was made on the discipline to impose, if any. On September 20, 2016, the CBSA, through its regional director general, Mr. Chiquette, decided to terminate her retroactive to July 18, 2016, citing in particular as a reason that the bond of trust between the employer and the grievor was irrevocably broken.

[149] Before commenting on the facts of this case, I will first address the issue of whether I have jurisdiction to hear and rule on the grievance about the indefinite suspension as of July 18, 2016.

[150] Counsel for the employer submitted that I did not have jurisdiction to rule on the indefinite suspension that was imposed after the employer decided to reinstate the grievor's reliability status on July 18, 2016. Counsel maintained that the decision was moot or administrative in nature and that therefore, I had no jurisdiction to decide the matter. On the other hand, the grievor's representative argued that the suspension was disciplinary in nature and that therefore, I had jurisdiction to decide it.

[151] It is true that once the grievor's reliability status was reinstated on July 18, 2016, the employer informed her by letter dated August 9, 2016, of its decision to suspend her indefinitely, retroactive to July 18, 2016, to take the time to decide whether a disciplinary sanction would be imposed. In his testimony, Mr. Provost stated that he did so to prevent her from returning to work before a decision was made. On September 20, 2016, Mr. Chiquette decided to terminate her retroactive to July 18, 2016, the day of her suspension.

[152] As discussed in the Federal Court of Appeal's decision in *Attorney General of Canada v. Bétournay*, 2018 FCA 230, the question of whether a suspension is administrative or disciplinary in nature goes to the Board's jurisdiction to deal with the grievance. Accordingly, it must be addressed.

[153] The employer alleged that the suspension imposed on August 9, 2016, retroactive to July 18, 2016, was administrative. As per the reasoning of the Federal Court's Trial Division in *Her Majesty the Queen v. Rinaldi*, (1997) 127 F.T.R. 60, demonstrating that it was not administrative would require the grievor to establish

that the required conditions were in fact not present at the relevant time. In this light, inherent to answering the question of whether it was truly administrative is considering when it took effect and the conditions then present.

[154] The suspension letter, issued on August 9, 2016, stated that the suspension took effect retroactively to July 18, 2016. When it was decided to suspend the grievor, her reliability status had already been restored; her security risk had been reassessed following the incident in question, and the employer had determined that she did not represent a risk to it. Thus, she was no longer unable to fulfil a job requirement since she held a valid reliability status.

[155] As the grievor did not represent a risk that could have explained the need to prevent her from returning to work, what was the true basis for imposing the suspension? Despite her enhanced reliability status being restored, Mr. Provost clearly testified that he did not want her back at work until a decision had been made regarding the disciplinary aspect of this case. By August 9, 2016, the employer was aware of the full extent of her misconduct, had completed its investigation, and had held the July 25, 2016, disciplinary meeting with her, at which it received her response to the disciplinary investigation's results. No facts were gathered after July 25, 2016; as of then, the employer had all the information it needed to assess the situation.

[156] That all leads me to conclude that Mr. Provost had decided that discipline would follow. What remained was determining the specific discipline to impose. I do not agree that the suspension could be characterized as administrative as of that point. From July 25, 2016, on, I find in fact that the suspension was disciplinary in nature. In light of this determination, I find that I have jurisdiction over that part of the suspension.

[157] Having found that part of the suspension was disciplinary, what analysis should follow? I note that in the Federal Court of Appeal's decision in *Canada (Attorney General) v. Heyser*, 2017 FCA 113, which the Board followed recently in *Jassar v. Canada Revenue Agency*, 2019 FPSLREB 54, the Court held that when an employer has allegedly terminated an employee on non-disciplinary grounds, it is not open to it to change the nature of the termination at a hearing; that is, it cannot change tack and assert that in the alternative, the termination should be considered as having been made on disciplinary grounds. Accordingly, once the Board finds that an alleged

administrative termination was disciplinary, there is no need to go further; it allows the grievance.

[158] However, I find that the situation before me differs from *Heyser* and *Jassar*. As in *Bétournay*, although the suspension was purportedly administrative, the facts on which it was based are the same as those relied on for the ensuing termination. Accordingly, I find that the suspension and ensuing termination were part of the same disciplinary process. As such, I need make only one assessment of it, which will apply to the preliminary suspension that morphed into the termination; in these circumstances, the analysis is one and the same.

[159] I note that the analysis detailed earlier as to the retroactive aspect of the suspension applies equally to the termination grievance. Given my finding that the suspension could be described as disciplinary only as of July 25, 2016, the disciplinary termination could not be retroactive to before that date.

[160] In making this finding, I note that before pursuing discipline, an employer should have the opportunity to gather all relevant facts. I find that on July 18, 2016, the employer had not finished gathering all the facts it needed to determine a penalty.

[161] As set out earlier in this decision, the employer met with the grievor again on July 25, 2016, to determine if other factors existed that it should consider. There was no evidence before me that between July 25 and August 9 (the date on which the suspension was imposed), the employer gathered new information. The same can be said for August 9 to September 20, the date of the termination letter. For those reasons, I find that once the meeting with the grievor ended, the employer concluded its investigation and fact gathering; it had all the relevant facts that would allow it to legitimately decide if it would proceed with discipline. Before the July 25, 2016, meeting, any disciplinary action that the employer might have taken would have been based on incomplete facts and might have been arbitrary in law. However, from that date forward, it was clearly on a disciplinary track. As to the first part of the suspension - from July 18 up to and including July 24, 2016 - I have considered the factors set out by this Board in *Basra v. Deputy Head (Correctional Service of Canada)*, 2007 PSLRB 70 (upheld in 2010 FCA 24), including the impact that the length of a suspension may have on the employee. I find that the length of this first part of the suspension was not so long as to characterize it as disciplinary.

[162] The preliminary suspension, which became disciplinary on July 25, culminated in the decision to terminate the grievor. That decision was based on facts that the employer knew when it imposed the suspension. I find that the Court's reasoning in *Bétournay* applies in this case to allow a disciplinary termination to be retroactive to the point at which all the facts were known.

[163] Allowing the suspension, which was disciplinary in nature, and the ensuing termination to have effect any earlier than July 25, 2016, would offend the principles of good human resources management and the fair and credible resolution of matters arising in respect of terms and conditions of employment, as set out in the preamble to the *FPSLRA*.

[164] Before embarking on the assessment of the discipline imposed, I wish to make a few comments on the use of administrative or disciplinary suspensions.

[165] Without a doubt, there is an appropriate place for administrative suspensions without pay, as in situations in which an employee presents an unmanageable risk and cannot remain in the workplace or in which an employee has lost an essential requirement, such as a particular licence.

[166] However, in circumstances such as those in the case before me, in which the employer has all the facts before it — the misconduct is known, the investigation has concluded, the disciplinary meeting was held, and the grievor's response to the investigation's conclusions are known — and the only thing left is to determine what discipline will be taken, imposing an administrative suspension without pay at this stage would be a sham unless the employer could demonstrate an unmanageable risk to its operations or a valid administrative reason preventing the grievor from working. When the employer has clearly formed an intent to take discipline and is just trying to assess its form, the better course of action would be to give clear notice to the employee that he or she is under a preliminary disciplinary suspension, pending the final determination of the penalty for the acts under consideration, and that the penalty might include termination.

[167] In that way, it can be said that the employer is acting in a manner consistent with its obligations of good faith and fair dealing with its employees (see the Supreme Court of Canada's decisions in *Wallace v. United Grain Growers Limited*, [1997] 3 S.C.R. 701, and *Honda Canada Inc. v. Keays*, 2008 SCC 39). The employee has a clear view of

what may lie ahead. Furthermore, given the truly disciplinary nature of the suspension, as opposed to administrative, the employee's rights under the relevant collective agreement in a disciplinary process become engaged.

[168] Returning to the facts of this case, it seems to me that the following are the questions to answer.

**A. Did the grievor try to pick up the package containing 12 g of hashish on February 5, 2016, and subsequently refuse to collaborate with the employer?**

[169] As mentioned from the outset, the facts of this case are not in dispute. The evidence demonstrated that twice on February 5, 2016, outside working hours, the grievor, a border services officer, attempted to retrieve a package that her then-boyfriend had mailed to her address. It contained 12 g of hashish, of which she was informed only that morning. She knew of its contents before trying to pick it up. Therefore, I conclude that on that date, she tried unsuccessfully to claim a package that she knew contained an illegal drug.

[170] I do not think I need to elaborate much on the fact that the very core of a border services officer's job is to search for and seize illegal goods in Canada. Hence, trying to claim a package for a friend that contains some amount of an illegal drug, albeit small, is completely against one of the main reasons of employing border services officers. Therefore, in situations in which a border services officer facilitates the circulation of illegal goods, depending on the factors and circumstances, termination could certainly be an appropriate sanction. Canadians rightly expect their border services officers to uphold the highest standards of ethics and honesty when carrying out their duties.

[171] However, in this case, after a long and very careful consideration, I conclude that the circumstances of this matter are very particular and unique and that they warrant a different outcome than the termination.

[172] While it is true that the grievor tried to claim the package on February 5, 2016, I must point out that she never asked for it and never benefitted from it. Nor did she know that her friend would send it to her; he had never done so before. Therefore, she simply reacted on the morning of February 5. The package had already been sent to her address. She thought that the mere fact of receiving an illegal substance made her guilty. As a result, alone and distressed, she did not know what to do, and she panicked.

[173] While of course she could have refused to pick up the parcel, the evidence showed that only on the morning of February 5 did she find out what was being sent to her. The undisputed evidence was that she became scared when she was told that it had been sent to her address and that she and her boyfriend “would be in trouble” if she did not pick it up.

[174] Normally, this set of events would not be adequately convincing to justify overturning a termination decision. As I said, each case is considered based on its facts and merits, and each one must be evaluated before concluding as to the appropriate sanction.

[175] However, in this case, I found two things particularly troubling.

[176] First, while the evidence clearly showed that the grievor tried to pick up the package on February 5, 2016, I do not think that she was in the right physical and mental state as of the incident and shortly after it. Therefore, for the reasons that I will set out in detail, I do not believe that she failed to act with honesty and sincerity as alleged in the third reason set out in her termination letter.

[177] Second, as I will explain later, I simply cannot understand why in this case, based on the same facts and criteria of trust and honesty, the grievor could be considered fit to be reinstated from a CBSA security point of view while she could not be reinstated from a disciplinary one. While I certainly agree that a person may be fit from a security perspective but on the other hand not suitable for work, it ought to be explained, especially when it involves a termination. In this case, the employer’s witnesses did not offer any explanation as to why the grievor seemed trustworthy and transparent when considering the risk to the CSBA’s security but not from a labour-relations perspective. For instance, Mr. Chiquette, who signed the termination letter, testified that he did not know the criteria Mr. Giguère considered when he concluded that the grievor was not a risk and was trustworthy and honest.

**B. Does the evidence support the allegation that the grievor failed to act honestly and sincerely with respect to the February 5, 2016, incident?**

[178] The evidence showed that instantly after the postal clerk refused to give the grievor the package, the grievor immediately went to the SQ, in tears, to inform it of what had just happened. As everyone agreed at the hearing, things would have probably taken another turn if after that, she had continued with that approach and

had let her employer know. Unfortunately, she did not, and she consulted a lawyer who advised her not to say anything, to avoid trouble for her then-boyfriend.

[179] In their testimonies, some of the employer's witnesses described the grievor's reaction after her visit to the SQ as an attempt to conceal her actions or to avoid cooperating with the employer's investigation into what happened on February 5, 2016. In addition, I think that it is fair to say that the termination of her employment was in great part based on the fact that it was perceived that she had refused to collaborate and had not been transparent in her discussions with the employer's representatives. Mr. Lapierre, Mr. Dominique, and Mr. Chiquette insisted that she was not forthright and that she tried to cover for her friend.

[180] In my view, while the employer's witnesses acknowledged that as of the incident, the grievor was fragile and was going through difficult times to the point that some of them worried about her personal safety, nevertheless, they did not seem to realize that she was completely taken aback and was overwhelmed by the situation. She was alone, inexperienced, had medical issues, and according to her testimony, she received absolutely no support; she did not know what to do.

[181] For instance, instantly after realizing that she would not claim the package, the grievor immediately went to the SQ station, in tears. As mentioned, she was in such a state that the SQ officer gave her a pamphlet on suicide. After her initial meeting with Mr. Banville on March 4, 2016, on March 6, the grievor called her colleague, Ms. Blais, to tell her what happened on February 5. In her testimony and in her declaration of March 15, 2016, to Mr. Banville, Ms. Blais described her meeting with the grievor that day. She stated that the grievor cried continually, was completely shaken, "[translation] was completely out of sorts", and "[translation] seemed to be going through a depression" (see the employer's Exhibit E-1 at tab 7, page 2). The grievor then expressed the desire to speak but in presence of a lawyer.

[182] Three days later, Ms. Blais, who had not heard from the grievor, was so worried that she went to check on the grievor at her home. She was worried about the grievor's physical and mental states and said the following: "[Translation] I panicked and communicated with Marc Banville around 14:45 because I was afraid of suicide. She was doing so poorly at the point she left on March 7, 2016, I feared the worst," (see the employer's Exhibit E-1 at tab 7, page 2).



[183] In his testimony, Mr. Lapierre maintained that the grievor refused to collaborate during the meetings held on the morning of March 4, 2016, with Mr. Banville. While it is true that she essentially remained silent, Mr. Banville, who did not testify, indicated in his notes that at the meeting, the grievor, who was alone, was shaken, along with the following: “[translation] ... she seemed shaken and tried to contain her tears” (see the employer’s Exhibit E-1, tab 9, page 2).

[184] Additionally, while the employer claimed that the grievor was not prepared to collaborate, it must be pointed out that despite the fact that it was not mentioned in the testimonies, Mr. Banville’s note clearly indicates that the grievor had asked on March 4<sup>th</sup> 2016 about the possibility of speaking later. She was then reassured by him that another meeting could be scheduled a week later, at which she could explain herself (Exhibit E-1, tab 9, page 5).

[185] According to Mr. Banville’s notes, again, the grievor did not say anything when she met with the RCMP in the afternoon. However, she made the same request to the RCMP officer for a meeting a week later, which was also accepted. All this makes me wonder why the employer’s witnesses maintained that she refused to collaborate. Again, she asked if she could talk to the employer and the RCMP a week later and was told that she could. As a matter of fact, she did contact them and attended the March 10, 2016, meeting, at which she did not deny what happened and offered an explanation.

[186] In other words, after listening to Mr. Lapierre’s testimony and reviewing his and Mr. Banville’s notes (Exhibit E-1, tab 9), I cannot conclude that the grievor refused to collaborate at both meetings in March 2016. To me, it was clear that at that time, the grievor, who was 24 years old, was inexperienced, unwell, and alone. She had been left on her own and had absolutely no idea where to go for help as to how to cope. Not only she was taken aback but also, one should keep in mind that while it is true that she mainly remained silent about the February 5, 2016, incident at the meeting, she never tried to deny or lie about what happened on that date.

[187] In her testimony, the grievor indicated that as of the February 5, 2016, incident, and later, during the meetings with Mr. Banville, Mr. Côté, and Mr. Dominique, she was could not think straight and experienced physical, mental, and family difficulties. I note that on March 7, 2016, when he was apprised of the situation, the grievor’s

immediate supervisor, Mr. Berberie, indicated to Mr. Banville that he was bothered by the situation since she was a very good employee who worked hard. She was going through some difficult moments in that her father was suffering from illness, and despite the distances involved, she tried to support her family.

[188] Specifically with respect to the March 10, 2016, meeting of the grievor, Mr. Banville, and Mr. Lapierre, I note again that she followed up on the suggestion she made at the March 4, 2016, meeting, to which Mr. Banville agreed, to meet again to talk about what happened on February 5, 2016 (Exhibit E-1, tab 9, page 3). She clearly indicated that she was alone in Sept Îles, with few friends, and she talked about her difficult situation. She referred to “SOS Suicide” (Exhibit E-1, tab 9, page 3).

[189] While the grievor confirmed to Mr. Banville that on February 5, 2016, she tried to claim the package while knowing that it contained hashish, she also told him that she felt so bad afterwards that she had to confide to the SQ officer. When she was asked why she did not then inform her employer, she told Mr. Banville and Mr. Lapierre that she was taking a “[translation] sedative - antidepressant”, which she did not want known. She also told them that she was under a Centre Intégré de Santé et de Services Sociaux’s care (Exhibit E-1, tab 9, pages 2 and 3).

[190] In addition, she explained that once she realized that the package containing hashish had been sent to her address, she thought that she was automatically responsible. She also explained that the lawyer she consulted on Monday, February 8, 2016, advised her to not say anything, to protect N (Exhibit E-1, tab 12, page 4).

[191] To me, this all indicates that while the grievor was clearly not in a right state of mind, she was overwhelmed and did her best to collaborate with the employer’s representatives that day, and she did not try to hide anything.

[192] As mentioned, one of the employer’s main arguments justifying the grievor’s termination was that after it found out about the incident and confronted her about it, she remained evasive and failed to act honestly and sincerely about what had happened. Mr. Dominique also concluded as much; he was in charge of the formal investigation. He met with her on April 11, 2016. Basically, she told him what had happened on February 5, 2016, and explained that when she had met with Mr. Banville on March 4, she had been in a state of shock.

[193] On July 26, 2016, Mr. Dominique submitted his report to Mr. Chiquette for a decision. Essentially, Mr. Dominique concluded that two allegations were founded. They were that the grievor tried to pick up the parcel containing an illegal drug and that she failed to immediately inform her employer of it. As mentioned, those facts are not in dispute. He also concluded that a third allegation was founded, which was mainly that she did not conduct herself honestly and sincerely with respect to the February 5, 2016, incident (Exhibit E-1, tab 15, page 15). I do not agree with that conclusion.

[194] Again, while Mr. Dominique cited some things with which the grievor's version of events differs, on the essentials of what happened on February 5, 2016, she remained consistent and did not try to hide anything. In addition, as was indicated, during the entire month before her meeting with Mr. Dominique, she remained alone, had medical issues, and had no one to guide her. By her admission at the hearing, she could not think straight, needed help, was overwhelmed by the incident, and had medical and family issues. So while the version of events she gave to Mr. Dominique might have contained some discrepancies, in my view, none went to the core of this case. At no point did she try to deny or downplay what happened on February 5, 2016.

**C. Can the employer's decisions to reinstate the grievor's security clearance and at the same time find her unsuitable for work be reconciled?**

[195] In his testimony, Mr. Giguère, who at the relevant time was the employer's director general of security, indicated that in light of what happened on February 5, 2016, on April 18, 2016, he decided to suspend the grievor's reliability status, pending an investigation. In his letter to her, he raised the fact that her actions had caused security concerns with respect to her honesty, integrity, and reliability. As is now known, based on her explanation of July 18, 2016, Mr. Giguère decided to reinstate her reliability status (Exhibit E-1, tabs 6, 17, and 18). I must now point out that her explanations in her response to Mr. Giguère were the same as those she provided at the March 10, 2016, meeting — she did not deny the facts of February 5, and she mentioned medical issues, isolation, and her father's health.

[196] I must also note that at the hearing, Mr. Giguère appeared very credible. He is a former RCMP officer and has retired from public service. In his testimony, he explained that he reinstated the grievor's security clearance on July 18, 2016, based on Mr. McCarthy's recommendations, who was then Mr. Dominique's supervisor. Before

rendering his decision, he also consulted Mr. Banville's and Mr. Lapierre's notes of the March 10 and 14, 2016, meetings, as well as Mr. Dominique's investigation report.

[197] Mr. Giguère explained that first, he suspended the grievor's reliability status because he was worried that she might have been in contact with some friends carrying out unlawful activities or that she might have received threats, etc. He realized that neither was true, so therefore, she was not a risk to the employer. He indicated that in his evaluation of whether to reinstate her reliability status, he considered the following three criteria: her honesty, integrity, and trustworthiness. He concluded that from his perspective, she met them.

[198] Mr. Giguère explained that when he read the grievor's comments, he understood that she was lonely, that she had no friends, and that she did not have a chance to obtain help or to discuss with anyone what to do. He also understood that she was stressed and had medical issues and that her family situation, with her father's illness, added to the stress. He also explained that while others might see some discrepancies in her versions of events, he thought that they were due to her state of mind and the stress of being placed in a very difficult situation.

[199] Mr. Giguère was also of the view that the grievor was a good person who had made a mistake. He stated that she did not try to hide anything. He stressed the fact that with some additional and focused training, she could return to work. He even stated that he would have no problem were she returned to his team. For him, the grievor had shown a serious lack of judgment, but she could be rehabilitated.

[200] When Mr. Giguère was asked to comment as to why, when his colleague considered the same criteria of honesty, integrity, and trustworthiness, Mr. Chiquette reached a different conclusion and decided that the grievor could not be reinstated, Mr. Giguère said that he could not comment from a labour relations point of view; he had considered it only from a security perspective.

[201] Conversely, when Mr. Chiquette was asked the same question, he responded that the criteria differ with respect to security and misconduct but did not explain the difference relative to the facts of this case. He also added that he did not know the factors that Mr. Giguère considered and that he based his decision on the information available at that point.

[202] While as I said, I certainly understand that in some situations, effectively, a person may be deemed trustworthy and honest from a security perspective but not from a labour relations point of view, it remains that two different conclusions must be explained when they are based on the same set of facts. It is certainly not sufficient to simply state that there is a difference when the future of a person's employment hangs in the balance. It is incumbent on the employer to to reconcile this discrepancy.

[203] In my view, it is certainly possible that one manager may reinstate an employee's security status while at the same time, another manager may decide to terminate the employee's employment. But a minimum explanation is required. One is required even more so in this case, given that an experienced witness, Mr. Giguère, concluded his testimony by stating that after reviewing the circumstances and the grievor's behaviour and condition, he would have welcomed her on his team.

**D. Did the employer consider mitigating factors?**

[204] While Mr. Chiquette indicated that he considered the fact that the grievor was isolated, that she did not have direct supervision, and that her father was ill, I am not sure that her general state and lack of support was given enough weight. Throughout the proceedings, the employer maintained that she was not transparent and that basically, she made things worse by refusing to collaborate. As I said, I think that the evidence revealed more that she was helpless, and while she certainly committed a serious error in judgment, at the relevant time, she might not have been able to appreciate her situation. Instead of trying to obtain real independent help, basically, she relied on and followed the employer's prescribed process.

[205] I would also like to stress the fact that while it is true that only at the hearing did the grievor indicate that she was suffering from chronic anxiety, it is quite clear from almost all of the employer's witnesses that the behaviour she displayed during the sequence of events following the February 5, 2016, incident, revealed that she was in difficulty. Twice, the employer's representatives expressed fear for her personal safety . And on March 10, 2016, she informed Mr. Banville and Mr. Lapierre that she was taking medication. So, in my view, right from the beginning, the employer knew that she was in a difficult physical and mental state.

**E. Given the facts of this case, was the termination appropriate?**

[206] The grievor's actions on February 5, 2016, were very serious. The job of border services officers is to prevent illegal merchandise and drugs from circulating in Canada. They simply cannot be involved in such activities. As I said, normally, termination would certainly be considered for such an act. I also must stress the fact that while I do not agree with the ultimate conclusion reached by the employer's representatives, I must point out that I am satisfied that everyone involved in this case acted in good faith.

[207] In my view, the termination was too severe a penalty, given all the circumstances. While again, the grievor misconducted herself and acted contrary to the requirements of her Code of Conduct, it must be understood that at the relevant time, she was very young, inexperienced, and completely on her own; she was overwhelmed and went through some difficult emotional times that also involved her family. Her colleague Ms. Blais, her direct supervisor Mr. Berberie, and Mr. Giguère considered her a very good employee who seemed appreciated.

[208] I have explained that to me, the grievor was not well emotionally during her dealings with the employer's representatives. In my view, the employer's evidence that she cried continuously, seem depressed, and was referred to a suicide counsellor clearly indicate that she was completely overwhelmed and did not know what to do. Contrary to what the employer alleged, she did not refuse to cooperate. On that point, as I said, I am at a loss to find anything that shows that she was elusive and dishonest in her discussions with the employer. As Mr. Giguère stated, her behaviour at the meetings could be explained by stress and lack of support.

[209] While I think that the grievor was honest and that her state of mind at the relevant time might explain her behaviour, I also remain very concerned by the fact that the employer's witnesses could not explain why from a security perspective, she could be employed, but not from the standpoint of misconduct, when the same criteria - honesty, integrity and trustworthiness - were considered.

[210] As I said, this case is unique. I am sure that in some other cases, the differences could be explained, and that therefore, resorting to termination as a sanction could be justified in those cases. However, for the reasons stated earlier, I am not convinced

that termination would be justified here or that the bond of trust was irrevocably broken.

[211] Given all this, I think that the termination should be rescinded. The question then becomes determining the appropriate sanction. As I said, the grievor's actions on February 5, 2016, were very serious, and she must learn from that very unfortunate experience.

[212] I understand from her testimony that she started over in a new life and that after the incident, she began receiving professional help.

[213] In my view, a suspension of two years, beginning on the date on which I have found the grievor's disciplinary suspension started, July 25, 2016, would stress the seriousness of what she did while giving her another chance to prove in her words "[translation]that [she] made a serious mistake that will never happen again".

[214] I would also recommend that as suggested in Mr. Giguère's letter, the grievor take the necessary training prescribed by the employer and that she also take the appropriate steps to seek help to ensure that in the future, she does not find herself in situations that may compromise her employment.

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

*(The Order appears on the next page)*

**V. Order**

[216] The grievances are allowed in part.

[217] I order the deputy head to do the following:

- a. replace the grievor's suspension and termination (Board file nos. 566-02-13726 and -13727) with a two-year suspension without pay;
- b. within 60 days of this decision, reinstate the grievor's salary at the FB-03 group and level, with pay and without loss of benefits, effective July 25, 2018; and
- c. within 60 days of this decision, compensate the grievor in terms of salary and benefits at the FB-03 group and level, starting from July 25, 2018, less the usual deductions.

[218] I invite the parties to meet with a view to agreeing on the position to which the grievor will be reinstated.

[219] I remain seized for 90 days in the event that the parties are unable to agree on a position for the grievor, or on the calculation of the amount due to her in terms of compensation for salary and benefits.

December 17, 2019.

**Linda Gobeil,**  
**a panel of the Federal Public Sector**  
**Labour Relations and Employment Board**