Date: 20200827

File: 561-32-00705

Citation: 2020 FPSLREB 84

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

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

BETWEEN

PAUL WURDELL

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA, AGRICULTURE UNION COMPONENT, AND ROBYN BENSON, BOB KINGSTON, KRISTA DEVINE, DAVID ORFALD, SYLVIE ROCHON, AND GLENN MILLER

Respondents

Indexed as
Wurdell v. Public Service Alliance of Canada

In the matter of a complaint made under section 190 of the *Federal Public Sector Labour Relations Act*

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

For the Complainant: Jennifer Zdriluk and Wade Poziomka, counsel

For the Respondents: Jeffrey Andrew and Lauren Sheffield, counsel

Heard at Hamilton, Ontario,
September 24 to 27, 2018, and April 24 and 25 and August 20 to 23, 2019
and at Oakville, Ontario, October 24, 2019.

REASONS FOR DECISION

I. Complaint before the Board

[1] Before February 27, 2013, Paul Wurdell ("the complainant") was employed by the Canadian Food Inspection Agency (CFIA or "the employer") as a slaughter inspector ("inspector"). On that day, he was terminated from his employment ("the termination"). On March 15, 2013, he filed a grievance against the termination.

[2] The grievance was referred to the Public Service Labour Relations Board (PSLRB), as it was then named, for adjudication. It was scheduled to be heard in London, Ontario, between June 3 and 6, 2014. It was postponed at the complainant's request and with the employer's consent. A settlement was reached, and the parties signed a memorandum of agreement (MOA) on June 19 and 20, 2014.

[3] On August 1, 2014, the complainant filed a complaint with the PSLRB against the Public Service Alliance of Canada ("the Alliance" or "the bargaining agent") and its Agriculture Union component ("the component") along with Robyn Benson, Bob Kingston, Krista Devine, David Orfald, Sylvie Rochon, and Glenn Miller ("the respondents") under s. 190(1)(g) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*), as it was then named. The complainant alleged that the respondents failed in their duty of fair representation with respect to him and that they acted in a manner that was arbitrary, discriminatory, and in bad faith, as set out in s. 187 of the *PSLRA*, by refusing to represent him and by withdrawing their representation of him in his grievance against the termination.

[4] On August 1, 2014, the PSLRB wrote to the complainant and requested further details from him. On September 1, 2014, the complainant emailed an extensive set of particulars, and on September 21, 2014, he again emailed an amended set of particulars ("the complaint's particulars"). For the purposes of this decision, there is no relevance with respect to the differences between the two. On October 24, 2014, the respondents filed a response to the complaint, and on November 18, 2014, the complainant filed a reply to that response.

[5] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace

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

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

[7] The complainant requested this as relief:

- damages in the sum equivalent to what he lost in wages from the date of the termination (February 27, 2013) to the month following his 65th birthday, including any wage-rate and incremental increases as well as overtime he would have earned, based on the average overtime he worked over the 5 years before the termination;
- damages for out-of-pocket expenses, including any lost benefits he would have received from the date of the termination to the month following his 65th birthday;
- damages for any pension losses and top-up as required to the month following his 65th birthday;
- general damages in the sum of $100 000;
- an apology letter from the Alliance, the component, Mses. Benson and Devine, and Mr. Kingston; and
- a declaration that the Alliance must post any decision in this matter on its website.

A. The complainant's allegations

[8] The complainant alleged the following:

- the respondents did not ensure that his grievance was heard at any level, which also violated the collective agreement and his legal right to the grievance process;

- the respondents did not exercise their discretion in good faith, objectively or honestly when they decided to withdraw representation as they did not carry out a thorough study of the grievance and case;
- the respondents, in representing him in his grievance to the point that he was informed that their representation would be withdrawn, did not do so fairly or genuinely, and their representation was merely apparent;
- the respondents, in representing him in his grievance to the point that he was informed that their representation would be withdrawn, did not do so with integrity and competence and were negligent in how it was handled or not handled;
- the respondents never obtained a complete version of events from him;
- the respondents never asked him to describe the incidents and outline the issues in writing;
- the respondents never thoroughly investigated the issues and circumstances pertaining to the termination and grievance, which were not investigated as early as possible;
- the respondents relied solely on the employer's investigation when they decided to withdraw their representation;
- the respondents did not interview all available witnesses, who were not asked for written statements;
- the respondents never completely interviewed him or asked for his written statement;
- the respondents' decision to withdraw representation was arbitrary, capricious, discriminatory, wrongful, and made in bad faith;
- the respondents did not follow their guidelines as per the Alliance's policy, as written in its representation kit;
- the respondents violated his membership rights by not fully representing him;
- the respondents acted in an arbitrary and negligent manner in deciding to withdraw their representation as they had not sufficiently investigated or handled his case or the circumstances surrounding it and had not considered his interests;
- the respondents acted in bad faith as their decision to withdraw their representation was motivated by personal feelings, political agendas, and monetary issues and agendas, which in turn led to deceitful and dishonest conduct when they decided to withdraw their representation;
- the respondents' process when they made their decision to withdraw their representation was wrongful and flawed as they did not put their minds to the merits of his case;
- the respondents did not consider relevant factors or use objective and rational judgement when making their decisions;
- the respondent Ms. Rochon failed to properly represent him and to meet the duty of fair representation both at the third level of the grievance process and before being referred to the Alliance's representation section; and
- the respondent Mr. Miller was deeply involved with the complainant's case and was part of a lengthy meeting with him on June 7, 2014.

B. Procedural issue

[9] The complainant was the first to testify and called two witnesses on his behalf. After the three testified, counsel for the respondents indicated his intention to bring a

non-suit motion. In the face of the potential motion, the complainant elected to call as witnesses two people whom otherwise the respondents would have called, were the motion unsuccessful. They were Mr. Kingston and James Cameron.

[10] Mr. Cameron is a lawyer in private practice with the law firm of Raven, Cameron, Ballantyne & Yazbeck ("the Raven firm"), which specializes in labour-side employment law. At the times relevant to the matters at issue in this complaint, the Alliance had retained him to provide representation for the complainant with respect to the termination.

C. Names redacted

[11] A number of individuals were identified who did not testify and as such they have been identified by either Mr. or Ms., as the case may be, and a letter designation.

II. Summary of the evidence

A. Background

[12] In or about 1988, the complainant commenced his employment in the federal public service with the CFIA's predecessor. In 1997, he joined the CFIA, and at the times relevant to this complaint, he was employed as an inspector, classified at the EG-03 group and level. His position was part of the Engineering and Scientific Support group bargaining unit ("the ESS unit").

[13] The Alliance is a certified bargaining agent, as defined under the *Act*, and is the certified bargaining agent for the inspectors who belong to the ESS unit and are represented by the component. The Alliance is made up of 17 components across the country and has its national headquarters in Ottawa, Ontario.

[14] At the times relevant to this complaint, and before the termination, the complainant was assigned to work at a facility belonging to Great Lakes Specialty Meats of Canada Inc. ("Great Lakes") known and referred to as Establishment 419 ("Est. 419") in Mitchell, Ontario, which slaughtered and processed pork. He was the local president of the component, an alternate regional vice-president for its Ontario region, and a member of the Alliance's collective bargaining team.

[15] As an inspector, his job required him to enforce compliance with regulations covering slaughtering, processing, and shipping meat at and from privately owned

meat plants. He was required to adhere to all relevant regulations, protocols, and polices and to ensure that plant staff also adhered to them.

[16] At the times relevant to this complaint, Ms. Benson was the Alliance's national president, Ms. Devine was the director of its collective bargaining unit, Mr. Orfald was the acting coordinator of its representation section, Ms. Rochon was a labour relations officer (LRO) with the Alliance, and Mr. Miller was a regional vice-president of the component.

[17] As of the hearing, Mr. Kingston was retired from the CFIA. From August of 2007 to August of 2017, he was the component's national president.

[18] At the times relevant to this complaint, the following persons held the following positions:

- Stephen Michon was the regional director for the CFIA's southwestern Ontario region, which included Est. 419;
- Tom Doyle was an inspection manager in that region;
- Brian McCann was a CFIA employee, a member of the component's local executive, a union steward, and a representative of the grievor;
- Bronwyn Kurtz-Cooke was a CFIA employee, a member of the component, a union steward, and a representative of the grievor;
- Jason Garnett was a CFIA employee, a member of the component, and the president of the component's local 16; and
- Christal Côté was employed as a grievance and adjudication ("G&A") analyst with the Alliance.

[19] As of the hearing, Mr. Cameron was a senior partner of the Raven firm. He was called to the bars of Nova Scotia and Quebec in 1986 and of Ontario in 1991.

[20] As of the hearing, Mally McGregor was a partner with the firm of Ault and Ault in Cornwall and Winchester, Ontario. She was called to the Ontario bar in June of 2014. Between August of 2013 and her call to the bar, she was an articling student with the Raven firm. The evidence disclosed that the last work she carried out on the complainant's grievance file would have been done on June 3, 2014.

[21] Mr. Cameron confirmed that the Raven firm is, and was at the time material to the matters relevant to this complaint, legal counsel to the Alliance, and that it has been for 27 years. He confirmed that the Alliance referred the complainant's grievance against the termination to the firm and that he was responsible for it.

B. Facts leading to the termination

[22] By letter dated October 3, 2011, Great Lakes communicated issues of concern to the CFIA about the behaviour of some CFIA staff at Est. 419, including the complainant. In turn, the CFIA retained the services of Anper Management Consultants Inc. ("Anper"), specifically Anabela Pereira, to investigate the behaviour ("the Anper investigation").

[23] The complainant alleged that the CFIA, in the form of either Mr. Michon or Mr. Doyle, put Great Lakes up to making that complaint; however, no evidence was brought forward to substantiate his allegation.

[24] Around October 12, 2012, Anper produced a draft report ("the draft report"). On that date, as part of the investigation process, the complainant was provided with a copy of the draft report. And on an undisclosed date, he provided a 19-page typed response ("the Wurdell response"), a copy of which was entered into evidence. Anper issued its final report on February 21, 2013 ("the final report").

[25] The Anper investigation addressed five allegations of inappropriate behaviour attributed to the complainant. The termination arose out of the four allegations held founded in the final report, which read as follows:

> *i. Allegation # 1 – Familiarity; Mr. Wurdell allegedly stepped out of his official role, and engaged in activities which violated his role and responsibilities under the CFIA Code of Conduct and the Conflict of Interest and Post-Employment Code.*
>
> *ii. Allegation # 2 – Breach of Established Protocols; Mr. Wurdell allegedly engaged in activities that in view of the nature of his job responsibilities may have breached the rules he was responsible for enforcing.*
>
> *iii. Allegation # 3 – Respectful Workplace; Mr. Wurdell allegedly failed to conduct himself in a respectful and civil manner in his dealings with others.*
>
> *iv. Allegation # 5 – Complaints from plant staff; Mr. Wurdell allegedly engaged in activities which were considered inappropriate by some of the plant staff at Est. 419.*

[26] On February 26, 2013, a disciplinary hearing was held, and by letter dated February 27, 2013 ("the termination letter"), Stephen Baker, Vice-President of Operations, CFIA, terminated the complainant's employment. The relevant portions of the termination letter state as follows:

Along with being personally interviewed by the third party investigator, you were provided with full and ample opportunity to participate throughout the investigation process, including the opportunity to respond to the allegations and comment in writing on the Preliminary Report prepared by Anper Management Consultants Inc. Then, on February 22nd, 2013 you were provided with a copy of the Final Report including its findings, and you have now had the further opportunity to meet with me personally to explain the situation in your Disciplinary Hearing on February 26th.

In the written Notice of the Disciplinary Hearing delivered to you on February 22nd and at the hearing itself, which you attended with your Union Representative, Mr. Brian McCann, you were invited to provide me with any and all additional evidence or submissions that you may not have already provided to the investigator, that may be relevant to my determination in this matter, or that you wished me to consider prior to making my decision as to whether or not disciplinary conduct has occurred in your situation, and if so, as to the appropriate disposition or penalty of the matter.

Unfortunately, you chose not to provide any additional information during the Hearing, advising only that you were prepared to offer an apology if your actions were perceived as harassment. As a result, I am left to consider only that comment, and the evidence and findings in the investigator's Final Report.

Pursuant to CFIA policy and practice, as Delegated Manager, I have the authority to accept, reject, or vary the findings of the investigator and conclusions reached in the Final Report, in whole or in part. Having reviewed the report in its entirety, and having weighed its evidence, I accept the findings of the Report in their totality.

Based upon those facts and the information you provided in your Disciplinary Hearing, on the balance of probabilities I find you culpable of the four allegations of misconduct outlined in the Report, which can be summarized as follows:

> *1.* ***Re Conflict of Interest and Familiarity:*** *That you stepped outside of your official role as a Meat Inspector, and engaged in activities which violated your role and responsibilities under the CFIA Code of Conduct and the Conflict of Interest and Post- Employment Code. I find that your actions constituted a breach of your responsibilities as a CFA employee, including but not limited to those specifically as described in the CFIA Code of Conduct, Section (E) Conflict of Interest.*
>
> *As part of the Regulatory authority posted Establishment #149, you knew or ought to have known that your actions would constitute a breach of your responsibilities as a CFIA employee, in that you had the responsibility to examine and review your personal and professional interests and activities, and also to recognize, avoid, report and resolve any situation*

> *of real, potential or apparent conflict of interest, and you failed to do so.*
>
> *2.* ***Re: Breach of Established Protocols:*** *I find that you engaged in activities that in view of the nature of your job responsibilities as a Meat Inspector breached the very rules you were responsible for enforcing. Your actions, as founded, constitute a breach of your responsibilities as a CFIA employee, specifically as described in the CFIA Code of Conduct. Further, CFIA inspection staff have a special obligation to ensure that their work contributes to the protection and safety of the Canadian food system. Adherence to the established policies, procedures and instructions is not an option, but rather a mandatory requirement for the position that you occupy. Your lack of due diligence in the performance of your duties could have seriously impacted upon the safety of our food supply and the health and wellbeing of Canadians.*
>
> *3.* ***Re: Respectful Workplace.*** *I find that you have consistently and repeatedly failed to conduct yourself in a respectful and civil manner in your dealings with others, that you have abused your authority and personally harassed your colleagues, and superiors and plant employees, and failed to demonstrate respect, fairness and courtesy in your dealings with fellow Public Servants, in breach of both the CFIA Code of Conduct, and the CFIA's Policy on the Prevention and Resolution of Harassment in the Workplace.*
>
> *4.* ***Inappropriate Behaviours and Complaints from plant staff;*** *I find, on the preponderance of evidence, that you regularly and repeatedly engaged in a pattern of behaviour in the workplace, which you either knew, or ought reasonably to have known, was reprehensible, inappropriate and unacceptable. Inherent in your position is an obligation to act in a professional and appropriate manner, while showing respect for human dignity and contributing to a harassment-free workplace, all of which I find you have failed to do, in violation of the CFIA Code of Conduct, which reads in part as follows:*
>
> . . .

Regrettably, my findings show that you have fallen far short of the standard of behaviour that is expected from employees of the CFIA. Your proven misconduct is unacceptable, incompatible and inconsistent with your duties and responsibilities, both as a Meat Inspector, and as an employee of the CFIA.

As a Meat Inspector, you are responsible for ensuring that the Establishment complies with the appropriate CFIA Regulations, however during the investigation it was determined that on several occasions you yourself did not adhere to the same regulations and safety standards and requirements which you were charged with enforcing, calling into question your ability to carry out our

> *mandate, potentially putting at risk food safety as well as potentially damaging the reputation of the Canadian Food Inspection Agency.*
>
> *You have abused your authority as a Meat Inspector, by improperly using your power and authority to influence plant management and staff. Your conduct has caused significant fear and stress amongst these and other employees, and demonstrates a calculated pattern of behaviour that has created a toxic and poisoned work environment.*
>
> . . .
>
> *I find that you have irrevocably breached the trust the Employer had in you to perform your duties appropriately. The Employer cannot accept nor tolerate the behaviours you have consistently demonstrated in the workplace, nor is there any reasonable expectation that your pattern of behaviours can, or would, change. In the circumstances, I have no alternative but to terminate your employment effective immediately for just cause.*
>
> . . .
>
> [*Sic* throughout]

[27] Around the time of the termination, another inspector, also from Est. 419, was terminated from his position as well, which he grieved. He was also represented by the component and Alliance, and his grievance moved through the grievance process in tandem with that of the complainant. Many of the documents entered into evidence often refer to the grievors, as opposed to the complainant, and name them both. In this decision, I will refer to the other terminated inspector as “Mr. A”.

[28] In his evidence, the complainant confirmed that as an inspector, he had the ability to stop the process line if something was not in line with the regulations he was empowered to enforce.

[29] In cross-examination, the complainant confirmed his receipt of the draft and final reports. He was then taken through the allegations against him that were founded, as they appeared in the final report. They do not portray his behaviour in a flattering manner. For the purposes of this decision, I need not go through the evidence in this area.

[30] In cross-examination, the Wurdell response was put to the complainant. He identified it and confirmed that he understood that preparing it was his opportunity to respond to the allegations in the draft report. He confirmed that he took some time and that he was careful when he prepared it. He also confirmed that it was important

to him to rebut and correct the allegations in the draft report that he thought were false or inaccurate.

[31] In cross-examination, counsel for the respondents went through the Wurdell response in detail; again, for the purposes of this decision, I need not go through the majority of it. However, he did refer the complainant to his inability to locate the complainant's response to the health-and-safety allegations, to which the complainant stated that if they were not in the Wurdell response, they were in the draft report.

C. February 27, 2013, to September 2013

[32] As of the hearing, Ms. Devine was the Alliance's director of representation and legal services. Her career there started in 2006 as a G&A officer. In 2009, she became the coordinator of the representation section, and in 2013, she became the director of the collective bargaining branch.

[33] Ms. Devine testified that she first met the complainant at a meeting shortly after she became the director of collective bargaining. The meeting was held to discuss his position on the collective bargaining team. She stated that to be on that team, a member must be present in the workplace, and since he had recently been terminated from his position, he no longer satisfied that requirement; so, an exemption was required. She stated that Mr. Kingston had written to the Alliance and requested the exemption and that Ms. Benson had approved it.

[34] In cross-examination, the complainant confirmed that he met with Mr. Kingston on March 24, 2013, and gave him a bundle of documents, including some he obtained via the access-to-information process (ATIP) under the *Access to Information Act* (R.S.C., 1985, c. A-1). He confirmed that Mr. Kingston listened to him and told him that he was concerned that the documents did not refute the allegations in the final report.

[35] Attached and marked as Appendix B to the complaint's particulars is a 4-page document entitled, "Witness List – CFIA Employees and Plant Employees" ("the 2013 witness list"). Its first page contains 11 names. The top of the second page contains the 5 allegations from the final report, and following that is this heading: "Witness and Individuals Listed". The balance of the document is again the 11 names from the first page. However, after each name is a brief paragraph about each person in relation to the complainant and what he believed each person could say on his behalf.

[36] On May 1, 2013, the grievor, together with Mr. McCann and Ms. Kurtz-Cooke, travelled to Ottawa and met with Mses. Benson and Devine and Christopher Aylward, who at that time was the Alliance's executive vice-president ("the May 1 meeting"). The complainant said that at the meeting, he provided background information and the 2013 witness list. Entered into evidence was an agenda for the meeting that referred to a list of witnesses; however, no list was attached to the agenda.

[37] Ms. Devine confirmed her attendance at the meeting. She stated that at that early stage, based on what he and his supporters had told him, she felt that he had been targeted for his bargaining agent activities. She said that her job was not to investigate grievances but to assign the work to others, which she did. She stated that she assigned the file to Ms. Côté and advised her as to her understanding of the underlying circumstances.

[38] There is no evidence that the complainant's grievance was heard at any level of the grievance process. However, termination grievances, given the loss of employment, rarely if ever are heard at any level except the final one. The evidence did disclose that the component attempted to engage the employer and hold a grievance hearing, that some form of presentation or representation was made, and that the complainant's and the employer's representatives had held discussions. In addition, the evidence disclosed that the complainant was kept informed of the steps being taken in the process as evidenced in the following documents:

- An email dated May 1, 2013, at 1:36 p.m., from Ms. Rochon to Mr. McCann, the complainant's local representative, who was making inquiries and who stated as follows:

> . . .
>
> *We are having major problems with CFIA at this time. One [sic] of them being that they are not scheduling a final level for Paul and* [Mr. A]. *Bob is meeting with Dapont tomorrow. If we have not heard anything by Monday, I will be sending the grievances to the PSAC Representation Section requesting that they be referred to adjudication without an employer's response at the final level.*

- A letter dated May 6, 2013, from Ms. Rochon at the component to Ms. Devine at the Alliance, stating as follows:

> . . .
>
> *Attached please find the grievance files for the above noted grievors. They were EG-03s working for the Canadian Food*

> *Inspection Agency (CFIA). These grievances were filed following the employer's decision to terminate their employment on February 27, 2013.*
>
> . . .
>
> *You will note that the employer has not responded at the final level of the grievance procedure. We have tried to set a date for consultation but the employer has not yet responded to our request.*
>
> *We contacted and left messages with Tammy Jeffery, Senior Labour Relations Officer, Megan McMurchy, National Manager Labour and Employee Relations, Gerard Etienne, Vice President Human Resources. We feel that delaying the final level any further will cause prejudice to our members.*
>
> . . .
>
> *Brother Wurdell, through Access of Information, received a lot of documents that reveals the set up [sic]. We will forward the documentation relating to the ATIP requests under separate cover and asap.*
>
> *We have requested the grievors complete Form 21 and will forward it to you upon receipt. On behalf of the grievors, we request that you review the documentation and provide them with representation.*
>
> . . .

· An email dated May 8, 2013, at 10:37 p.m., from the complainant to Mses. Benson and Devine and Mr. Aylward and copied to Mr. McCann and Ms. Kurtz-Cooke and two others, which forwarded to them the email sent on May 1, 2013, at 1:36 p.m., by Ms. Rochon to Ms. Côté, and that stated as follows:

> *Below is the latest e-mail [sic] and update we received regarding the status of our third level termination grievances.*
>
> *Why is CFIA not scheduling a third level hearing for our grievances?*
>
> *This is just another example showing that this employer does things how they want, even though a [sic] wrong decision, and does not play by the rules.*
>
> . . .

· An email dated May 13, 2013, at 4:17 p.m., from Ms. Côté to Ms. Rochon, which stated as follows:

> . . .
>
> *Chantal has briefed me on the above noted grievances. I can't refer these grievances yet because they haven't been heard at the final level. I have just reviewed the regulations and we may be able to make an application to order compliance. Try the recommended wording below to see if that motivates them to get*

going on this. It may have to be Agri-U that makes the applications.

. . .

- An email dated May 15, 2013, at 9:17 a.m., from Ms. Rochon to Ms. Côté, which stated as follows:

. . .

As per s. 226 of the PSLRA we have presented the grievances to the employer but they have not responded yet.

. . .

- An email dated May 27, 2013, at 12:41 p.m., from Ms. Côté to Ms. Devine and Chantal Homier-Nehmé, who at that time was head of the Alliance's representation section, which stated as follows:

. . .

I am just giving you a quick update on these two files since I have been briefed on the peripheral issues. The component was unable to identify to me the actual date that the representation was made therefore I was unable to calculate a proper deadline. There appeared to be confusion as to what was considered a presentation and I had to advise that the final level could not be bypassed. In the end result, Sylvie Rochon is going back to the employer with a final date to reply of June 24, 2013 because there has been a series of representations made and consultations to get some kind of a reply. I have the file BF'd [sic] for 24th which will then allow us to calculate the deadlines to refer properly.

I have done a preliminary analysis on this file and there appears to be sufficient evidence from the Employer to discharge their burden. I did not note any fundamental breaches in the administrative investigation and those noted will be cured de novo. The both of them would be better served i [sic] mediation but it is my understanding that they have already turned down offers.

. . .

- An email dated June 14, 2013, at 8:27 a.m., from Ms. Côté to Ms. Rochon and copied to Mr. Kingston, which stated as follows:

. . .

I know there was a meeting on May 2 to try to get a reply but what was the actual date that hearing was held? If you do not intend to give a final date to reply by, then please let Lucie know the date of the hearing itself so we can adjust the deadlines accordingly.

. . .

· An email dated June 24, 2013, at 11:13 p.m., from Ms. Côté to Ms. Rochon, which stated as follows:

> . . .
>
> *The last we spoke of this file you were going to provide a deadline to the employer for June 24, 2013.*
>
> *I assume that there has still not been a FLR [sic]. Please send me the confirmation that your final request was sent (or forward the email discussion thread to me) so I can proceed on my end and calculate our deadline to refer.*
>
> . . .

· An email dated June 25, 2013, at 12:19 p.m., from Ms. Côté to Ms. Rochon, which forwarded an email Ms. Rochon sent to an employer representative on May 24, 2013, at 10:30 a.m., which stated as follows:

> *I am sending you this email because you are acting in Megan McMurchy's position as CFIA National Manager, Labour and Employee Relations.*
>
> *We would like to schedule a date to consult with the employer, at the final level of the grievance procedure, on Paul Wurdell and* [Mr. A's] *termination grievances. We would be discussing the following issues (and not be restricted to):*
>
> . . .
>
> *If no dates are scheduled and agreed by both parties shortly, we request that you respond to the grievances by June 24, 2013. If we have not received any responses by June 24, 2013, we will assume the employer does not want to consult at the final level of the grievance procedure and we will then be referring the grievances to adjudication.*
>
> . . .

[39] There was no evidence to suggest that the employer ever responded to Ms. Rochon's email of May 24, 2013, so the Alliance referred the grievance to adjudication. This was confirmed in a letter dated July 31, 2013, from Edith Bramwell (her position at the Alliance at the time was not made known to me) to Ms. Rochon and copied to the complainant. The following portion of the letter is relevant to this complaint:

> . . .
>
> *We have requested that this matter be dealt with through the mediation process. Should the employer refuse to have this grievance dealt with through the mediation process, or should the grievor object to this process, a further assessment of the merits and consequences of an objection will be made by the Grievance*

> *and Adjudication Officer who will be assigned to provide representation. Accordingly, this referral is conditional and does not indicate a commitment by the PSAC to proceed to mediation or to a hearing on this case/these cases.*
>
> . . .
>
> *Please notify the local of our decision to refer this grievance to adjudication, and of the conditional nature of this referral.*
>
> . . .

[40] In cross-examination, it was put to the complainant that the Alliance had referred the grievance to adjudication as the employer had not replied to it in a timely manner, and he agreed that if the employer did not reply in a timely manner, it was appropriate procedure for the Alliance to refer it to adjudication.

[41] The complainant testified that on March 24, 2013, he was at a union seminar where, among other things, he met up with Mr. Kingston and Ms. Rochon. He said that he then gave them material, including some he had obtained by way of an ATIP request. He confirmed that he gave them a bundle of documents. He confirmed that they looked at the documents and that they listened to what he had to say.

[42] The complainant confirmed that Mr. Kingston said that he was concerned that the ATIP disclosures that the complainant provided did not refute the allegations made against him. When it was put to the complainant that at the time, he did not refute to Mr. Kingston that the boot washes were dirty and that he did not always wash his boots, he said that he did not recall saying that to Mr. Kingston. But the complainant stated that he did recall Mr. Kingston telling him that making sure that the boot washes were clean and updated was his responsibility. He also confirmed to Mr. Kingston that he was not always at his workstation when he was supposed to be.

[43] The complainant testified that he told Mr. Kingston that if there were deficiencies, the CFIA should have corrected them, and he confirmed that Mr. Kingston told him, “Maybe, but two wrongs don’t make a right; you don’t look too good either.”

[44] In cross-examination, it was put to the complainant that Mr. Kingston told him that he needed witnesses to refute the allegations made against him in the final report, not character witnesses; the complainant said that he told Mr. Kingston that that was impossible. He said that he told Mr. Kingston that the union should investigate. When it was put to him that he was saying that it was the bargaining agent’s job to obtain the

witness list, to refute the specific allegations, he said, "I told the union they should interview all these people." He did not specify if he meant the Alliance, the component, or both; nor did he specify whom he meant by "all these people".

[45] Entered into evidence was a copy of an internal Alliance memo dated July 19, 2013, and written by Ms. Côté ("the July 19 memo") with respect to both the complainant and Mr. A, the relevant portions of which state as follows:

> . . .
>
> ***NOTE TO G&A OFFICER: There are several peripheral political issues for these two files and an update from the Director should be sought. Also, both members filed s. 133 complaints, Jean-Rodrigue Yoboua is assigned to the s. 133 complaints and should be consulted for an update.***
>
> ***Both grievors were offered a settlement at the final level and both refused. The grievors assert that these matters should proceed to a public hearing on principle.***
>
> ***REASONS FOR REFERAL***
>
> . . .
>
> *The termination of employment for both grievors arose out of the same investigation. There were other individuals who are also no longer employed but their departing terms varied.*
>
> *Given the nature of the allegations, a public hearing may not be in the grievors' better interests. I highly recommend that settlement is pursued given all the circumstances.*
>
> *For these reasons and my analysis below, I am recommending this matter be* ***referred to Adjudication with Mediation.*** *The deadline for referral is* ***August 6, 2013****.*
>
> ***ANALYSIS***
>
> *The jurisprudence is not favourable on this issue. There were no noted major deficiencies in the investigative process to possibly strike void ab initio. The deficiencies that were noted will therefore be cured de novo. I have listed for the Officer the most recent decisions for cases of termination (disciplinary) that involve the irreparable breach of trust and the current view on this topic.*
>
> *The grievors had suggested that this was anti-union animus. There is nothing on file to suggest that there might be a prima facie case. Despite the fact that the allegations are broad, the actual incidents and supporting testimony are very specific in context and there is no causal link to union activity. The grievors provided ATIP documents from a 2009-2010 early evaluation and intervention on poor labour relations. I have reviewed these document and at best, they prove that the matter was investigated, the matter addressed and for those incidents, the grievors legitimately were acting in their union roles.*

ADMINISTRATIVE INVESTIGAION –GENERAL PROCESS

The process in its entirety appears to be in tact. The grievors were given full opportunity to participate and respond prior to the release of the final report. There were a few minor anomalies detected that could be challenged such as the length of the investigation and the vagueness of the allegations at the onset of the investigative process. The grievors asserted that the redactions and the lack of copies of the witness statements were major breaches. Under the privacy Act, I suspect that the information that was redacted were in regards to those persons who were not employed by CFIA but by a private sector employer, Unfortunately access to those documents will be delayed until disclosure. On this issue I have listed cases of interest as there are conflicting opinions on what can or can not be disclosed during the course of an investigation.

. . .

The grievors, when provided with the opportunity, responded to the draft report with commentary and opinion. It is my understanding from the component that the credibility attacks on the investigator were not supported by the component. I do not believe either that the persistent attacks on the investigator's credibility will prove beneficial.

The grievors' list of additional witnesses was, at best, character references. There was no clear identification that those witnesses were actually present at each of the incidents and would provide conflicting testimony to the events that are alleged to have occurred. The grievors asserted that this was 'plant cultural' and that there must not have been anything wrong with the behaviour if the employer did not previously stop it.

. . .

ALLEGATIONS

As you will see on the file, the allegations wordings are vague to begin with. But they will not be the most problematic. What will be problematic is that there were 22 witnesses interviewed (including the grievors) and the majority of the witnesses did not give favourable statements in support of the grievors.

Maintaining regulatory independence is at the core of the dispute because of the level of trust and independence inspectors must have when working without or little supervision. The employer specifically identified the irreparable breach of trust as the cause central cause for termination. This is the topic that the jurisprudence is the least in favour.

. . .

As you can see there is a whole gambit of issues involved that puts all parties in a precarious situation. The aggravating factors are so overwhelming that the likelihood of success is low. The case law shows that adjudicators are not kind to those who hold positions of

> *trust and they are held to a higher standard. The adjudicator will most likely weigh in on the fact that the originating complaint came from a private sector company and that CFIA's presence at these plants is to ensure that the public's food supply is not contaminated and protected. The public's interest will be taken into consideration.*
>
> *The employer may very well be able to discharge its burden and there will be a struggle to achieve an alternate disciplinary measure.*
>
> . . .
>
> [Emphasis in the original]
>
> [*Sic* throughout]

[46] Ms. Devine was shown the July 19 memo. She stated that grievances were analyzed and that memos were written and placed in files as a matter of routine. She said that she would not normally see those memos and that she is familiar with this one only because of the complaint.

[47] In cross-examination, the complainant was brought to the July 19 memo and the reference to his witness list, where it states that his witnesses were character witnesses, which he stated was Ms. Côté's preliminary view. However, he conceded that it was appropriate for her to analyze the allegations against him that led to the termination.

[48] A further meeting took place at the Alliance's offices on August 28, 2013 ("the Aug. 28 meeting"), involving the complainant, Messrs. Garnett and McCann, and Mses. Kurtz-Cooke and Devine. Ms. Devine did not have an independent recollection of the meeting but conceded that it took place.

[49] In his examination-in-chief, the complainant said that the gist of the Aug. 28 meeting was about Sheryl Heaman, who was an inspector interviewed as part of the Anper investigation. He testified that Mr. Garnett told him that Ms. Heaman had told Mr. Garnett that "what she told to the CFIA upper management was false." He said that at the meeting, Mr. Garnett produced a written statement from Ms. Heaman, as he was representing her. The complainant identified that written statement being produced as a key piece of information.

[50] Between 2010 and January of 2015, Ms. Heaman was employed by the CFIA as an inspector. She testified that she met the complainant in 2012. She was terminated from her employment in January of 2015.

[51] Ms. Heaman was interviewed as part of the Anper investigation. Her evidence, as set out in the final report under each specific allegation, is as follows:

> . . .
>
> ***Allegation #1 – Familiarity:*** *Mr. Wurdell allegedly stepped out of his official role, and engaged in activities which violated his role and responsibilities under the CFIA Code of Conduct and the Conflict of Interest and Post-Employment Code.*
>
> . . .
>
> ***Witness Heaman's Testimony (Appendix- CFIA-PW-7a):***
>
> *Ms. Heaman is an EG-3 CFIA Slaughter Inspector who has been a Federal Government employee for approximately 1.5 years. Ms. Heaman has not worked at Est. 419; she attended at this plant for a few days for training in 2010 and 2011.*
>
> - *Ms. Heaman clarified that she attended at Est. 419 for one week of training in December 2010, and subsequently on two or three more occasions for 1 day of training.*
> - *The last time Ms. Heaman attended at Est.419 for training, was in November 2011, with another female inspector.*
> - *Ms. Heaman maintains her regulatory independence by being friendly but without fraternizing with plant staff.*
> - *When asked if she noticed that CFIA inspectors at Est. 419 followed a similar approach, Ms. Heaman stated: "No. I was shocked, the first time, and every time I was there. The CFIA's office was an open door for plant staff, particularly young women (plant staff, I do not know their names . . .*
> - *Ms. Heaman added: "Some plant employees had their uniform hanging on hooks in the office where CFIA staff hang theirs, and in the female washroom there were plant staff uniforms hanging. The way they came into the CFIA area was as if this was as much their office as the CFIA staff's office, they were very much at ease."*
>
> . . .
>
> - *When asked to describe her relationship with plant staff and plant management where she works, Ms. Heaman said that it was very good, based on mutual respect and they work well together. Ms. Heaman added; "there are CFIA male inspectors working there (at the plant where she works). "*
> - *Ms. Heaman confirmed she witnessed one of Mr. Wurdell's colleagues in his car smoking with plant staff, and added that it*

was with [name omitted] and some of the girls that were in the CFIA office and sat on his lap.

- *Ms. Heaman explained that in her own plant there is a professional division, and that this is to ensure, no conflict of interest, or skewing the results of testing in favour of the plant, or try to get the plant punished.*

. . .

Allegation #2 – Breach of Established Protocols; *Mr. Wurdell allegedly engaged in activities that in view of the nature of his job responsibilities may have breached the rules he was responsible for enforcing.*

. . .

Witness Heaman's Testimony (Appendix- CFIA-PW-7a):

- *Ms. Heaman is not concerned about making work related decisions as they are sound decisions based on the requirements of her job.*
- *When asked if by being friendly with plant staff, and/or plant management, the performance of an inspector's duty can be affected, Ms. Heaman said that it can if one is overly friendly, beyond the normal pleasantries of working.*

. . .

Allegation # 3 – Respectful Workplace; *Mr. Wurdell allegedly failed to conduct himself in a respectful and civil manner in his dealings with others.*

. . .

Witness Heaman's Testimony (Appendix- CFIA-PW-7a):

- *Ms. Heaman advised the investigator that when she went to Est. 419 in December 2010 for one week of training, she received no training. Ms. Heaman said that the inspectors there,* [other terminated inspector], *Paul Wurdell, and* [name omitted] *told her that it was not in their job description to train her, and she sat at a desk for the week and just wandered around the plant for one week.*
- *Ms. Heaman clarified in Appendix-CFIA-PW-7b that* [Mr. A] *was there in 2010, and took her out once to observe the viscera. None of the other inspectors assisted or trained her while she was there. Ms. Heaman clarified that* [name omitted] *was under a lot of pressure from* [other terminated inspector] *and Paul Wurdell, who said: "we don't do training. We don't get paid to train."*
- *Ms. Heaman added: "When I went in December they allowed me to go to the inspection stand, but this stopped, as they said it was too dangerous."*
- *Ms. Heaman said that on her first day, she took donuts, but the inspectors refused to have any, and* [Mr. A] *and Paul Wurdell were incredibly rude.*

- *Ms. Heaman commented: "This was the first time i met them. Then, they informed me that the female bathroom at the CFIA area was for them to have their bowel movements, and I was not to expect anything out of it."*
- *Ms. Heaman said that she had to return to this plant on two or three more occasions for one day training. The last time she was sent there was in November 2011, and another lady inspector,* [Ms. B] *went with her.*

. . .

- *When asked, Ms. Heaman said that* [other terminated inspector] *liked to be agitated, that was his normal state, whereas Mr. Wurdell does not yell. Ms. Heaman commented: "my impression was that* [other terminated inspector] *is the negative cloud and the agitator; the mouth piece and everyone agreed with what he said."*
- *When asked if she heard the inspectors being disrespectful when talking to the VIC or about the VIC, Ms. Heaman said: "They were very dismissive to the VIC it was like; go back to your office kind of thing. I heard* [Mr. A] *saying; he is f****** useless.* [Mr. A] *said this in the CFIA office, the VIC was there."*
- *Ms. Heaman stated: "It was incredibly unprofessional, and I think that [Mr. A] went out of his way to be very intimidating to everyone, and I was definitely a target. He is proud of the fact that he hangs with bikers, and has the attitude; "don't mess with him. . ."*
- *Ms. Heaman said: "Paul went along with all this and is backing him up and this was very disappointing because he is a union rep, and you would expect that he would know better."*
- *Ms. Heaman described events relating to the training day in November 2011: "the last time I was there* [Ms. B] *came with me for Hog training, and we walked in and they were clearly not expecting us.* [name omitted] [Mr. A] *and Paul were there, and all of them said: I got to leave I am going to puke, and they all carried on like that for sometime. No training was provided to us."*
- *When asked if any of the three men (* [name omitted] [Mr. A] *and Paul Wurdell) were civil to her at any time, Ms. Heaman said: "No.* [Mr. A] *and Paul were also very rude to a new Vet* [name omitted] *. . .* [Mr. A] *started to flip out about Tom Doyle to Patty and I , in front of the other two inspectors, and they all made comments. Patty and I went for lunch and decided not to return; it was useless, and they were obnoxious. I went home and emailed Tom Doyle about my wonderful morning."*

. . .

Allegation # 5 – Complaints from plant staff; *Mr. Wurdell allegedly engaged in activities which were considered inappropriate by some of the plant staff at Est. 419.*

. . .

Witness Heaman's Testimony (Appendix- CFIA-PW-7a):

- *Ms. Heaman advised that while she was "on the floor" at Est. 419, she heard Mr. Wurdell yelling things at plant employees regarding their sex lives. Ms. Heaman commented: "It was just so inappropriate."*
- *Ms. Heaman added: "I witnessed Paul and* [Mr. A] *yelling at one girl if it was true that she got laid by someone the night before, and she also responded in an inappropriate banter, and Paul said that she is going back for more tonight. The whole day was like that."*
- *Ms. Heaman commented: "I was uncomfortable with this, and there was a woman across from me who was a Jehovah Witness and she was not impressed with the conversation. I could tell by her facial expression. We never spoke about it. I don't know if she is still there."*
- *When asked, Ms. Heaman confirmed that she definitely heard comments/jokes which could be considered sexual/inappropriate while at Est. 419. Ms. Heaman elaborated: "there was the yelling at the girl about having sex with another plant employee and there was another girl (I don't know the name) that Paul and* [Mr. A] *were teasing about her dad being a transvestite."*
- *When asked if the use of profane language, and/or sexual type comments are common at her own plant, Ms. Heaman said: "The "F" word is not uncommon, but it is not every other word either. Sexual comments, no."*
- *Ms. Heaman advised that the use of profanity she observed on the floor at est. 419 is about the same as in her plant; however, in the CFIA's office at Est. 419, it is definitely more than in her office.*
- *Ms. Heaman advised that while she was at Est. 419 in December 2010, she saw three of the plant women sitting on the inspectors' laps one day;* [three names of plant women omitted] *and that* [two names of plant women omitted] *were sitting on* [Mr. A] *and Mr. Wurdell's laps, but she is uncertain as to which woman was sitting on which inspector, but that* [woman's name omitted] *was sitting on* [another inspector]*'s lap, performing a lap dance without music. Ms. Heaman clarified that this lasted a couple of minutes. Ms. Heaman commented: "It resembled a night club not an office."*

. . .

[*Sic* throughout]

[Emphasis in the original]

[52] The complainant identified an email of September 2, 2013, at 8:15 p.m., which he sent to Ms. Devine, stating as follows:

. . .

> *As promised to you during our meeting last week on August 28, 2013, please see the attached chronological timeline, a copy of the signed and dated statement from Sheryl Heaman, and numerous other attachments that go along with and substantiate the chronological timeline.*

. . .

[53] Ms. Devine was shown that email and the attached copy of a typed and signed statement from Ms. Heaman. Ms. Devine said that she had no recollection of the exchange but that she did recognize the statement. It is the same document that was attached as Appendix D to the complaint's particulars. Ms. Heaman signed it; it contains a handwritten date of August 21, 2013 ("the Aug. 21 statement"). When he was asked how he obtained the Aug. 21 statement, the complainant said that he received it from Ms. Kurtz-Cooke. It states as follows:

. . .

> *In 2009, and prior to my employment with the Canadian Food Inspection Agency in 2010, I was contacted by [name omitted, title omitted] and Mr. Tom Doyle, Inspection Manager Southwest Ontario Region, in regards to employment with the CFIA, and in regards to Establishment #419 in Mitchell, Ontario, the town in which I live.*

. . .

> *In 2010 and 2011, I was approached by both of these individuals once again in regards to providing information to Ms. Anabela Periera, relating to the Establishment #419 investigation and the inspectors at this facility. Although only having been at this Establishment for very brief periods of time since my employment with CFIA, Mr. Doyle assured me that he would "help me out" with this and again promised me a position at this Establishment when the present inspectors were "gone and dealt with".*
>
> *In 2011 and 2012, and prior to speaking to Ms. Anabela Pereira, I was provided information from Mr. Tom Doyle, Inspection Manager, as to what to say, discuss and bring up with Ms. Anabela Pereira. Although Mr. Doyle provided me with this information, he informed me that nobody could know he provided this information to me, and that "he had to appear as remaining aloof from this information and investigation, in order to get the outcome they were looking for".*
>
> *After speaking with Ms. Anabela Pereira, it was very clear to me, that Ms. Pereira had been prepared ahead of time by CFIA Management as to what questions to ask, what issues to discuss and bring up and what individuals to speak to, as these question related directly to the information that I was given by Mr. Tom*

Doyle. After speaking to Ms. Pereira and providing the information to her that I received from Mr. Doyle, Ms. Pereira continued to harass me for further clarification and further information. Although being informed by both myself and my Union representative, Mr. Jason Garnett, that I had nothing further to provide and that I would no longer be cooperating with her and this investigation, Ms. Pereira continued to harass me, in the form of emails and phone calls, regarding this. Shortly after informing Ms. Pereira of my decision, Mr. Doyle then contacted me and began harassing me about providing more information, as this was very important to him and the investigation to do so. Mr. Doyle also threatened that I would not be placed at Establishment #419, Mitchell, as promised in the further, if I did not fully cooperate further with this investigation, as it was important for them to achieve the outcome they were looking for.

As a result of hearing the situation now faced by the inspectors that were at Establishment #419, and based on my personal involvement in its unfolding and the involvement that Mr. Doyle and Mr. Greg Shoreman, Mr. Stephen Michon and Canadian Food Inspection Agency Management, have been working on setting up this investigation and outcome for the last number of years.

Based on my personal involvement, it is also my belief, that Ms. Anabela Pereira conduced a biased investigation and was prepared ahead of time by CFIA Management to conduct such a biased investigation, so that CFIA, Mr. Tom Doyle and Mr. Stephen Michon, could attain the outcome that they had been working on and planning towards.

As one of the key people interviewed by Ms. Anabela Pereira, in regards to the investigation at Establishment #419, and put forward by Mr. Tom Doyle, I now realize that it was wrong to provide the false information given to myself by CFIA and Mr. Tom Doyle. The fact of being fed empty promises by Mr. Tom Doyle, in attaining a position at a facility only minutes from my home, clouded my judgement and I now realize I was wrong for putting Mr. Doyle's information forward.

In closing, I was targeted and used by CFIA Management to put forward their information into the investigation at Est. 3419 and the inspection staff at this facility. I feel that I was hired and fed empty promises by CFIA Management and Mr. Tom Doyle to get me to do the things they needed and wanted done. Since my decision to no longer cooperate with Mr. Doyle and Ms. Anabela Pereira, I have now been targeted by Mr. Tom Doyle, inspection Manager, Southwest Region, and Mr. Stephen Michon. Regional Director, Southwest Region, and I am extremely fearful for my job and employment with the CRIA, and that I will be targeted the same as the Inspection staff at Est. #419 was.

I have written and provided this statement at my own free will, and am willing to substantiate any statement in this written statement and can and will provide further information as to anything mentioned above and more.

. . .

[*Sic* throughout]

[54] Ms. Devine was then shown a second unsigned and undated statement, which Ms. Heaman also prepared ("the undated Heaman statement"). Ms. Devine said that she did not see it before the complaint was filed. It states as follows:

. . .

In 2009, well before the beginning of my career with the CFIA, I worked at a company in Mitchell. One of the ladies I worked with regularly had a room mate who was employed by est. 419 – Great Lakes Specialty Meats aka the hog plant.

On day while we were working together, she told me about some stories her roommate told her about the hog plant. I had no opinion as to the validity of the stories. I had a friend who works for the CFIA that I was in regular email contact with at the time. The next time I emailed him, I related the stories I had heard. He was quite concerned with the content of the stories and the fact that they were being made public knowledge. My understanding from my friend is that he contacted the Inspection Manaager for the hog plant, Tom Doyle, and relayed what i had told him. Tom had ore questions for me and my friend was the "go between" between myself and Tom Doyle. I didn't know too much about the situation other than the few tales I had heard so the communication was overwith fairly quickly.

Previous to all of this, I had competed in and won a place in a hiring pool for the CFIA. My friend would contact Mr. Doyle whenever an opening in southwest region was open to remind Mr. Doyle of my co-operation.

In July 2010 I was offered a job at the CFIA by Mr. Doyle. Tom was my inspection manager and we enjoyed a very friendly relationship, often sharing storied about our families etc. Tom was very clear with me since the very beginning of my employment that he wanted to place me at the hog plant after it "had been cleaned up'

I was sent to the hog plant on a few occasions for training. It was not a great experience at all because of the inspectors who were there, one in particular. Tom would always contact me afterwards to see how it had gone and gather information about the inspectors.

In or about December 20 I was contacted at work by Anabella Piera, a private investigation, retained by the CFIA to investigate the inspectors at the hog plant. An appointment was arranged for a few days in the future. Between the time of the appointment being made and actually going to the appointment I had occasion

to speak with Tom. Tom reminded me of all the things I had told him about my time with the hog plant inspectors and their lack of training etc. He went so far as to send me any emails with comments about the hog plant that I had sent him over the 2 yea r period, some having to be unarchived. I remember sending Tom an email one day about something to do with the hog plant and he responded with "call me". I called him in his office and he said he had to be careful to give the impression of remaining aloof from the investigation.

I attended at my appointment with Anabella Piera in a hotel suite in London. I took my friend Greg, the friend from CFIA that has been involved in this since the beginning for my support person.

Anabella conducted the interview asking very specific questions that made it seem as if she already had a lot of the information I was going to be able to provide. I told the truth during my interview and told her everything I knew of the situation. At Greg's urging, I told Anabella of my knowledge before I even worked for CFIA. I finished the interview and left.

Shortly thereafter I was contacted again by Anabella to go to London to sign my typed statement. I believe there were one or two errors that were corrected before I signed.

A few days later, I was contacted again by the investigator asking for more details or clarification. I believe I told Anabella that I couldn't speak freely and gave her my home number for a more private conversation later that day. She called me at home and we spoke. After that, there were more emails and more phone calls until finally I told her that I had had enough and please stop contacting me. I told her that I had already told her everything I knew. Anabella continued to contact me and I asked my union for help with the situation. My union rep, Jason Garnett, sent a cease and desist email to Anabella. I was contacted once again after that by Tom Doyle to tell me how important my information and co-operation were. I did not answer.

My relationship with Tom immediately cooled and there was little to no conversations between us after that.

At some point the following spring, February and March I think, another inspector and I were sent to the hog plant to undergo training. While we were there, we encountered some difficulties with the Vet. Both the other inspector and I contacted Tom Doyle and the Regional Director Stephen Michon for help with this matter. Were were not given any help at all beyond some lame excuses for their inaction. It was obvious to both of us that we were not going to get any help so we turned to our union again for help. This situation continues to this day and is fairly acrimonious.

A few months after the incident at the hog plant, I was contacted by my friend Greg who is an EG 5 at a poultry establishment. He wanted to know if I would be interested in coming to his establishment under the guise of CVS "train the trainer" coaching as CVS training is something we are both involved in. I agreed to

go and he said he would make the arrangements with my supervisor for this to happen.

While I was driving home that day, Greg called me to tell me the real reason he invited me to come to his plant is that Tom Doyle has contacted him and asked Greg to "rein me in". He asked Greg to show me the roles and responsibilities as an EG 5 position as there would soon be a position coming up at my plant in the future and I would be considered for the position. My immediate understanding was that if I drop my grievance and toe the line then I could be an EG 5. I did not drop my grievance and I am not an EG 5. A woman names [named omitted and herein referred to as Ms. B] was brought in to be out acting EG 5 and a young man, Shawn acts off and on as the EG 5 as well.

My experiences with [Ms. B] since the first day she came to our plant is that she has singled me out for harassment, bullying and is targeting me for discipline whenever possible. She berates me for common practices, she badgers me when speaking and absolutely refused to provide accommodations to me when I was injured at work. I had to call WSIB and involve a Return to Work specialist for help. I have been berated for not "completing meaningful CFIA work" while icing my knee. I have been disciplined for refusing to follow a cruel schedule that she wrote up. I have been labelled as difficult and insubordinate and I feel that my career is in danger, as much as the inspectors at the hog plant.

Tom Doyle has told me directly that I will never go anywhere in the CFIA and I believe he meant it.

Looking back I can see how I was hired specifically for the information and testimony I had and could provide about the hog plant inspectors.

I can also see a definite pattern of harassment and being targeted since I stopped co-operating. The harassment continues to this day by [Ms. B], *Tom Doyle and Stephen Michon. I believe that they are working towards my termination as they did at the hog plant.*

I am writing this because I believe I was used solely for the purpose of providing information to terminate the employment of the hog plant inspectors. I believe that Anabella was given information that made an impartial investigation impossible. I believe that Tom Doyle was much more involved in steering that investigation that he let on. I believe that the hog plant inspecots were treated unfairly and I feel that the same thing is happening to me. I am ashamed that I participated in any way in their termination and just want to make this right.

If I am required to appear before any panel or tribunal, I will swear to this information under oath. I can also provide many emails that prove what I said.

. . .

[*Sic* throughout]

[55] Ms. Devine stated that she was unaware that Ms. Heaman had made more than one statement. She said that she recalled the complainant telling her that he had been "set up" and that Ms. Heaman had been used to set him up.

[56] In her evidence-in-chief, Ms. Heaman stated that Ms. Pereira constantly called her at work and home and that she received so many calls that she " . . . went to the union to put a stop to it; [she] felt [she] had told her all [she] could at that point." Ms. Heaman did not state the following:

- how many times she met with Ms. Pereira to be interviewed;
- on what date or dates she met with Ms. Pereira to be interviewed;
- how many calls she received from Ms. Pereira in relation to her interview or interviews;
- the dates she received calls from Ms. Pereira in relation to her interview or interviews;
- how many emails she received from Ms. Pereira in relation to her interview or interviews; and
- the dates she received emails from Ms. Pereira in relation to her interview or interviews.

[57] Ms. Heaman was shown an email Mr. Doyle sent her dated April 3, 2012, and one from Mr. Garnett replying to Mr. Doyle, dated April 5, 2012. The emails state as follows:

> [April 3, 2012; Mr. Doyle to Ms. Heaman:]
>
> . . .
>
> *I had wanted to talk to you but I'm headed to Ottawa again for a couple of days. Anabela requires one more piece of information from you and it is important that you provide it. You can just send an e-mail [sic] to her. No need to provide any more than what she has asked for.*
>
> *I do realize this whole situation can create some stress however this information is required in order to ensure a complete & fair investigation is conducted.*
>
> *I would greatly appreciate you getting this information to Anabela today.*
>
> . . .
>
> [April 5, 2012; Mr. Garnett to Mr. Doyle:]
>
> . . .
>
> *Sheryl has asked me to reply to you as her union representative. Good morning.*

> *Although I was not the representative for Ms. Heaman at her interview, she has contacted me and has asked me to do so now. She has also expressed that she feels she has provided what information she can and that she has fully co-operated with the investigation. She has told both the investigator and yourself that she has nothing further to discuss and wished that any communication regarding the investigation would end.*
>
> *I would ask you to stop all contact regarding the investigation with Ms. Heaman as she is expressing a great deal of stress and we don't want to have her in an unhealthy situation.*
>
> . . .

[58] When she was asked about her reference to the "great deal of stress", Ms. Heaman said that she felt that she was being pulled into something that she did not want to be pulled into, that Ms. Pereira knew the questions she wanted answers to, and that she "had a bad feeling." She said that Mr. Garnett told her that she did not have to cooperate. She stated that she had no further contact with Ms. Pereira.

[59] She said that the day after her interview, she was shown a copy of her interview notes and was asked to sign them. In cross-examination, she confirmed that after Ms. Pereira interviewed her, she was presented with a printed statement that she signed, but only after she had satisfied herself that it was accurate.

[60] No copy of the signed written statement from the Anper investigation was entered into evidence; nor was I provided any evidence that Ms. Heaman retained a copy.

[61] At one point in her evidence-in-chief, Ms. Heaman said that she was not shown a copy of the draft report. However, later on in that evidence, when she was asked if she had seen the investigation report, she said that she had seen it. I assume that she meant the final report. However, she did not elaborate as to the following:

- when she saw the final report;
- who provided her with a copy of it;
- what she had seen in it;
- if she had read all or just parts of it and if so, which parts;
- whether she had a copy of it; and
- whether she used it as the basis for making the Aug. 21 statement or the undated Heaman statement.

[62] Without specifying the version, counsel for the complainant asked Ms. Heaman if the investigation report was accurate. She replied that some of it was out of context and mentioned these two things:

- Ms. Pereira referred to foul language and then said that the language at Establishment 439 was worse but that it was not the inspectors but the staff who used it; and
- a comment about her saying that she was disappointed that the complainant had not told Mr. A to smarten up.

[63] When the complainant's counsel asked her if the material that was out of context or inaccurate had caused her concern, she replied, "Not that [she] recalled."

[64] Ms. Heaman was asked if she met with Mr. Garnett after the Anper investigation. She confirmed that she did. She stated that she was having difficulty with management and that she gave him a bunch of documents when they met at a coffee shop in Lucan, Ontario, with Ms. Kurtz-Cooke. No date was given for this meeting.

[65] Ms. Heaman then referenced emails that she and Mr. Doyle exchanged, Mr. Michon, and "getting stuff re Est. 419". When she was asked when this took place, she could not recall. When she was asked if she had the emails, she stated that she did not. She stated that Mr. Garnett and Ms. Kurtz-Cooke invited her to the meeting and that once there, she gave them her permission to provide the information to the complainant. This appeared to precipitate a further meeting with Mr. Garnett, the complainant, and perhaps Ms. Kurtz-Cooke at a Wendy's restaurant in Stratford, Ontario, for which no date was provided.

[66] Ms. Heaman thought that a further meeting might have been held after the one at the Wendy's, but she was not sure and provided no details of one.

[67] Mr. Garnett testified that Ms. Heaman contacted him at some point during the investigation process and that she told him that Ms. Pereira was harassing her. He said that she conveyed to him that she was being pressured for more details. He said that his last interaction with Ms. Pereira was to email her; he asked her to stop contacting Ms. Heaman. He said that his involvement in the Anper investigation was limited to attending interviews with three interviewees, none of whom were Ms. Heaman. He did not see either the final report or the draft report. Mr. Garnett stated that before this case, he did not know the complainant and that he did not meet him before the termination.

[68] Mr. Garnett recounted meeting at a coffee shop on an unspecified date with Ms. Heaman and Ms. Kurtz-Cooke. He said that Ms. Heaman told him that she had been coached in her interview with Ms. Pereira and that she had not been truthful with Ms. Pereira. She said that her supervisor sat with her in the interview and coached her and that she felt that she should come clean to the complainant because she had ruined his career.

[69] Mr. Garnett also testified about the meeting at the Wendy's. He said that Ms. Heaman brought emails from both Messrs. Doyle and Michon. In cross-examination, he said that she gave them to the complainant. Mr. Garnett was shown the undated Heaman statement and said that he was confident that it was the document she brought to the meeting, which he also did not provide a date for.

[70] Ms. Heaman stated that after a meeting (without clearly specifying which one), she recalled wanting to make a statement to CFIA management. She stated that she wanted to clarify the information she had provided to the Anper investigation and that when she used the word "guys", it really referred more to Mr. A than to the complainant. She stated that she felt bad about what happened to the complainant.

[71] Ms. Heaman said that a lawyer from the Treasury Board (TB) had called her. She appeared to be referring to the department commonly referred to as the TB, rather than the three federal cabinet ministers that are the TB. This department is usually referred to as the Treasury Board Secretariat (TBS). She did not specify when the call took place or with whom she spoke.

[72] Ms. Heaman then stated that she made the Aug. 21 statement in preparation for the conference call with the TBS. It was not clear if that call was the one with the TBS lawyer or one with someone else. When she was asked if she recalled anything specific from the TBS call, she said that she needed to clarify some statements that had been made to her about the complainant. She said that she felt great pressure from her manager, that she had been promised promotions, and that she had been sent on management training before the Anper investigation. She then stated that she needed to clarify what she had said and that she needed to recant some statements.

[73] Ms. Heaman was shown a copy of an email chain that included one between her and Ms. Kurtz-Cooke on March 27, 2015, at 11:45 a.m., which she forwarded to Ms.

Rochon that same day at 11:54 a.m. along with an attached typewritten statement. The emails state as follows:

> [Ms. Kurtz-Cooke to Ms. Heaman, at 11:45 a.m.:]
>
> . . .
>
> *Is this the one?*
>
> . . .
>
> [Ms. Heaman to Ms. Rochon, at 11:54 a.m.:]
>
> . . .
>
> *per our conversation the other night, here is the letter I wrote. I believe it is the only thing in writing that they may have regarding this*
>
> . . .

[74] Attached to that chain was the undated Heaman statement. It should be noted that the email exchange took place long after the complainant was terminated from the CFIA (February 2012), after he had settled his grievance with the CFIA (June 2014), after he filed this complaint with the PSLRB (August 2014), and after Ms. Heaman was terminated from the CFIA (January 2015).

[75] In her evidence-in-chief, Ms. Heaman said that she sent the undated Heaman statement to Ms. Rochon because she wanted to help the complainant in his dealings with the Alliance. Counsel for the complainant asked Ms. Heaman if she gave the statement to the TBS, to which she answered in the negative and stated that she recalled "having that written in a book." She said that she did not provide it to management. When she was asked when she wrote it, she replied, "Probably late 2013." When she was asked if she gave it to anyone in 2013 or 2014, she said that she thought that she gave it to Ms. Rochon and then said that it could have been Ms. Kurtz-Cooke, because Ms. Kurtz-Cooke had sent it back to her (referring to the email chain).

[76] Counsel for the complainant then brought Ms. Heaman to the Aug. 21 statement and asked her to identify it. She said that it appeared to be the same as the undated Heaman statement but that it was formatted differently. When counsel suggested to her that some of the content was different, she replied that it was "likely more condensed". When she was asked who wrote the statement, she said that the content was hers but that she imagined that she had received some help from Mr. Garnett or

Ms. Kurtz-Cooke to condense it. When she was asked if it was accurate when she wrote it, Ms. Heaman answered that it was. When she was asked what she did with it, she said that she was sure that she gave it to someone. When she was asked why she understood that she had signed it, she said "A formal belief of what happened in furtherance of Paul's issue as well as my own."

[77] Ms. Heaman confirmed that no one from the Alliance or any lawyers on its behalf contacted her to discuss the Aug. 21 statement. She also said that she was not involved in any meetings with Alliance representatives. And she said that no one from the Alliance told her what would be done with it.

[78] In cross-examination, Ms. Heaman was asked what part of the Aug. 21 statement indicates that she is recanting what she said in the Anper investigation. She replied, "To be honest, 'recanting' is a word Treasury Board put to it; I always wanted to clarify."

[79] Ms. Heaman agreed with counsel for the Alliance when he put to her that she did not want to change her statement to Ms. Pereira; she merely wanted to clarify it. When counsel asked her to detail the clarifications, she said that she believed that she clarified that Messrs. Doyle and Michon gave her the information to provide to Ms. Pereira. When counsel asked her if that meant that she gave Ms. Pereira false information, she said that she could not say that the information was false. She then stated that many times, Mr. Doyle emailed her about a promotion to a manager position if things went the way management wanted them to.

[80] In cross-examination, Ms. Heaman confirmed that she felt that the CFIA had made promises to her contingent on her cooperating with the investigation and that it did not make good on the promises of promotions and opportunities. She then stated that the moment she clarified the situation with Ms. Pereira, it changed from one of pleasantness and cooperation to one of harassment.

[81] In cross-examination, Ms. Heaman was brought to the second-last paragraph on the second page of the Aug. 21 statement, where it states, ". . . I now realize that it was wrong to provide the false information given to myself by CFIA and Mr. Tom Doyle." It was put to her that that phrase could be read to understand that Mr. Doyle gave her false information to pass along to the investigation. She replied that it could be but that she did not know that the information was false.

[82] In cross-examination, Ms. Heaman was brought back to her statement that someone from the TBS had used the term “recant” to mean that her evidence was false. She confirmed it and stated that she had used only the word “false”. When counsel suggested that she understood that that is how the TBS took it, she confirmed that that was correct but then stated that it did not happen during the telephone call but at some point after that. When counsel asked her if it was from the TBS, to confirm the answer, she said, “I would think; who else?” She did not recall any other discussions with anyone from the TBS; nor did she produce any email correspondence.

[83] In cross-examination, Ms. Heaman was brought to the undated Heaman statement and was asked to confirm that it too was written in 2013. She reiterated that it was formatted differently. Counsel then asked her if she had been honest and accurate when she drafted it, to which she answered that she had been. He then brought her to the last paragraph on the first page, which stated, “I told the truth during my interview and told her [Ms. Pereira] everything I knew of the situation.” She confirmed that Ms. Pereira did not tell her anything dishonest and that Ms. Pereira appeared well prepared. Finally, when she was asked if she had answered Ms. Pereira honestly, Ms. Heaman stated that she had.

[84] Finally, in cross-examination, Ms. Heaman said that the undated Heaman statement was drafted before the Aug. 21 statement. When she was asked if the complainant asked her for the more concise Aug. 21 statement, she stated that instead, she believed Ms. Kurtz-Cooke had done the asking.

[85] No emails that Ms. Heaman stated were between her and Ms. Pereira were entered into evidence.

[86] Ms. Heaman produced no handwritten notes of any meetings she attended; nor did she provide a diary or any other document to help determine when meetings took place.

[87] Neither the complainant nor Mr. Garnett provided notes from the coffee shop or Wendy’s meetings; nor did they provide a diary as a source of dates for the meetings.

[88] Entered into evidence through the complainant was a package of documents that totalled 19 pages. He stated that he gave it to Ms. McGregor. About one-third of the first page consists of an undated typewritten paragraph from Don Gamble (“the

Gamble statement"), which will be referenced later in this decision. The next 18 pages consist of emails that Ms. Heaman was either sent or received. In his evidence-in-chief, the complainant stated that the package was proof of CFIA management's coercion of Ms. Heaman.

[89] Of the 18 pages, the last 12 are dated June 24, 2010, or earlier and contain administrative emails with respect to Ms. Heaman's initial hiring as an inspector in 2010. This leaves 5 pages, of which one is Mr. Doyle's email to her on April 3, 2012, and Mr. Garnett's response to Mr. Doyle dated April 5, 2012.

[90] The remaining four pages do not seem to have any relevance to the Anper investigation, Ms. Heaman's statements to Ms. Pereira, what Ms. Heaman said about the complainant in the investigation, or to the statement that Ms. Heaman's evidence in the investigation was obtained by way of promises from Mr. Doyle. The emails do not seem to be in any particular order and appear to be different emails that are not necessarily the part of the same chain but perhaps bits and pieces of different ones. The only email that perhaps has any relevance to the complainant's behaviour was dated January 26, 2012, was sent by Ms. Heaman to Mr. Doyle, and states as follows:

> . . .
>
> *I was wondering if there was any way you could give me your assurances that I will not ever have to work with the boys from Mitchell if I go ahead with the hog training. That has been the reason why I havent pursued it and I am afraid that if I get hog trained and they don't lose their jobs that i will be forced to work with them again and I really, really do not want that.*
>
> *Maybe this is an off the record conversation lol*
>
> . . .
>
> [*Sic* throughout]

[91] Ms. Heaman did not testify about any of the emails in the package except for the one Mr. Doyle sent her about Ms. Pereira needing a little more information and the one in which Mr. Garnett responded to Mr. Doyle on her behalf.

[92] The complainant testified that Mr. Garnett told him that Ms. Heaman had told him that what she had told upper management was false. The complainant provided no evidence about his meeting with Ms. Heaman.

[93] In cross-examination, the complainant was shown the undated Heaman statement, and when it was suggested to him that it was Ms. Heaman's first statement, he replied, "I guess." It was then put to him that when Mr. Kingston was shown the statement, he pointed to the paragraph detailing that Ms. Heaman said that she had told the truth during the investigation, which he said was not helpful. The complainant replied that that was Mr. Kingston's opinion. The complainant was then told that Mr. Kingston would say that the complainant told Mr. Kingston that he would speak to Ms. Heaman and obtain a second statement. Mr. Kingston would then say that he told the complainant that that would be even more useless. The complainant confirmed that he recalled Mr. Kingston saying as much. When he was shown the Aug. 21 statement, the complainant identified it as Ms. Heaman's second statement.

[94] In cross-examination, the complainant confirmed that Ms. Heaman's statement was raised at the Aug. 28 meeting. When he was asked if it was the Aug. 21 statement, he said he that was not sure if it was brought up at that meeting or at another one. When he was asked if he presented the undated Heaman statement to Mses. Benson and Devine, he said that he could not recall.

[95] In cross-examination, Mr. Kingston was shown the undated Heaman statement. He confirmed that he had seen it but that it had come from a different person. He confirmed that he and the complainant discussed it and that he stated to the complainant that it would not help. He said that the complainant offered to have Ms. Heaman write a second statement. Mr. Kingston said that he told the complainant that doing so would not be useful because there would then be three documents. He said that he explained to the complainant the concern about Ms. Heaman's credibility.

[96] Mr. Kingston was then shown the Aug. 21 statement. He said that he did not see it before the complaint was filed.

[97] The Alliance retained the Raven firm to represent the complainant and Mr. A after their termination grievances were referred to the PSLRB. That was done around the middle of September 2013, at which time no dates for the adjudication hearing had been set.

[98] Entered into evidence was a copy of the Raven firm's pre-bill for the complainant's file with the Alliance. In columns, it sets out the date on which work was done, the lawyer or student who did it (by their initials), a short description of the

work done on the specific date, the time spent on it, and the hourly rate of the person who carried it out. The pre-bill redacted only the hourly rate and the amount of time spent on the work. It consisted of 13 pages; however, the work carried out on the file until the date on which the MOA was signed counted a little more than 11 pages.

[99] The pre-bill disclosed that the first work was done on the file on September 18, 2013.

[100] Under cover of an email dated September 27, 2013, Ms. Devine forwarded Andrew Raven a copy of the Aug. 21 statement. She attached the complainant's September 2 email, which had forwarded the Aug. 21 statement to her.

[101] Ms. McGregor's evidence indicated that she received the file material from the Alliance on October 1, 2013, and that she reviewed it on October 1 to 4 and 7, 2013, and prepared a memo on the file on October 11 and 15, 2013. Mr. Cameron's first docket to the file appears on October 17, 2013, in which he reviewed Ms. McGregor's memo and met with her and Mr. Raven.

[102] Ms. McGregor testified that her original memo was updated from time to time and that it was a work in progress.

[103] On October 28, 2013, Ms. McGregor created a memo to the complainant's file, the relevant portions of which state as follows:

> *I called P. Wurdell to discuss the documents that he refers to in his "chronological timeline of events," particularly the "coercive" emails from CFIA management to Sheryl-Ann Heaman telling her what to say to the Anper investigator.*
>
> *He said he would forward these documents to me by email. He also has statements from other witnesses.*
>
> *Eg: Ex plant manager said that in meeting with CFIA management (before investigation started), CFIA management mentioned the new badge identification system for employees. The Ex plant manager asked if there would be a ceremony to give these badges to the CFIA inspectors, and CFIA Management said "No, there will be a ceremony when we take the badges away."*
>
> . . .
>
> [*Sic* throughout]

[104] On November 1, 2014, at 2:10 p.m., Ms. McGregor emailed both Mr. Cameron and Ms. Côté, the relevant portion of which is as follows:

> *After several unsuccessful attempts, I reached Mr. Wurdell by phone on October 28, 2013. I asked him about the "coercive" emails from the employer that he discusses in his "Chronological Timeline of Events" and the written statement from Sheryl Heaman. He told me that he has copies of these documents and would send them to me by email, but I have yet to hear back from him. I will follow-up with another email to Mr. Wurdell this afternoon.*
>
> . . .

[105] The first meeting of the complainant, Mr. Cameron, and Ms. McGregor was held on December 3, 2013. Both Mr. Cameron and Ms. McGregor testified about it, and their handwritten notes were entered into evidence. Both notes contain brief, jotted information. Both identify two general areas of concern, one being health and safety, and the other being behaviour.

[106] Mr. Cameron testified that the purpose of the initial meeting was to meet the complainant and to get a sense of what he wanted from the grievance. Mr. Cameron testified that they discussed making a settlement and that they required his idea of a good deal. Mr. Cameron said that his professional obligation was to provide the complainant some indication of his chances of success, along with what was both feasible and probable. Mr. Cameron stated that the two key issues were health and safety, and behaviour.

[107] The complainant did not testify about this meeting in his evidence-in-chief. In cross-examination, he confirmed that the health-and-safety and behaviour issues were raised at the December 3 meeting and that Mr. Cameron flagged them as concerns. He also confirmed that the complainant did not rule out a settlement with the CFIA, as long as the terms were acceptable.

[108] Entered into evidence was an updated copy of Ms. McGregor's ongoing memo to the complainant's file, dated April 14, 2014. The relevant portion of it states as follows:

> . . .
>
> *On September 2, 2013, Wurdell forwarded two documents to PSAC that he believes are evidence to question the integrity of the Anper investigation. Wurdell wrote a "Chronological Timeline of Events: Sheryl-Ann Heaman's involvement in CFIA Southwest/Anper Management Consultant investigation regarding Paul Wurdell,* [Mr. A]. [name omitted]*." Sheryl-Ann Heaman was a witness in the*

> *investigation who had received some training at the plant where the grievors worked. During the investigation she made very negative statements about the grievors. However, she has now come forward and says she was pressured by CFIA management and Anper to make these negative comments. The second document provided by Mr. Wurdell is a signed statement by Ms. Heaman. Both the timeline and Ms. Heaman's statement allege that there were multiple coercive emails and telephone calls to Ms. Heaman to pressure her to give specific and false information to Anper. No copies of these emails have been provided by Wurdell. I spoke with Wurdell about this issue, but he was unable to provide copies of these "coercive" emails. He did provide copies of letters of support from some of his co-workers.*
>
> *Even if there is evidence of coercion, Ms. Heaman was one of many witnesses and her testimony would likely not be necessary for the employer to make their case.*
>
> . . .
>
> ***Allegation 2: Breach of Established Protocols***
>
> *These are perhaps the most serious allegations. In an internal memo, PSAC was particularly concerned about a possible risk to health and safety given their recent food safety campaigns. The investigation confirmed allegations of improper hygiene including handwashing, use of hair and beard nets, and boot sterilization by CFIA staff. One veterinarian also noted that the inspectors did not conduct the requisite number of safety tests. The inspectors were also overheard criticizing the health and safety procedures in front of plant staff. This is particularly problematic because the CFIA inspectors are supposed to be setting the health and safety standards for the plant.*
>
> . . .
>
> *Wurdell stated that he sometimes did not dip his boots because the water was too dirty; however, the cleanliness and availability of these boot cleaning stations is actually part of a CFIA inspector's duties. He also gave an inaccurate description of how many sanitation pads are in the plant at room entrances for sterilizing boots.*
>
> . . .
>
> [Emphasis in the original]

[109] On April 30, 2014, Mr. Cameron met with Messrs. Orfald and Kingston. Mr. Cameron said that his firm is paid to provide the Alliance with an honest view. His view was that contesting the complainant's grievance would be a steep uphill battle and that it would likely not succeed.

[110] When the complainant's counsel asked him what led him to that conclusion, he stated that fundamental were the health-and-safety concerns set out in the Anper investigation. He said that his firm handles only labour and employment law cases. From his experience, an adjudicator upholds discipline, even for a long-service employee, when the employee's misconduct strikes at the very heart of the job the employee is being paid to do; that is central with respect to a breach of trust involving a fundamental job function. As an example, he spoke of a border services officer allowing a drug shipment into the country or an employee in the financial sector stealing money. Those breaches go to the heart of the organization's function and the employee's duties.

[111] He said that the complainant's job was to ensure the safety of the food supply, which was why he went to work every day. The problem with the complainant's case was that allegations in the investigation struck at the heart of what he was paid to do. He said that he could make a case that the complainant is a good guy and that the CFIA was a bad employer, but at the end of the day, the termination decision would have come down to what he was paid to do and the health-and-safety allegations.

[112] Mr. Cameron said that going into the meeting at the Alliance's offices, he was quite apprehensive, and that he was surprised when he learned that Messrs. Orfald and Kingston shared his concern. At that point, the Alliance informed him that it would not represent the complainant at the PSLRB hearing.

[113] Mr. Kingston confirmed that he attended the April 30, 2014, meeting with Messrs. Cameron and Orfald. He said that he recalled listening and that Mr. Cameron spoke. He said that Mr. Cameron's conclusion matched his; namely, the chances of the complainant's grievance succeeding at a PSLRB hearing were slim. Mr. Cameron strongly recommended a settlement. He said that at the end of the meeting, he and Mr. Orfald decided that the Alliance would not pursue the grievance any further, except for the settlement process.

[114] On May 5, 2014, Mr. Cameron wrote an opinion letter ("the Cameron opinion") addressed to Mr. Orfald at the Alliance, which was emailed at 2:18 p.m. that day. Its relevant portions state as follows:

. . .

The most serious findings in the Report (Anper report) are related to breach of established CFIA protocols. Not only did the Report conclude that the grievors were not enforcing appropriate standards amongst Ext. 419 plant staff, but also that they were not adhering to these standards themselves. As one witness, a fellow CFIA Inspector stated: "If the regulating body does not comply with the regulations, how can they enforce them?" These breaches include failure to wear hair and beard nets, failure to have the appropriate number of inspectors on the floor at any one time and failure to ensure safe water temperatures during slaughter. When asked why people at the plant were not sterilizing their boots in accordance with procedure, one employee indicated that it was because the water in the trays was black and filthy; testimony of the grievors suggested that they were unaware of the number of boot washing stations in the plant or that it was part of their responsibility to ensure these sterilization stations were clean and accessible.

One plant employee expressed relief that new CFIA Inspectors were properly following procedure when compared with [Mr. A] *and Mr. Wurdell. When she heard that the new CFIA Inspectors were enforcing established policy, she stated:*

> "I was happy to hear this, because I stopped eating port in the last 2 years because of how things were being let go by the Inspectors here. There is a difference now; these Inspectors here are doing what they are supposed to do."

There is also testimony in the Report that the grievors knew they were not following procedure, because they would intentionally improve their performance when their supervisors were present, arguably in order to cover up their normally lax approach to procedure.

Multiple witnesses expressed concerns with the familiarity between the grievors and some plant staff (partial sentence redacted). Some plant staff were regularly seen in the CFIA offices. The concern with this behaviour is that CFIA inspectors must remain independent in order to conduct inspections of the slaughter, and that close personal relationships can impact their objectivity. Regarding respectful workplace and complaints from plant staff, multiple witnesses testified that the grievors were disrespectful and regularly made rude, derogatory and sexist remarks at work. While most people working at Est. 419 would likely agree that vulgar language and sexist remarks are not uncommon in the plant, the Report shows a patter of inappropriate behaviour in contravention of the CFIA Code of Conduct. There was also an overall concern about retaliation from the grievors, including negative financial consequences for the plant, if anyone did anything to upset them or their friends in the plant.

. . .

CONCERNS ABOUT THE INVESTIGATION

. . .

Both grievors have expressed concerns about the investigation. One witness, Sheryl Heaman, another CFIA Inspector, who provided negative testimony particularly related to respectful workplace, has since recanted. She has said that she was coerced by both CFIA management and the Investigator to provide negative testimony in exchange for favourable job treatment. Both Mr. Wurdell and Ms.

Heaman indicated that there is an email record to demonstrate this coercion, but despite multiple requests from our firm for this information, they have provided no concrete evidence. Given the drastic change in Ms. Heaman's testimony, and that fact that her current version of events demonstrates a willingness to lie for personal gain, there could be serious concerns about her credibility at the hearing. It is unlikely that her testimony would be given much weight in a haring. Further, her testimony does not address in detail the allegations of breach of CFIA procedure, which in our opinion are the most serious.

. . .

ANALYSIS

At the hearing, the employer will call cogent evidence regarding the grievors' failure to follow and enforce CFIA procedures, and about their negative behaviours at work. Given the totality of the evidence, it is unlikely that the terminations will be overturned or that the outcome will be in any way positive for the grievors or the union.

The role of CFIA Inspectors is to ensure adherence to procedures directly related to food safety in order to protect the public. Potential employer witnesses will not only include CFIA management and Est. 419 management, who have an interest in the termination of the grievors, but also inspectors, veterinarians, and plant staff who have little personal interest in the outcome of this case. The employer would have to call only a small number of their witnesses in order to demonstrate serious concerns with the conduct of the grievors, which could have or indeed may have resulted in unsanitary product entering the Canadian food supply.

It is our view that management will argue the case as establishing a justified loss of trust in the grievors, going to the heart of the employment relationship. The essence of the grievors jobs was to maintain controls on the safety of food being produced at plants they inspected. They knowingly failed to do so. Employer counsel may well play to the personal and family health concerns of the adjudicator. Unfortunately for the grievors, the employer will easily be able to maintain the termination.

PSAC has made its position clear on the role CFIA Inspectors and the positive impact they have on the Canadian food supply. The evidence in this hearing will become part of the public record, and if PSAC is on the record for these grievors it will likely have a negative impact on the public perception of PSAC members' role in food safety.

> ***CONCLUSION***
>
> *It is unlikely that the grievances for* [Mr. A] *and Mr. Wurdell will succeed. It is our recommendation that PSAC should not continue to provide representation on this file. In light of the approaching hearing dates, it is important that a decision be made and communicated to the grievors as quickly as possible.*
>
> . . .
>
> [*Sic* throughout]
>
> [Emphasis in the original]

[115] In his examination-in-chief, Mr. Cameron confirmed his concerns about Ms. Heaman and her statement. He was also asked about the reference to the Alliance's position on food safety. He responded by stating that he and his firm are paid to think broadly, more broadly than any particular file. They deal in labour law and handle a large amount of labour-law issues for the Alliance. They can craft good labour law by bringing good cases forward. He said that he knows of the importance of the CFIA inspectors' work and of keeping food safe. He said that in this paragraph, he pointed out the possible political consequences to the Alliance.

[116] In his examination-in-chief, the complainant was brought through a copy of the Cameron opinion that had been provided to him and that had some markings upon it, which he identified were his. He was brought to a portion of the opinion on page 3. It referenced him and Ms. Heaman indicating that there was an email record demonstrating coercion directed at her to provide negative testimony in exchange for favourable job treatment by both CFIA management and Ms. Pereira. He had both circled and placed an asterisk next to that reference. He testified that the Cameron opinion states that it was never provided, but it was provided, along with the multiple emails.

[117] On May 8, 2014, Mr. Orfald emailed Mr. Cameron and advised him as follows:

> . . .
>
> *We have a green light from Krista/Robyn on the opinion, and to deliver the news/options to the grievors. Obviously, this morning is now out as an option. Bob has confirmed he is available during the window we discussed for tomorrow:1 PM-3 PM. Are you able to try and [sic] set that up?*
>
> . . .

[118] Ms. McGregor was asked if she formed an opinion about the complainant's case at or about that time. She answered that she had but qualified that she was only an articling student then. She stated that she foresaw significant hurdles if the grievance went to a hearing in the form of the food-safety issues. She said that the complainant had promised that great evidence was forthcoming, but the Raven firm had not seen it. They (she and Mr. Cameron) had not seen evidence that spoke to the food-safety allegations.

[119] On May 12, 2014, a telephone meeting ("the May 12 meeting") took place involving the complainant, Messrs. Cameron, Orfald, and Kingston, and Ms. McGregor. Messrs. Cameron and Orfald and Ms. McGregor were in Mr. Cameron's office. They conference-called Mr. Kingston and the complainant. During the call, the complainant was advised that the Alliance would not represent him at adjudication but that it would represent him in settlement negotiations with the employer.

[120] In cross-examination, the complainant confirmed the following from that call:

- Messrs. Cameron, Orfald, and Kingston said that it was not about not going on the public record;
- Mr. Cameron told him that his chances of winning were negligible;
- Mr. Cameron told him that food safety was the key;
- Mr. Cameron recommended that they negotiate a settlement;
- Messrs. Orfald and Kingston explained that food safety was a big issue;
- Mr. Cameron told him that he recommended to the Alliance that they not go forward with representation at the hearing;
- Mr. Cameron told him that if he thought that there was a reasonable chance of winning, he would have recommended to the Alliance to continue to pursue the grievance;
- Mr. Cameron told him that he could pursue the grievance at adjudication on his own but that the best option was to settle;
- Mr. Cameron told him that if he pursued it on his own, he would likely lose and receive nothing;
- he understood that if he pursued the grievance and lost, it would be a public airing of his misconduct, and that it could hurt him and his job prospects in the future; and
- he had inquired of Mr. Cameron about representing him (without the Alliance's backing) at the PSLRB hearing, which Mr. Cameron stated he would not do.

[121] On May 23, 2014, the complainant emailed Ms. McGregor, stating as follows:

. . .

> *I am just following up with you in regards to our telephone conversation on Wednesday May 21, 2014.*

> *During this conversation, I advised that by Friday May 23, 2014 (today) if there was no response at all from CFIA's lawyer in regards to a settlement offer, or if there was a settlement offer and it was not acceptable to me, I am requesting James to get this matter adjourned with the PSLRB today during his conference call with them, in [sic] which you informed me had lined up.*
>
> *To be clear, I am requesting that this matter be adjourned as there is no way possible that we can be prepared to proceed with the hearing on those dates in June due to the lateness in which we were advised of this latest development.*
>
> *I guess if the employer wants to try and [sic] settle it after it has been adjourned, we can worry about that then.*
>
> *I am also requesting that this matter be adjourned to as far down the road as possible to allow me adequate time to prepare the file and case with my representative. My preference would be at least 6 months or longer down the road.*

[122] On May 23, 2013, a pre-hearing conference call took place with the PSLRB's board member assigned to hear the complainant's grievance. A postponement of the June hearing dates was requested. The PSLRB was also advised that if the matter proceeded to a hearing, the Alliance would not represent the complainant at it.

[123] In cross-examination, the complainant confirmed that as of May 23, 2014, he was contemplating pursuing the grievance on his own; however, he was also open to a settlement. He stated that at that time, he also intended to find a representative.

[124] After the May 12 meeting, Messrs. Cameron and Kingston and Ms. McGregor were actively involved in negotiating a settlement on the complainant's behalf, which appeared to start in earnest in late May 2014. During this period, the complainant continued to lobby for the Alliance to represent him at a PSLRB adjudication hearing.

[125] Significant negotiations took place, including discussions Mr. Cameron had with the complainant and with counsel for the employer. At times, different persons from the Alliance, as well as Mr. Kingston, were copied on the relevant emails. A settlement was reached with the employer, reduced to writing in the MOA, and signed by the complainant on either June 19 or 20, 2014.

[126] The following terms and conditions of the MOA are relevant to this matter:

> . . .
>
> *9. The Employee agrees to withdraw his grievance and complaint in writing (as cited above as PSLRB files 566-32-8855 and 560-32-*

> *92), upon signing this agreement, and to confirm the withdrawal in writing to the PSLRB Registry within 24 hours of signing this agreement, along with a request that they close the files and cancel the scheduled hearings in these matters. The Employee shall provide the Employer and Treasury Board counsel, Ms. Christine Langill, with a copy of the withdrawal and communication to the PSLRB for its records.*
>
> . . .
>
> *11. The Employee further agrees to withdraw any and all grievances and complaints he has filed during his employment with the Employer, including but not limited to, those outlined in Annex D, and this shall be considered his irrevocable withdrawal of all such grievances and complaints at all levels.*
>
> . . .
>
> ***FULL AND FINAL RELEASE***
>
> *14. By signing the agreement below,* ***PAUL WURDELL*** *acknowledges and agrees that:*
>
> *a) he has read, understood, and accepts the terms of this agreement and also confirms that the facts outlined in the preamble are accurate and true;*
>
> *b) this agreement comprises the entire content of the agreement between the Parties, and that there are no other verbal or written warranties or terms of agreement;*
>
> *c) he is signing this agreement voluntarily, without coercion, duress or promise of reward, of his own free will and volition; and that*
>
> *d) he has either sought independent legal advice with respect to the terms of this agreement from his Bargaining Agent or otherwise, or knowingly and voluntarily waives such independent advice, fully understanding and accepting the terms of this agreement.*
>
> . . .
>
> [Emphasis in the original]

[127] [In his examination-in-chief, the complainant stated that he never wanted a settlement, that his goal was always to get his job back, and that he was pressured and coerced into signing the MOA. In cross-examination, he agreed that he read the MOA before signing it.

[128] On June 19, 2014, Mr. Cameron emailed himself, stating as follows:

> *Telephone call to Paul Wurdell*
>
> *See email to Krista*

> *I reviewed amended MOU with him. No questions.*
>
> *He asked me whether it was a good deal and I said I thought it was. Er* [employer] *would withdraw offer at noon if he didn't sign.*
>
> *He said no choice but to sign as PSAC had withdrawn. He would prepare for his next battle.*
>
> *He noted that I had spoken to Jason Garnett. He said that talking to the witnesses now a too late as the PSAC had already withdrawn and it would make no difference.*
>
> *I told him if he was going to sign to do and get me the documents by email or fax and to mail the originals. The PSAC has to sign too so earlier is better given the noon deadline.*
>
> *He thanked me and reminded me about including a not that an*
>
> [term of MOA] *would be forthcoming.*
>
> . . .
>
> [*Sic* throughout]

[129] On Thursday, June 19, 2014, at 11:42 p.m., the complainant emailed Mr. Cameron, stating, "Here are the documents that I was told to sign and accept. Please let me know that you have received them ASAP." On Friday, June 20, 2014, at 2:09 p.m., Mr. Cameron emailed the complainant, stating as follows:

> . . .
>
> *I have your signed settlement documents. I will forward them to the PSAC for signature and send them to the employer with the note that you are intending to supply a* [term of MOA].
>
> *Just to be clear, I did not tell you to sign the documents, I recommended that you do so. It is clear that if you did not sign and return the documents by noon today, that the offer would be withdrawn, as the employer has repeated several times.*
>
> . . .

[130] The employer had put a deadline of noon Friday, June 20, 2014, to receive the signed MOA, failing which there would be no settlement. Mr. Cameron emailed counsel for the employer the MOA signed by the complainant and the Alliance at 11:13 a.m. on June 20, 2014.

[131] At 8:05 p.m., on June 1, 2014, at a critical point in the negotiations, when the Raven firm and counsel for the employer were negotiating the settlement and going back and forth on key terms, the complainant emailed Mr. Cameron and Ms. McGregor, stating as follows:

. . .

> *I have headed North for a few days with my family for personal reasons that were out of my control.*
>
> *I will have no or very very limited email and phone access during this time.*
>
> *If I do not before….I will talk to you upon my return.*
>
> *I hope you have received the numerous emails that I have copied you on over the weekend.*

. . .

[132] On Monday, June 2, 2014, Mr. Cameron and the complainant spoke. According to Mr. Cameron, a settlement in principle was in place, pending the confirmation of one outstanding particular piece of information from the employer. Entered into evidence was a copy of Mr. Cameron's handwritten note of the call. His last note stated, "back home Thursday latest".

[133] On Monday, June 2, 2014, counsel for the employer emailed Mr. Cameron with a revised offer on the outstanding provision of the proposed settlement and indicated that the offer was open until 5:00 p.m. that day. Mr. Cameron emailed his reply, stating as follows:

. . .

> *I have emailed your client's offer to Paul Wurdell and underlined the time line [sic].*
>
> *Unfortunately, he had notified us by email Sunday that he had to leave on a family emergency in the north and his access to emails was going to be problematic.*
>
> *I will get back to you as soon as I have instructions.*

. . .

[134] On Wednesday, June 4, 2014, counsel for the employer forwarded a draft MOA to Mr. Cameron. He testified that he understood from the complainant that the complainant would be back on Thursday. He said that he told counsel for the employer to forward the MOA and that he would try to reach the complainant.

[135] On Thursday, June 5, 2014, at 5:04 p.m., counsel for the employer emailed Mr. Cameron, as follows: "I understood you were meeting your client today, please forward the signed settlement and once I have that, I can forward to my client, thank you." Mr. Cameron replied at 6:00 p.m. that same day, stating, "I have not heard from him today

and have left an email message. I will do so again now and hope to have news tomorrow."

[136] Mr. Cameron testified that immediately after responding to the employer's email at 6:00 p.m., he emailed the complainant, stating as follows: "Please get back to me asap concerning the employer's offer to settle and your agreement in principle."

[137] On Friday, June 6, 2014, at 11:39 a.m., Mr. Orfald emailed Mr. Kingston, advising him that he had left him a voicemail but that he was following up by email. The email stated that Mr. Cameron had not heard back from the complainant, despite having emailed him again the previous evening. According to the email, the complainant worked for the regional office from May 16 to June 5, was registered as a delegate to the Alliance's Ontario regional convention, and in fact was seen at the convention with Ms. Kurtz-Cooke. The email further stated that his supporters had drafted an emergency resolution to supposedly ask the Alliance to fulfil its obligation to fairly represent him.

[138] Still on Friday, June 6, 2014, at 1:58 p.m., the complainant called Mr. Cameron's office and scheduled an appointment to speak with Mr. Cameron on Monday, June 9, 2014, in the afternoon.

[139] In cross-examination, the complainant was shown his email to Mr. Cameron of June 1, 2014, stating he was going north with his family for personal reasons and that he would largely be out of contact. He admitted that in fact, he did not go north with his family but instead attended an Alliance conference in Mississauga, Ontario. He admitted that he both did not want to be reached by Mr. Cameron and was actively trying to avoid being reached by him. He also admitted to working for the Alliance's regional office and to making telephone calls.

D. The complainant's other potential witnesses (excluding Ms. Heaman)

[140] On May 25, 2014, the complainant emailed Mr. Cameron, stating as follows:

. . .

> *Before tomorrow morning, I will be sending and providing you a list of individuals and witnesses that need to be contacted. These individuals and witnesses that have not been spoken to, can speak to and disprove and discredit the allegations made against myself. This is not the complete of individuals and witnesses I have to*

> *bring forward, but is just a start for you to work with as per the e-mail below.*
>
> *The individuals named on this list, are both CFIA employees and plant employees that I worked with on a regular basis at this facility.*
>
> *I, along with Bronwyn Kurtz-Kook and* [Ms. D]*, had a lengthy in person conversation with Bob Kingston this past Saturday May 24, 2014, in which our concerns were brought forward to him regarding the decision that has been made for PSAC, Agricultural Union and yourself, to walk away from this and discontinue representation. He assured us that if this new list of witnesses and information was presented to you and looked into a little further, that the decision to discontinue representation of my file would be reconsidered and discussed and hopefully reversed.*
>
> . . .
>
> [*Sic* throughout]

[141] On May 26, 2014, the complainant emailed Mr. Cameron and copied Mses. McGregor and Kurtz-Cooke and attached a witness list with seven names on it ("the 2014 witness list"). The email was as follows:

> . . .
>
> *Here is some information and names to start.*
>
> *Again. . . as mentioned yesterday, this is not a complete list of individuals or witnesses I would want to bring forward.*
>
> *I look forward to talking with you today.*
>
> . . .

[142] The 2014 witness list included email addresses and telephone numbers for those on it. There was no information as to the evidence that each particular witness would provide that would be helpful to the complainant. In fact, the 2014 witness list contained the first seven names on the 2013 witness list.

[143] The four names on the 2013 witness list that were not on the 2014 witness list were those of Mr. Garnett, Ms. Kurtz-Cooke, Ms. Heaman, and Ms. C.

[144] I have already set out Ms. Heaman's and Mr. Garnett's evidence before me. Mses. Kurtz-Cooke and Ms. C did not testify before me. The 2013 witness list set out the following paragraphs about Ms. Kurtz-Cooke and Ms. C:

> . . .

> [Ms. C]– *CFIA -was a work colleague and also an EG-03 Inspector the same as myself.* [Ms. C] *was also one of the key witnesses used by the employer in the investigation.* [Ms. C] *has since that time, recanted her statement and revealed the truth of how the employer used her to provide false information about myself and my actions to the employer. Although this information was provided to PSAC and James Cameron, she never received a call from anyone asking for further information, clarification or a written statement.*
>
> . . .
>
> *Bronwyn Kurtz-Cooke – CFIA - was a work colleague and also an EG-03 Inspector the same as myself. Bronwyn was also one of the individuals that Sheryl Heaman and* [Ms. C]*went to when they recanted their statements. Bronwyn was also part of the meeting that we had with Krista Devine on May 1, 2013 and August 28, 2013 in Ottawa at the PSAC office when this new information was provided to the Bargaining Agent.*
>
> . . .

[145] The paragraph from the 2013 witness list for Sheryl Heaman is exactly the same as the one recounted in the previous paragraph for Ms. C except that Ms. Heaman's name is substituted for that of Ms. C.

[146] After receiving the 2014 witness list, Mr. Cameron tasked Ms. McGregor to contact those on the list. Her printed notes were entered into evidence. She spoke with all seven on the list. She set out the difficulty with the witnesses as follows:

- some were not involved for the relevant time period;
- some worked with the complainant only sporadically; and
- some shared the theme of anger toward management but did not address the misconduct allegations against the complainant.

[147] Entered into evidence was an email exchange between Ms. C and Christine Langill, counsel for the employer, dated May 16 and 29, 2014, which was forwarded to Ms. Kurtz-Cooke on June 7, 2014, and to Mses. Devine and Benson and Mr. Cameron's office on June 9, 2014. Ms. Langill's email to Ms. C was an introduction in which she advised Ms. C that she was the legal counsel assigned to represent the employer in the termination grievances before the PSLRB and that she was being contacted because she had been identified as a witness for the CFIA. Ms. Langill asked to meet with her in the coming week.

[148] In her May 29, 2014, reply, Ms. C suggested that they had conversed on May 27, 2014; however, it is unclear if it was in person or by phone. She then stated that when she referred to the behaviours of the complainant and Mr. A, she was describing a time of a different culture at the CFIA.

[149] Ms. C was interviewed as part of the Anper investigation. Her name figures prominently in the final report with respect to the first and third allegations.

[150] On May 26, 2014, the complainant forwarded an email chain about Ms. C to Mr. Cameron and Ms. McGregor. What appears to be the first email in the chain is incomplete. It is an email from Ms. McMurchy at the CFIA to Ms. C. The chain entered into evidence is as follows:

> [Mr. Wurdell to Mr. Cameron and Ms. McGregor, May 26, 2014:]
>
> . . .
>
> *Here is just one of the many emails I have received from [Ms. C]. She is one of CFIA's key witnesses at that point.*
>
> *If she hated me as much as she stated in that investigation report, why would she be contacting me?*
>
> *She was also pressured and coerced into providing false information.*
>
> . . .
>
> [Ms. C to Ms. Kurtz-Cooke and Messrs. Garnett and Wurdell, May 15, 2014:]
>
> *As you are aware, I have been asked to talk about this investigation. I am not comfortable saying anything in regards to this matter. I will not be involved any further without the support of a union representative. How would you like me to respond to this request? I will be on holidays from May 16-20. I would like to email back and say I will not be available.*
>
> *Guidance please…..*
>
> . . .
>
> [Ms. McMurchy to Ms. C, May 13, 2014:]
>
> *I understand that you participated in an investigation which was conducted into the behaviour of certain inspectors at Establishment 419 in Mitchell, ON. Certain related matters have been scheduled before the Public Service Labour Relations Board. As part of this process, the Agency is required to present certain information in relation to this investigation, including evidence brought forward in the investigation.*

. . .

[151] In the email forwarding the C-Langill email exchange to Mr. Cameron, Ms. Devine referred to Mr. Miller, who was an agriculture activist. He was identified as a component vice-president. His involvement in the termination, grievance, and complaint were not identified. In the complaint's particulars is one reference to him on page 6 of 9, as follows: "PSAC, Agriculture Unions [*sic*], Robyn Benson, Bob Kingston and Glenn Miller, have breached confidentiality in regards to this matter. This can be confirmed in Appendix P."

[152] Appendix P to the complaint's particulars is an email from Mr. Cameron to the complainant, Ms. Devine, and Mr. Orfald dated June 17, 2014, at 10:55 a.m., with respect to the settlement discussions. It does not refer to Mr. Miller. I heard no evidence about Mr. Miller except that he was involved in some discussions with the complainant in June of 2014, just before the MOA was signed. I heard no evidence about what if any role he played in the decision-making process with respect to representing the complainant at adjudication.

[153] Mr. Cameron testified that the Alliance provided another list, different from the 2014 list, to his office that contained four or five names, including those of Ms. C and Messrs. Garnett and Miller. In his email response to Ms. Devine on June 9, 2014, Mr. Cameron pointed out that none of Ms. C or Messrs. Garnett and Miller were on the 2014 witness list. He recalled contacting witnesses but not specifically which ones, except for Mr. Garnett.

[154] He stated that the difficulty with the witnesses that the complainant brought forward was that the complainant viewed them as "super helpful", but the fundamental problem with them was that they did not provide the information necessary to strike at the heart of the employer's case, which were the health-and-safety allegations. Mr. Cameron stated that he discussed this with the complainant.

[155] In cross-examination, the complainant confirmed that Messrs. Cameron and Kingston and Mses. Devine and McGregor told him that he needed witnesses that would rebut the allegations set out in the final report.

[156] In cross-examination, the complainant was brought to the email that had forwarded the 2014 list and was asked why there was no complete witness list over a

year after the termination. His response was that after he spoke with those individuals, [suggesting the Alliance, the component, Mr. Kingston, and Mses. Benson and Devine] they wanted more and more. He said that he continually provided names.

[157] In re-examination, the complainant was referred to the 2014 list he provided to Mr. Cameron's office and was asked if it was the first time he sent it to that office. He replied that he did not recall. He then stated "Probably not", and that he "sent a bunch of stuff". He then said, "Well before June of 2014."

[158] In cross-examination, the complainant was asked why he did not have a list of witnesses in March of 2013, immediately after the termination. He said that he had a list to which names were continually being added. Counsel for the respondents suggested to him that there were no other lists. He replied that there were others. That suggestion was made to him a second time, and he repeated that there were other lists. When counsel for the respondents put to him that the 2014 list was not much of a change from the 2013 list, he said that there was a dramatic change.

[159] In cross-examination, it was put to the complainant that at the March 24, 2013, meeting, Mr. Kingston told him that he needed witnesses to refute the allegations against him in the final report, not character witnesses. He said that he told Mr. Kingston that that was impossible and that the union should investigate. When it was put to him that he was saying that it was the union's job to obtain the witness list, to refute the specific allegations, he said: "I told the union they should interview all these people." He did not specify if he meant the Alliance, the component, or both; nor did he specify whom he meant by "all these people".

[160] Of the 11 witnesses identified by the complainant on the 2013 and 2014 witness lists, only Mr. Garnett and Ms. Heaman testified before me, and it appears that only Ms. Heaman and Ms. C were interviewed as part of the Anper investigation.

[161] Entered into evidence was an undated and unaddressed four-page handwritten document from Mr. E ("the Mr. E statement"). Mr. E did not testify. The statement discloses that at some point, he was employed as a CFIA inspector in its southwestern Ontario region. It does not refer to the Anper investigation, the draft report, or the final report; nor does it speak to the specific allegations against the complainant. It appears to be about complaints and concerns that Mr. E had against his employer in general and against Mr. Doyle specifically.

[162] The evidence disclosed that on November 6, 2013, the complainant could have emailed the Mr. E statement to the Raven firm as an email from that date references a letter from Mr. E. Unfortunately, the email put into evidence did not contain the attachment. At a later point in his cross-examination, the complainant referred to Mr. E being added to the witness list in the spring of 2014 and stated that the Mr. E statement was forwarded then.

[163] Entered into evidence was an email dated June 9, 2014, which appears to have been sent by Ms. Kurtz-Cooke to Mr. Garnett. It referred to a Mr. F and listed a phone number.

[164] Both Messrs. E and F were listed as being interviewed as part of the Anper investigation. Mr. Garnett represented them both at their interviews.

[165] The final report indicated that Mr. E's regular workplace was not Est. 419 but that from time to time, he worked there when it was short-handed and that he knew of the complainant and Mr. A. It also disclosed that Mr. F worked in the federal public service for 25 years and at Est. 419 on and off for 2 years and continuously from April of 2011 to January of 2012 (roughly 10 months).

[166] In cross-examination, the complainant stated that Messrs. E and F would refute the allegations in the final report; however, he admitted that he never spoke to them but that Ms. Kurtz-Cooke did. He could not say specifically what they would refute. In the end, he stated that he had hoped that they could refute the allegations.

[167] Mr. Kingston stated, without specifying if he meant the Alliance or the component, that it was beating the bushes for information despite the settlement discussions that were underway. He said that if witnesses could be found that would contradict the final report, the Alliance would have reconsidered its decision to not represent the complainant at adjudication.

E. The badge comment

[168] One of the issues discussed at the May 1 meeting, which appeared to be a recurring topic in the complaint, was a comment allegedly made in 2011 by CFIA managers, which is summarized in the Gamble statement. Mr. Gamble was identified in the statement as the Est. 419 plant manager between February and September of 2011. This memo was the first in the package of 19 pages of material that the complainant

gave to Ms. McGregor in November of 2013, the balance of which were emails either from or to Ms. Heaman from several people.

[169] The Gamble memo states as follows:

> . . .
>
> *During my time at Great Lakes we were subject at our request to a Russian audit. In preparation for the Russian audit we had several meetings with senior managers of CFIA. One of those meetings involved myself, Stephen Michon, Tom Doyle, Tekla Redda and another member of CFIA. At the conclusion of the meeting a remark was made about the new CFIA Inspector badges being available for the inspectors. Tom Doyle quipped that they needed to have a ceremony to give the badges to the inspectors. Stephen Michon responded that they would have the ceremony when they took them away. As a member of plant management I thought the remarks were extremely inappropriate and should not have been stated in my presence.*
>
> . . .

[170] None of Messrs. Gamble, Doyle, Michon, or Redda or anyone else who was at the meeting and heard these alleged remarks testified.

[171] Mr. Kingston was aware of the comment about the badge-removal ceremony, although he could not recall who had brought it to his attention. He confirmed that he did speak to the complainant about it, who told him that it had upset him. Mr. Kingston said that others had also been upset. Mr. Kingston stated that he spoke to Mr. Baker about it. He said that the Mr. Baker responded that he would "look into it" and later said that the manager who made the comment could not be located.

[172] [172] Mr. Kingston was shown an email from Mr. Baker dated October 16, 2011, in which, in reference to the badge comment, he noted telling Mr. Kingston that he thought that the guys [referring to managers] were "playing games". Mr. Kingston confirmed that Mr. Baker likely said something like that. He said that he did not agree that it had been simply game playing and said that he told Mr. Baker as much. He said that he did not recall the conversation but that he did recall dialoguing extensively with Mr. Baker.

[173] Mr. Kingston was asked about the reference to Russia. He recalled that at the time, in 2011, Est. 419 was expanding, and there was some talk of a Russian market.

III. Miscellaneous

[174] Ms. Devine testified that other than the initial May 1, and the Aug. 28 meetings, she had no involvement in the complainant's grievance file. She did not participate in the discussions on pursuing and advancing his grievance file. She said that she was aware that his grievance had been referred to outside counsel. But she did not make that determination or take that step; it was done by either Ms. Côté or Mr. Orfald, who at that time was the acting director of the Alliance's representation section. She stated that once she authorized the use of outside counsel, she would no longer be involved; nor was doing so her role.

[175] Ms. Devine stated that she was not involved in the discussions that led to the decision to not represent the complainant at adjudication; nor was she involved in any of the settlement discussions that eventually led to the MOA. She stated that while at times, she was sent material and might or might not have read it, grievance adjudications were not in her area of responsibility. As such, she would have determined who was responsible for receiving such documents and would have passed them on.

[176] Entered into evidence was an undated letter signed by Mr. Garnett ("the Garnett letter") that stated as follows:

> *On the weekend of June 6, at the 2014 Ontario Triennial Convention in Mississauga held at the Delta Conference Centre, I Jason Garnett was involved in conversations where both* [Ms. D], *and Glenn Miller, made statements that Mr. Paul Wurdell's case was not going to be pursued due to financial reasons and financial feasibility. And that PSAC or the lawyer hired would not be proceeding with the case further.*
>
> *Both* [Ms. D] *and Glenn confirmed that the information was received from National Agriculture Union President Bob Kingston.*

[177] Mr. Garnett was asked about the letter. He stated that Ms. D told him that "they", meaning herself and Messrs. Kingston and Miller, would not move forward with the complainant's grievance case due to timing and financial resources issues.

[178] Ms. D's name came up a couple of times in the documents. While it is clear that she was somehow involved as a member of either the Alliance or the component, the exact nature of her position with them was not explained to me.

[179] In his examination-in-chief, the complainant recounted that on June 8, 2014, he met separately with Ms. Benson and Mr. Miller at the Ontario convention to discuss why his case was not advancing to adjudication. He stated that Mr. Miller told him that Mr. Kingston had told Mr. Miller that the complainant's case was not winnable and that presumably the component or perhaps it and the Alliance did not wish to go on record about it.

[180] Mr. Kingston testified after both the complainant and Mr. Garnett completed their testimonies. No one asked him about the alleged comment referred to in the Garnett letter. Ms. Devine testified once both Messrs. Garnett and Kingston were done. She was not asked any questions about the complainant's grievance not being pursued due to financial reasons or financial feasibility. The complainant stated that around June 8, 2014, Mses. Benson and Devine also told him that the decision had been made on facts provided by Messrs. Kingston and Cameron and that the Alliance did not want to go on the public record about this matter.

[181] Entered into evidence was a letter dated June 19, 2014, which Ms. Devine emailed to the complainant. Its relevant portions state as follows:

> . . .
>
> *During our discussion on Sunday, June 8, 2014 you were asked to provide the names and contact information for any witnesses that had not yet been contacted regarding your grievance. A commitment was made to you that the PSAC would re-evaluate its decision regarding representation based on the evidence provided.*
>
> *On Monday June 9, 2014 I received a list of witnesses from Sister Bronwyn Kurtz-Cooke and Brother Jason Garnett. You had previously provided the same list to counsel on May 25. Witnesses had been contacted on May 26. I have also asked counsel to follow up with other individuals which were identified other than those on the list provided.*
>
> *At this time I can confirm that 6 of 7 of the witnesses on the list provided were spoken with directly. I understand that the potential testimony of these witnesses was discussed with you at that time and that our legal counsel advised that their evidence did not change his assessment that your chances of success at adjudication were very low.*
>
> . . .

[182] Countless times throughout his testimony, the complainant often answered a question by stating that the Anper investigation and the final report were biased. He

confirmed that he was aware that Ms. Pereira did not work for the CFIA or for Great Lakes, but he suggested that she was biased because she was promised future work, which he stated is reflected in emails.

IV. Summary of the arguments

A. For the complainant

[183] The complainant referred me to *Belzile v. Teamsters Canada Rail Conference*, 2016 CIRB 821, *Judd v. Communications, Energy and Paperworkers Union of Canada, Local 2000*, 2003 CarswellBC 2189, *McRaeJackson v. National Automobile, Aerospace, Transportation and General Workers Union of Canada*, 2004 CIRB 290, *Bujalski v. Glass, Molders, Pottery, Plastics and Allied Workers International Union - Local 231*, 1991 CarswellOnt 1204, *Swaminathan v. Canadian Staff Union*, 2002 CarswellOnt 8759, and *Lucyshyn v. Amalgamated Transit Union, Local 615*, 2010 CarswellSask 246.

[184] The principle respecting duty-of-fair representation owed by unions is set out at paragraph 39 of *Belzile*, quoting from *Canadian Merchant Service Guild v. Gagnon*, [1984] 1 S.C.R. 509, which states as follows:

> *[39] . . .*
>
> *The following principles, concerning a union's duty of representation in respect of a grievance, emerge from the case law and academic opinion consulted.*
>
> *1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.*
>
> *2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.*
>
> *3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.*
>
> *4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.*
>
> *5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.*

. . .

[185] The complainant's position is that the decision not to pursue his grievance to adjudication was discriminatory and arbitrary for the following reasons:

- Mr. Kingston had an animus toward him that coloured his position with respect to proceeding;
- the Alliance was motivated by its concerns with respect to the food-safety campaign and decided not to proceed with the grievance, given the nature of the allegations against him; and
- the Alliance acted arbitrarily and in bad faith by failing to investigate.

[186] The complainant submitted that he was a long-term employee and that this case is serious as it involves the termination. The Alliance blindly relied on the employer's investigation. It failed to investigate all relevant facts and failed to ask him relevant questions.

[187] The complainant was a long-service employee with an excellent record and was terminated. In their evidence, neither Mr. Kingston nor Mr. Cameron could recall if he had looked at the complainant's performance appraisals, although Mr. Cameron said that he believed that the complainant had a good performance record; yet this was not in the Cameron opinion.

[188] The complainant testified that he did not have a good relationship with Mr. Kingston and that Mr. Kingston resented him.

[189] Referring to the badge-ceremony comment, Mr. Kingston said that he looked into it; however, he did not, and he had an animosity toward the complainant.

[190] With respect to credibility, Mr. Kingston thought that the complainant received a great deal and much more money than he actually received. Both Mr. Kingston and the complainant testified that before the termination, he was causing the employer many problems, and that Mr. Kingston had to spend significant time in the complainant's region.

[191] A number of the witnesses spoke to the fact that the investigation was a witch-hunt and that the complainant and Mr. A were being painted with the same brush. There is no evidence of any Alliance investigation with respect to the complainant's allegation that the termination was a set-up except that it asked him for names and it called some people only after it had decided to not represent him.

[192] No one from the Alliance made any effort to contact the employer's witnesses or the people named in the final report except those that the complainant identified. No evidence was adduced that the Alliance took any independent steps to confirm the information in the final report.

[193] Ms. Devine told the complainant that Ms. Heaman would be a critical witness. Despite this fact, no one did anything to follow up. Both Messrs. Cameron and Kingston said that there were issues with Ms. Heaman's credibility, which was an assumption. Her evidence was credible. She did not recant but wanted to clarify. She could have been a credible witness.

[194] It is implausible that not contacting Ms. Heaman and other potential witnesses would have allowed the Alliance to reasonably conclude that it could not refute the employer's allegations or raise a reasonable defence. The failure to interview Ms. Heaman alone is sufficient to find that the Alliance's actions were arbitrary and included a failure to investigate.

[195] In a duty-of-fair representation hearing, it is not for the Board to decide if the grievance would have been successful. However, the Alliance based its decision not to represent the complainant solely on the final investigation.

B. For the respondents

[196] There is no basis to claim that actions occurred that were contrary to s. 187 of the *Act*. The actions were not arbitrary, discriminatory, or in bad faith.

[197] While some references were made to discrimination, this case is about arbitrariness. There is nothing to indicate bad faith. The suggestion that Mr. Kingston had an animus toward the complainant is preposterous.

[198] Did the Alliance turn its mind to the grievance and the complainant's situation? Absolutely. Was it obliged to reinvestigate the employer's case as it was the essence of the complainant's case? No; the bargaining agent was not obliged to do that.

[199] The Alliance reviewed and considered all the information it was provided with. It engaged in extensive communications. From the outset of its involvement, it asked the complainant for witnesses to contradict the employer's very detailed allegations.

[200] While the complainant provided some names to the union and the Raven firm, they were correct in determining that those people were character witnesses, when witnesses were needed who could contradict the employer's witnesses.

[201] While the witnesses that the complainant brought up were not spoken to before the bargaining agent determined that it would not represent him at adjudication, it continued to represent him, and his grievance was still alive. Both Messrs. Cameron and Kingston stated that if the information the witnesses provided was appropriate, the Alliance could change its mind. That is the hallmark of the duty of fair representation.

[202] In the end, the information from the witnesses did not pan out, and with the bargaining agent's assistance, the complainant negotiated a settlement that was acceptable to him. They did so after the bargaining agent successfully obtained a postponement of the pending PSLRB hearing.

[203] The bargaining agent's efforts do not have to be perfect; in fact, they can be wrong. The Alliance's position was that they were not wrong, arbitrary, or perfunctory. However, the Board's job is not to sit as an appellate court reviewing the bargaining agent's actions.

[204] There is no dispute that the CFIA is Canada's independent food-safety regulator. Its job, through the inspector position, is to ensure that food products are safe for consumers. Inspectors are the CFIA's eyes and ears in slaughterhouses. They have the ability to shut down a slaughterhouse's processing. They must be independent, maintain confidentiality, and maintain a distance from the people and organizations they are mandated to regulate.

[205] It is clear that the impetus for the eventual termination was Great Lakes' complaint about CFIA inspectors. Anper produced both a draft and a final report, each containing detailed allegations. The investigation process involved interviewing witnesses and then giving them a printed statement that they were asked to sign as being accurate.

[206] The operations of the CFIA's southwestern Ontario region were dysfunctional. Mr. Kingston testified as much.

[207] Counsel for the respondents went through the detailed allegations set out in the final report. Of the five allegations, one was not founded.

[208] Mr. Cameron testified that of all the allegations, the most serious were those that involved food safety. Mr. Kingston echoed this assessment.

[209] Before the termination, the complainant was given a copy of the draft report and the opportunity to respond to the allegations in it. He had a chance to state, "They are all not true." He prepared a response, which was entered into evidence. It was his opportunity to refute the allegations, specifically with respect to those relating to food safety; he did not.

[210] The complainant sometimes acknowledged that the behaviour he was accused of was inappropriate; however, he did not deny or acknowledge his actions. Sometimes, he stated that he did not recall, and sometimes, he stated that his comments had been taken "out of context".

[211] A grievance was filed and was moved through the grievance process. The component attempted to secure a final-level hearing with the employer, and the grievance was referred to the PSLRB for adjudication. Ms. Côté, a G&A analyst, carried out an analysis that identified potential problems. The Alliance and the component went above and beyond what they were required to do. The complainant was retained on the bargaining team despite having been discharged from his job. All those things were consistent with acting in good faith.

[212] The complainant suggested that the termination was a "set-up" and a "witch-hunt". If so, and everything in the final report is false, then there should be evidence. But even if the employer disliked him and was out to get him, if the things it said he did in the final report are true, which would suggest that it set him up, or if he said that it was a witch-hunt, it will not help.

[213] The Alliance cannot reinvestigate. It cannot go on fishing expeditions. The complainant was asked to identify for the Alliance the contents of the final report that were false and to identify witnesses who could contradict the statements of the employer's witnesses who provided evidence for the final report. The complainant was told as much several times, from the grievance's filing to the settlement date. The information never materialized.

[214] The witnesses that the complainant named did not contradict the specific allegations of wrongdoing. Both Mr. Cameron and Ms. McGregor spoke to the witnesses. At the end of the day, they were character witnesses. The evidence that the complainant said was forthcoming with respect to the witnesses never came because it does not exist.

[215] Ms. Heaman was brought forward as an employer witness recanting the evidence produced to the Anper investigation. However, the problem with her evidence is that her first statement was that she was truthful when she spoke to the investigator. Then, the complainant stated that he would have her make another statement, which Mr. Kingston told him would be useless. The evidence disclosed that the complainant produced the Aug. 21 statement, which was the second statement to the Alliance. In addition, there is no evidence that he gave the undated Heaman statement to the Alliance, which suggests that he made a clear attempt to mislead the Alliance.

[216] In cross-examination, Ms. Heaman admitted that the statements she made to the Anper investigation were accurate and that she was not pressured to make false statements.

[217] A suggestion that the Alliance's failure to interview Ms. Heaman is the lynchpin of this case is unsustainable. Both Messrs. Cameron and Kingston assessed her conflicting statements as a major problem for the complainant's case. She has a major credibility problem and has displayed a willingness to lie for personal gain. These are serious concerns, and her evidence was not likely to be given much weight. The complainant made a grave mistake by placing his case in her hands.

[218] Mr. Cameron and Ms. McGregor were excellent witnesses. They were provided with a box of materials that was reviewed and analyzed. Both testified that some areas were problematic.

[219] The complainant accepted the employer's settlement offer. He stated that he would accept an offer if it was a great one. Settlement discussions were ongoing, yet in his complaint, he stated that he never wanted a settlement. He said otherwise in his evidence.

[220] Mr. Cameron assessed the case with some apprehension because it involved a union leader being terminated. Mr. Cameron visited Mr. Kingston and Mr. Orfald at the Alliance's offices to tell them that they would not win. In turn, they told him that they had reached the same conclusion. He wrote the Alliance a detailed legal opinion, which was entered into evidence. It stated that the chances of success were very low. This was his informed professional judgment.

[221] There is absolutely no evidence that the respondents acted arbitrarily or discriminatorily.

[222] The complainant freely engaged in the settlement process. The evidence disclosed that he would proceed down two tracks, despite the Alliance stating that it would not represent him at adjudication. He would pursue settlement discussions and would prepare to adjudicate later. In the end, he accepted a settlement. He reviewed the documentation and signed it. As part of the settlement, he agreed to a full and final release with the employer. He acknowledged in the MOA that the settlement was entered into voluntarily and without coercion or duress. He had a choice; he made a choice, and he made a decision.

[223] The complainant suggested that the Alliance did not want to go on the public record with this matter due to a food-safety campaign it was running. Mr. Cameron spoke about this in his opinion. He stated that he had a duty to point it out. Mr. Kingston explained that it was not a deciding factor for the Alliance, which publicly emphasized the important role of inspectors with respect to the food safety of Canadians. It is hard for a union to succeed in obtaining a reduction to discipline, and these circumstances made that task harder.

[224] The Raven firm's legal opinion was that the grievance would not succeed. An adjudicator can have a different opinion, but the test is not whether the opinion is right; the test is reasonableness.

[225] Mr. Kingston testified that during the course of the settlement negotiations, he had discussions with CFIA management behind the scenes to get it to accept a settlement.

[226] The respondents referred me to *Canadian Merchant Service Guild*, *Noël v. Société d'énergie de la Baie James*, [2001] 2 S.C.R 207, *Sayeed v. Professional Institute of*

the Public Service of Canada, 2010 PSLRB 44, *Court v. Teamster Local Union No. 879*, 2011 CIRB 567, *Holloway v. Professional Institute of the Public Service of Canada*, 2015 PSLREB 55, *Bergeron v. Public Service Alliance of Canada*, 2019 FPSLREB 48, and *Tran v. Professional Institute of the Public Service of Canada*, 2014 PSLRB 71.

C. The complainant's reply

[227] The complainant did not dispute the jurisprudence.

[228] The issue is not the complainant's behaviour but what the respondents had at their disposal and what they did with it.

[229] The complainant advised that the CFIA asked Great Lakes for the letter seeking an investigation.

[230] With respect to interviewing the witnesses, a number of them mentioned in the investigation report did not have direct knowledge of the situations. Some witnesses could have spoken to how the complainant conducted himself at work.

[231] It was wrong to assume that Ms. Heaman would not be credible. That is not supported by the evidence. Mr. Kingston was advised that she would testify that she was coerced with respect to her testimony. The Alliance was aware that the termination could have been a witch-hunt. She said that she was coerced, and she should have been spoken to. There was an obligation to contact her.

[232] The complainant testified that he felt pressure at the deadlines and that he accepted the settlement in that light.

V. Reasons

A. Request to seal documents

[233] The parties requested that the MOA be sealed.

[234] The test for sealing documents is set out in *Basic v. Canadian Association of Professional Employees*, 2012 PSLRB 120, which states as follows:

> . . .
>
> *[10] However, occasions arise where freedom of expression and the principle of open and public access to judicial and quasi-judicial hearings must be balanced against other important rights,*

> *including the right to a fair hearing. While courts and administrative tribunals have the discretion to grant requests for confidentiality orders, publication bans and the sealing of exhibits, it is circumscribed by the requirement to balance these competing rights and interests. The Supreme Court of Canada articulated the sum of the considerations that should come into play when considering requests to limit accessibility to judicial proceedings or to the documents filed in such proceedings, in decisions such as* Dagenais and Mentuck. *These decisions gave rise to what is now known as the* Dagenais/Mentuck *test.*
>
> *[11] The* Dagenais/Mentuck *test was developed in the context of requests for publication bans in criminal proceedings. In* Sierra Club of Canada*, the Supreme Court of Canada refined the test in response to a request for a confidentiality order in the context of a civil proceeding. As adapted, the test is as follows:*
>
> . . .
>
> (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
>
> (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.
>
> . . .

[235] I am satisfied that the test in *Basic* has been met. I find that the salutary effects of the confidentiality order with respect to the publication of the terms and conditions of a settlement agreement outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings. The MOA was entered into evidence twice, once as Exhibit C-6, and once as Exhibit R-3, tab 83.

[236] In addition, a number of the documents entered into evidence disclosed the terms and conditions being negotiated and eventually incorporated into the MOA. The reasons set out with respect to sealing the MOA apply equally to these documents, which were exchanged. As such, the following documents shall be also sealed: Exhibit R-3, tabs 24, 33, 34, 37, 39, 40, 41, 45, 48, 53, 55, 61, 62, 63, 65, 66, 67, 71, 77, 78, and 79.

B. The merits of the complaint

[237] The Board has jurisdiction to hear and determine complaints of alleged breaches of the duty of fair representation by virtue of the following provisions of the *Act*:

> ***Complaints***
>
> . . .
>
> ***190 (1)*** *The Board must examine and inquire into any complaint made to it that*
>
> . . .
>
> ***(g)*** *the employer, an employee organization or any person has committed an unfair labour practice within the meaning of section 185.*
>
> . . .
>
> ***Meaning of unfair labour practice***
>
> ***185*** *In this Division,* ***unfair labour practice*** *means anything that is prohibited by subsection 186(1) or (2), section 187 or 188 or subsection 189(1).*
>
> . . .
>
> ***Unfair representation by bargaining agent***
>
> ***187*** *No employee organization that is certified as the bargaining agent for a bargaining unit, and none of its officers and representatives, shall act in a manner that is arbitrary or discriminatory or that is in bad faith in the representation of any employee in the bargaining unit.*
>
> . . .

[238] It was alleged that the respondents breached their duty of fair representation by acting in a manner that was arbitrary, discriminatory, and in bad faith in how they handled the complainant's grievance against the termination.

C. The individual respondents

[239] The complainant named six individuals as respondents. Under s. 187 of the *Act*, duty-of-fair-representation complaints may be made only against a bargaining agent that is duly certified as the bargaining agent for a bargaining unit. In this case, the only possible respondents could be the Alliance and the component. While directors, officers, employees, and representatives of a bargaining agent may act in a manner that could be seen as breaching the relevant provisions of the *Act*, their actions would impugn the bargaining agent upon whose behalf they act and not themselves,

personally. As such, the complaint against Mses. Benson, Devine, and Rochon and Messrs. Kingston, Orfald, and Miller is dismissed.

D. The component

[240] As set out in the previous paragraph, a complaint under s. 187 may be made only against a bargaining agent certified under the *Act*. There is no evidence that the component meets this requirement. As such, the complaint against it is dismissed.

E. The Alliance

[241] The Board and its predecessors have often stated that a complainant has the burden of establishing a *prima facie* case that an unfair labour practice occurred. (See for example, *Halfacree v. Public Service Alliance of Canada*, 2009 PSLRB 28, *Halfacree v. Public Service Alliance of Canada*, 2010 PSLRB 64, and *Baun v. National Component, Public Service Alliance of Canada*, 2010 PSLRB 127.)

[242] To be successful in his complaint under s. 187 of the *Act*, the complainant had to establish that on the balance of probabilities, in its representation of him in his grievance against the termination and in particular the decision not to represent him at adjudication before the PSLRB, the Alliance acted in an arbitrary or discriminatory manner or in bad faith.

[243] The Board's jurisdiction is succinctly set out in *Sayeed*, which states as follows:

> . . .
>
> *[36] By defining a breach of the duty of fair representation, section 187 of the Act also sets out the scope of the Board's jurisdiction over an allegation of unfair representation. The Board must determine whether the bargaining agent, in its representation of the member involved, acted in bad faith or in a manner that was otherwise arbitrary or discriminatory. The Board does not sit on appeal of decisions made by a bargaining agent, and its mandate is not to determine whether the bargaining agent's decisions were correct. The Board's jurisdiction is limited to determining whether the bargaining gent acted within the parameters of section 187 of the Act.*
>
> *[37] . . . The duty of fair representation does not mean that members of the bargaining agent have an absolute right to representation or that they have the final say with respect to the manner in which the bargaining agent carries out its obligations in their cases. The bargaining agent is allowed a fair amount of discretion in deciding whether to file a grievance, to refer it to adjudication or arbitration or to represent a member in the*

grievance process. It also has fairly broad discretion in determining how to handle a grievance and when to settle it. The parameters that circumscribe the bargaining agent's duty of fair representation were well enunciated by the Supreme Court of Canada in Canadian Merchant Service Guild v. Gagnon et al.*, [1984] 1 S.C.R. 509 at 527 . . . .*

[38] Although those principles were enunciated in the context of the bargaining agent's discretion to file a grievance and refer it to arbitration, they serve as a guide for all aspects of the bargaining agent's duty of fair representation.

[39] The Board has applied those criteria on numerous occasions. In Ouellet v. Luce St-Georges and Public Service Alliance of Canada*, 2009 PSLRB 107, the Board outlined its role in the following manner:*

. . .

30. . . . Thus, the Board's role is not to examine on appeal the bargaining agent's decision of whether to file a grievance or to refer it to adjudication but rather to evaluate the manner in which it handled the grievance. In other words, the Board rules on the bargaining agent's decision-making process and not on the merits of a grievance or complaint. That said, it is often necessary to review the facts to determine whether the bargaining agent's decision-making process reflects the value and seriousness of a given case.

31. In a complaint under section 187, the grievor bears the onus of presenting evidence sufficient to establish that the bargaining agent failed to meet its duty of fair representation.

32. Moreover, the bargaining agent's duty of fair representation assumes that the grievor takes the necessary measures to protect his or her own interests. He or she must inform the bargaining agent of his or her willingness to file a grievance and act within the time limits set out in the collective agreement. He or she must collaborate with the bargaining agent by providing the information required to prepare his or her case and follow the bargaining agent's advice on how to behave during the grievance process. If the grievor neglects any of those things, he or she risks the Board dismissing the complaint. The Board will not usually allow a complaint where the bargaining agent obtained a reasonable settlement that the complainant subsequently rejected.

. . .

39. In short, the bargaining agent's obligation is to carry out its duty of representation in a reasonable manner, taking into account all the related facts, investigating the situation,

> weighing the conflicting interests of the employee, drawing considered conclusions as to the potential outcomes of the grievances and then informing the employee of its decision on whether to pursue the grievance.
>
> *[40] The Board has often reiterated that an employee does not have an absolute right to be represented by his or her bargaining agent and that he or she cannot dictate the extent of the representation or the manner in which the bargaining agent handles the grievance. In the same vein, a disagreement with one's bargaining agent does not amount to a breach of the duty of fair representation . . . .*
>
> . . .
>
> *[42] In* International Longshore and Wharehouse *[sic]* Union, Ship and Dock Foremen, Local 514 v. Empire International Stevedores Ltd.*, [2000] F.C.J. No. 1929 (C.A.)(QL), the Federal Court of Appeal stated that, to prove a breach of the duty of fair representation, ". . . the member must satisfy the Board that the union's investigation into the grievance was no more than cursory or perfunctory."*
>
> . . .

[244] Applying these principles to the complaint, for the reasons that follow, I find that the complainant did not establish that the Alliance breached its duty of fair representation.

A. Did the Alliance act in a discriminatory manner in its representation of the complainant?

[245] The complaint's particulars stated as follows with respect to discrimination:

> ***5B – Discriminatory Conduct***
>
> *I was treated differently by the Bargaining Agent because of the reference made to my physical appearance in the biased investigation report and being referred to as a "big man".*

[246] I heard no evidence whatsoever about the complainant's size.

[247] The complainant provided no evidence that the Alliance, or any employee of it or director, officer, or representative, acted in any manner that would suggest that the actions it took were due to his race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered. As such, the

complainant failed to establish on a balance of probabilities that the Alliance's decisions with respect to his representation were discriminatory.

B. Did the Alliance act in an arbitrary or bad-faith manner in its representation of the complainant?

[248] "Arbitrary" in the context of duty-of-fair representation complaints is defined by the Supreme Court of Canada at paragraph 50 of *Noël*, as follows:

> *[50] The concepts of arbitrary conduct and serious negligence, which are closely related, refer to the quality of the union representation. The inclusion of arbitrary conduct means that even where there is no intent to harm, the union may not process an employee's complaint in a superficial or careless manner. It must investigate the complaint, review the relevant facts or seek whatever advice may be necessary; however, the employee is not entitled to the most thorough investigation possible. The association's resources, as well as the interests of the unit as a whole, should also be taken into account. The association thus has considerable discretion as to the type and extent of the efforts it will undertake in a specific case. . . .*

[249] The Board and its predecessors have canvassed bad faith in different contexts, most often in cases involving the terminations of employment of probationary employees. *Dhaliwal v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2004 PSSRB 109 at para. 79, states as follows:

> *[79] To determine whether the employer's actions were made in good faith, I must examine the meaning of good faith. In the Treasury Board's "Guidelines for Non-Disciplinary Demotions or Termination of Employment for Cause", good faith is defined as: "Means a manner of conduct based upon honesty of intentions and fairness of treatment." . . .*

[250] *Tello v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 134, again a case dealing with the termination of employment of a probationary employee, addresses bad faith as follows:

> . . .
>
> *[127] . . . As noted by the Federal Court of Appeal in another context (*Dansereau v. Canada *(1990), [1991] 1 F.C. 444 (CA), at page 462) bad faith cannot be presumed and an employee seeking to provide evidence of bad faith ". . . has an especially difficult task to perform. . ." In* McMorrow v. Treasury Board (Veterans Affairs),

> *PSSRB File No. 166-02-23967 (19931119), an adjudicator noted, at page 14, that, in his view:*
>
> . . .
>
> . . . It is trite to say that a determination of whether there is good faith or not must be gleaned from all the surrounding circumstances; there can be a multitude of sets of facts that may result in a conclusion of bad faith . . . keeping in mind . . . that good faith should always be presumed. . .
>
> . . .

[251] In many places in the complaint's particulars, the complainant states that the Alliance withdrew its representation. This is not accurate. The Alliance was prepared to act for him in negotiating a settlement and did represent him in negotiating one. At no time did its representation cease. It told him that it would not represent him if his grievance proceeded to a hearing; however, it never did proceed to one. With Mr. Cameron's assistance, he successfully negotiated a settlement, which was set out in the MOA.

[252] The complainant testified that he never wanted a settlement and that his goal was to get his job back; yet, he also testified that as far back as the initial meeting with Mr. Cameron and Ms. McGregor, a settlement was certainly an option. The evidence also disclosed that at the May 12 meeting and after it, he authorized the Alliance and Mr. Cameron to try to negotiate a settlement for him. The evidence further disclosed that negotiations toward an eventual settlement began in earnest shortly after the May 12 meeting and that the complainant was actively involved in the process.

[253] The complainant and the CFIA reached the settlement outlined in the MOA that he signed. It included a full and final release and his agreement to withdraw his grievance along with apparently 246 other grievances and complaints he had filed with respect to his employment. Indeed, as part of the settlement, he signed a letter dated June 19, 2014, withdrawing his grievance against that termination. The CFIA withdrew the termination, and he was permitted to resign, effective February 27, 2013.

[254] The gist of the complaint is that the Alliance failed to fairly represent him by deciding to not represent his grievance at adjudication, which was based upon allegations that it failed to investigate, including that it failed to speak with witnesses. He alleged that a thorough investigation did not take place and that the witnesses he brought forward were not spoken to.

[255] The *Webster's New World Dictionary* defines "investigate" as to search into, to learn the facts, to inquire into systematically, or to make an investigation. It defines "investigation" as a detailed examination or search, often formal or official, to uncover facts and determine the truth.

[256] The complainant also often stated that the Alliance relied on the Anper investigation and final report. He made those statements in conjunction with comments about the union not investigating. Based on what he stated, it is clear that he felt that the Alliance should have reinvestigated the Great Lakes complaint because the Anper investigation was biased.

[257] During the course of giving evidence, it became clear that the complainant and Alliance had differing views as to the meaning of "investigation". The complainant often stated that the Anper investigation and the final report were biased and that the Alliance should have conducted its own investigation.

[258] The Alliance was not required to reinvestigate the subject of the Anper investigation. It was required to look into the termination. The logical starting point was to meet with him and to review the material and information that he brought to the Alliance, which it did. From the evidence before me, after the complainant was terminated and before his grievance was referred to the Raven firm, he met a number of times with Alliance representatives, including the following, on the following dates:

- on March 24, 2013, with Mr. Kingston;
- on May 1, 2013 (the May 1 meeting), with Mses. Benson and Devine and Mr. Aylward; and
- on August 28, 2013 (the Aug. 28 meeting), with Ms. Devine.

[259] The evidence further disclosed that at the March 24, 2013, meeting with Mr. Kingston, the complainant provided material, discussed the termination, and was told by Mr. Kingston that he needed witnesses to refute the allegations made against him in the final report, not character witnesses. The complainant said that he told Mr. Kingston that doing so was impossible and that the union should investigate. When it was put to him that he was saying that it was the union's job to obtain the witness list, to refute the specific allegations, the complainant said, "I told the union they should interview all these people." He did not specify if he meant the Alliance, the component, or both; nor did he specify whom he meant by "all these people".

[260] At the May 1 meeting, the complainant met with Mses. Benson and Devine and Mr. Aylward (who attended for part of the time). After it, according to the evidence, the Alliance's material on the termination was turned over to a G&A analyst, Ms. Côté, whose job was to review and analyze it. She did so and produced an assessment, which was the July 19 memo.

[261] The first line of the July 19 memo, under the heading "Analysis", is as follows: "The jurisprudence is not favourable on this issue" [emphasis in the original]. She then stated, "There were no noted major deficiencies in the investigative process to possibly strike void ab initio. The deficiencies that were noted will therefore be cured de novo." The memo went on to state the following, which goes to the very essence of the complainant's case:

> . . .
>
> *As you will see on the file, the allegations wordings are vague to begin with. But they will not be the most problematic. What will be problematic is that there were 22 witnesses interviewed (including the grievors) and the majority of the witnesses did not give favourable statements in support of the grievors.*
>
> *Maintaining regulatory independence is at the core of the dispute because of the level of trust and independence inspectors must have when working without or little supervision. The employer specifically identified the irreparable breach of trust as the cause central cause for termination. This is the topic that the jurisprudence is the least in favour.*
>
> . . .
>
> *As you can see there is a whole gambit of issues involved that puts all parties in a precarious situation. The aggravating factors are so overwhelming that the likelihood of success is low. The case law shows that adjudicators are not kind to those who hold positions of trust and they are held to a higher standard. The adjudicator will most likely weigh in on the fact that the originating complaint came from a private sector company and that CFIA's presence at these plants is to ensure that the public's food supply is not contaminated and protected. The public's interest will be taken into consideration.*
>
> *The employer may very well be able to discharge its burden and there will be a struggle to achieve an alternate disciplinary measure.*
>
> . . .
>
> [*Sic* throughout]

[262] The evidence disclosed that the Aug. 28 meeting was about Ms. Heaman and what she conveyed to the complainant, Mr. Garnett, and Ms. Kurtz-Cooke. I will address Ms. Heaman and her evidence later in these reasons.

[263] The evidence disclosed that the Alliance retained the Raven firm around the middle of September of 2013 to represent the complainant and that the first work was done on the file on September 18, 2013. The Raven firm is in Ottawa and specializes in union- and employee side labour law. It performs a significant amount of work in the federal public sector, including regularly appearing before the Board and its predecessors. The Alliance has been one of its clients for 27 years. Mr. Cameron, who was the lawyer responsible for the complainant's matter, is a senior partner at the firm. He was called to the bars of Nova Scotia and Quebec in 1986 and Ontario in 1991. Ms. McGregor, who assisted Mr. Cameron, was an articling student at the firm at the time.

[264] The evidence disclosed that material that the Alliance possessed was delivered to the Raven firm sometime in early October and that the first work performed on the file was Ms. McGregor's review of the material. She analyzed it and then summarized it in a memo she prepared on October 11 and 15, 2013. Mr. Cameron's first work on the file appears to have been done on October 17, 2013. He reviewed Ms. McGregor's memo and met with her and Mr. Raven.

[265] Mr. Cameron and Ms. McGregor met with the complainant on December 3, 2013. They both testified about the meeting, and their handwritten notes were entered into evidence. Both notes contain brief, jotted information and identify two general areas of concern, one being health and safety, the other being behaviour. They both testified that the key issue in the complainant's case were the health-and-safety issues related to the finding that he not only did not enforce the health-and-safety regulations he was supposed to enforce but also that he did not follow them. In his testimony, he acknowledged that that was conveyed to him at that meeting.

[266] Mr. Cameron testified that while he could likely create some havoc with respect to a number of different things involving the CFIA, the work environment, and the Anper investigation, the complainant's failure to follow and enforce the health-and-safety rules and regulations with respect to the slaughter and processing of the

country's food supply would effectively nullify any chance of overturning the termination before the PSLRB.

[267] On April 30, 2014, Mr. Cameron met with Messrs. Orfald and Kingston at the Alliance's Ottawa offices. He advised them that the complainant would likely be unsuccessful before the PSLRB. On May 5, 2014, he set this out in writing in the Cameron opinion. Mr. Kingston stated that he and Mr. Orfald had independently reached the same conclusion. Messrs. Kingston and Cameron testified that at that meeting, he and Mr. Orfald decided that the Alliance would not represent the complainant at the PSLRB hearing, which was conveyed to him at the May 12 meeting.

[268] The complainant confirmed that the following occurred at the May 12 meeting:

- Mr. Cameron told him that his chances of winning were negligible and that food safety was key;
- Messrs. Orfald and Kingston also explained to him that food safety was a big issue;
- Mr. Cameron told him that he recommended to the Alliance that it not go forward with representation at the hearing;
- Mr. Cameron told him that if he thought there was a reasonable chance of winning, he would have recommended to the Alliance to continue to pursue the grievance;
- Messrs. Cameron, Orfald, and Kingston said it was not about not going on the public record; and
- Mr. Cameron told him that he could pursue the grievance at adjudication on his own but if he did, he would likely lose and receive nothing, so the best option was to settle.

[269] Despite the Alliance's determination that based on its assessment, it was not prepared to represent the complainant at adjudication, he was told that if witnesses were brought forward that could dispel the evidence in the final report about the health-and-safety issues, it would revisit its representation decision.

[270] The evidence disclosed that between the termination in February of 2013 and the MOA signing in June of 2014, the complainant produced two witness lists, the 2013 and the 2014 witness lists. At one point in his evidence, he said that the witness lists were continually added to and updated. There is no evidence at all of that. If he provided other witness lists to the Alliance, the component, any named respondent, Mr. Cameron, or Ms. McGregor, there is no evidence that they exist or were produced. No lists other than the 2013 and 2014 witness lists were produced before me.

[271] The evidence disclosed that the original list (the 2013 witness list) contained 11 names and that the second list (the 2014 witness list), which was sent to Mr. Cameron, contained only 7 names, all of which were already on the 2013 witness list. This meant that the 2014 witness list was simply an abbreviated version of the 2013 witness list. This can hardly suggest that more witnesses were added.

[272] The complainant testified that the 2014 witness list was sent to Mr. Cameron well before June of 2014. However, the documentary evidence shows that it was forwarded to his office on May 26, 2014. If there is any evidence that it was sent before that date, it was not produced as part of the hearing.

[273] A total of 11 people were set out on the two witness lists. Two of them, Mr. Garnett and Ms. Kurtz-Cooke, did not work at Est. 419 and were not interviewed as part of the Anper investigation. While Mr. Garnett testified before me, he could not provide any evidence with respect to the allegations in the final report. His evidence was largely contextual with respect to parts of the investigation process as well as his involvement in bringing forward Ms. Heaman and her evidence.

[274] Ms. Kurtz-Cooke's name appears on several documents entered into evidence; however, it is as being one of the complainant's representatives. She did not testify. There is no evidence that she worked at Est. 419, was interviewed as part of the Anper investigation, or could provide any meaningful evidence with respect to the allegations in the final report. From the complaint's particulars, it would appear that she could provide some context with respect to Ms. Heaman coming forward after the termination.

[275] Of the remaining 9 names, only Mses. C and Heaman were interviewed as part of the Anper investigation. This leaves 7 of the original 11, all of whom Ms. McGregor testified she contacted. Mr. Cameron determined that those witnesses would not help the complainant's case.

[276] The evidence identified that in a series of emails on June 9, 2014, the names of three more potential witnesses were brought to the attention of Mr. Cameron and Ms. McGregor. They were Mr. Miller, Mr. E, and Mr. F. The evidence before me did not disclose that any of these gentlemen were identified to the Alliance or the Raven firm as potential witnesses before early June of 2014. None of them testified before me.

[277] As set out earlier in this decision, there is no evidence of Mr. Miller's involvement or of how it could help the complainant in his case against the employer. There is no evidence that he could provide any evidence with respect to the allegations in the final report.

[278] Mr. E was interviewed in the Anper investigation. However, the content attributed to him in the final report is at best tangential, providing context. While he appears to have been an inspector, his regular place of work was not Est. 419; he went there only on occasion as relief for shortfalls. Entered into evidence was a four-page undated, unaddressed, and handwritten document that appears he signed that consists of complaints and concerns with respect to his work environment. Nothing in it speaks about the Anper investigation, his involvement in it, or the allegations it set out against the complainant. Based on the little information before me, nothing allows me to conclude that Mr. E's participation in the grievance hearing for the complainant would have been helpful. If something else was provided that could have been helpful, it was not produced to me.

[279] Like Mr. E, Mr. F was also interviewed in the Anper investigation. While for Mr. E, a handwritten letter was entered into evidence, for Mr. F, nothing was put forward. In response to questions put to him in cross-examination, the complainant said that both would refute the allegations against him. However, when pressed, he admitted that he never spoke to them and that he did not know what they would say. He agreed with counsel for the respondents that he "hoped they would refute the allegations."

[280] More disconcerting is that about four to five years later, when he testified before me in late September of 2018 and then again in late April of 2019, the complainant could still not say what Messrs. E and F could offer. I would have expected that by the time he appeared in front of me, he would have had something to present.

[281] This leaves Ms. C and Ms. Heaman. The final report identified 21 persons, other than the complainant, who were interviewed as part of the Anper investigation; Mses. C and Heaman were two of them. I will deal with Ms. C first.

[282] The complainant suggested that Ms. C recanted what she said as part of the Anper investigation. She did not testify before me. There is no evidence that the complainant actually spoke to her. The evidence before me comprises a handful of emails sent and received in May of 2014, shortly before the PSLRB hearing was

postponed, when Ms. C was contacted by the CFIA's LRO and TBS counsel, for what appeared to be a pre-hearing discussion, as it appears that the CFIA contemplated calling her as a witness.

[283] The complainant indicated that the emails suggest that Ms. C changed her story. They do not come close to stating that. They state that she wanted to speak to her bargaining agent representatives. Nowhere in them did she reference a change to what she said to Ms. Pereira or state that the employer coerced or allegedly enticed her. No evidence was led at the hearing that disclosed that Ms. C said that she was recanting what she said as part of the Anper investigation; nor is there any evidence that she was either coerced or enticed to say what she said to the Anper investigation.

[284] The emails in question that the complainant brought forward in June of 2014 were dated May of 2014. When he testified before me in late September of 2018 and then again in late April of 2019, some four to five years later, he had nothing further about Ms. C than the contents of those original handful of emails from May of 2014. Like Messrs. E and F, I would have expected that by the time he appeared in front of me with respect to this complaint, there would have been something to show; there was nothing.

[285] This brings us to Ms. Heaman, who was the only person other than the complainant interviewed as part of the Anper investigation who testified before me. A significant amount of hearing time was spent on her involvement with the Anper investigation, what she said, and her two written statements.

[286] Ms. Heaman did not help the complainant.

[287] Ms. Heaman authored two printed statements after the complainant had been terminated. One is undated (the undated Heaman statement), and the other is dated August 21, 2013 (the Aug. 21 statement). Of the witnesses who saw both statements, all of them indicated that the undated Heaman statement was the first one produced and that the Aug. 21 statement was the second. The only witness whose evidence was somewhat different was Ms. Heaman; she stated that the undated Heaman statement was produced in late 2013. While she did not date it, if it was before the Aug. 21 statement, I would not consider that as being late in 2013.

[288] Ms. Heaman said that the statements were the same except that they were "formatted different". While the two statements cover some of the same general topics, they were certainly significantly different, particularly in at least one important way. In the undated Heaman statement, when referring to her interview with Ms. Pereira, she stated as follows:

> . . .
>
> *. . . I told the truth during my interview and told her everything I knew of the situation. . . .*
>
> *Shortly thereafter I was contacted again by Anabella [sic] to go to London to sign my typed statement. I believe there were one or two errors that were corrected before I signed.*
>
> . . .

[289] In the Aug. 21 statement, Ms. Heaman stated as follows:

> . . .
>
> *As one of the key people interviewed by Ms. Anabela Pereira, in regards to the investigation at Establishment #419, and put forward by Mr. Tom Doyle, I now realize that it was wrong to provide the false information given to myself by CFIA and Mr. Tom Doyle. The fact of being fed empty promises by Mr. Tom Doyle, in attaining a position at a facility only minutes from my home, clouded my judgement and I now realize I was wrong for putting Mr. Doyle's information forward.*
>
> . . .

[290] When counsel for the respondents cross-examined her, Ms. Heaman testified that when she was interviewed as part of the Anper investigation, she received a printed statement of her words to Ms. Pereira, which she confirmed she had the opportunity to read over. She then signed it, only after she had satisfied herself that it was accurate. In her testimony, she said that she provided honest and truthful answers to the questions that Ms. Pereira asked her during the Anper investigation. This coincides with what she said in the undated Heaman statement.

[291] The exact date that Ms. Pereira interviewed Ms. Heaman is not known. However, it can be assumed that it was before October 2012, as that is the date of the draft report. At an unknown date, but likely before August 21, 2013, as the best evidence is that the undated Heaman statement was made before the Aug. 21 statement, and after the complainant was terminated from his employment (February 27, 2013), Ms.

Heaman made a typed statement in which she stated that what she said to Ms. Pereira as part of the Anper investigation was true. This is the undated Heaman statement.

[292] According to both the complainant and Mr. Kingston, they had a discussion in which the complainant apprised him of Ms. Heaman and the undated Heaman statement. They both confirmed that Mr. Kingston pointed out to the complainant that the problem with the undated Heaman statement was that Ms. Heaman stated that she told Ms. Pereira the truth. Mr. Kingston stated that during their discussion, the complainant told him that he would obtain a second statement from Ms. Heaman, which Mr. Kingston replied would be even more useless. The complainant acknowledged Mr. Kingston saying that. It would appear that this is exactly what occurred as the Aug. 21 statement does not contain the statement, "I told the truth during my interview and told her everything I knew of the situation"; instead, it contains this new statement: ". . . I now realize that it was wrong to provide the false information given to myself by CFIA and Mr. Tom Doyle."

[293] Ms. Heaman originally stated that she told the truth. She made a written statement that she told the truth, made one stating that she had lied and had provided false information, and then in front of me, reverted to stating that when she participated in the Anper investigation, she told the truth.

[294] What happened in front of me with respect to Ms. Heaman, her statements, and her evidence, is the exact concern that was pointed out to the complainant by both Messrs. Cameron and Kingston as the difficulty with Ms. Heaman as a witness for him in his grievance against the termination.

[295] That is not the only problem with Ms. Heaman's evidence. Glaringly missing from both the undated Heaman statement and the Aug. 21 statement is what she allegedly said to Ms. Pereira that was either false or wrong. Before me, she said that she both had seen and had not seen the investigation report, in either its draft or final form. When she said that she had seen it and was then asked if it was accurate, she said that some of it was "out of context". When she was asked what was out of context, she referred to two things: the first was the amount of foul language being used, and the second was about her comment on the complainant not telling Mr. A to smarten up. She then stated that the out-of-context comments caused her no concern. In front

of me, she did not go through either the draft or final report with respect to the statements attributed to her and comment on them.

[296] Ms. Heaman also testified to having had a telephone conversation with a lawyer from the TBS. She provided no date for the call and mentioned providing a statement to the lawyer that she had written in a book. The statement and book were not produced, and she did not identify the lawyer. In the context of her evidence about the call, she said, "I needed to clarify statements made to me with respect to Mr. Wurdell . . . I needed to clarify what I was saying; I needed to recant some statements."

[297] In cross-examination, Ms. Heaman was asked what she recanted in the Aug. 21 statement. Her response was that the TBS used the word "recanting" and that she had just wished to clarify things. She began her evidence-in-chief before me on April 26, 2019, at 09:46, and it ended at 10:30. After a short break, at 10:41, counsel for the respondents began cross-examining her. Less than a minute into it, she changed her testimony. She stated that the TBS used the term "recanting", when in fact before me, she clearly stated that she wanted to both clarify and recant some statements.

[298] In cross-examination, Ms. Heaman was asked for the false information she passed on to Ms. Pereira. She replied that she could not say that it was false, which directly contradicts her words in the Aug. 21 statement. When counsel for the respondents brought Ms. Heaman to the specific reference in the Aug. 21 statement to the false information, she stated a second time that she did not know that it was false. However you interpret what she tried to say, she did not identify anything at the hearing that was in the final report and that was attributed to her as false or that was false information provided to her to pass on to the Anper investigation.

[299] The gist of Ms. Heaman's testimony before me, and consistent in both her undated and the Aug. 21 statements, was the suggestion that for cooperating in the Anper investigation, the employer would reward her. Of course, this suggests that Ms. Heaman is prepared to say what is in someone's interest in return for favours or remuneration; in other words, she can be bought or bribed. This is not helpful to the complainant as the evidence disclosed that she changed the undated Heaman statement (in which she stated that she told the truth as part of the Anper investigation) to the Aug. 21 statement (in which she said that she provided the Anper

investigation false information). The inference in the evidence is that this occurred after the complainant asked her to do it.

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

> . . .
>
> *If a trial Judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility. . . A witness by his manner may create a very unfavourable impression of his truthfulness upon the trial Judge, and yet the surrounding circumstances in the case may point decisively to the conclusion that he is actually telling the truth. I am not referring to the comparatively infrequent cases in which a witness is caught in a clumsy lie.*
>
> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. . . .*
>
> . . .

[301] Applying the test in *Faryna*, I can state without a shadow of a doubt that Ms. Heaman's evidence is far from credible. It is not a stretch to state that it was not helpful to the complainant and that it certainly would not have helped him in his grievance against the termination. At several junctures, the complainant also suggested that the employer coerced Ms. Heaman to say what she said as part of the Anper investigation. He stated that there were documents to that effect. However, nothing in any document produced before me suggested that she was coerced into making her statements to Ms. Pereira as part of the Anper investigation. In her testimony before me, Ms. Heaman did not say that she was coerced into making them.

[302] Documents introduced into evidence did not disclose that the CFIA in any way bribed Ms. Heaman, bought her testimony, or coerced her.

[303] Only one document that Ms. Heaman authored or received could be interpreted as being suspect. It is her email to Mr. Doyle of January 2012, which stated as follows:

> . . .
>
> *I was wondering if there was any way you could give me your assurances that I will not ever have to work with the boys from Mitchell if I go ahead with the hog training. That has been the reason why I havent pursued it and I am afraid that if I get hog trained and they don't lose their jobs that i will be forced to work with them again and I really, really do not want that.*
>
> *Maybe this is an off the record conversation lol*
>
> . . .
>
> [*Sic* throughout]

[304] No questions were asked about the email. One may only speculate as to what Ms. Heaman knew at that time. She might well have already been interviewed by Ms. Pereira, had discussions with co-workers, and made assumptions about what might be going on.

[305] The burden in this case was on the complainant. It was incumbent on him to bring forward evidence to satisfy me that the Alliance acted in a manner that amounted to a breach of s. 187 of the *Act*. He did not meet that burden. The test is not whether the Alliance followed his instructions; nor is it whether it was correct in its assessment. As I have already addressed the issue of discrimination, remaining is the test of whether it acted in a manner that was arbitrary or in bad faith.

[306] I am satisfied that based on the evidence, the Alliance did not act in a manner that was either arbitrary or in bad faith. Its representatives reviewed the complainant's case as contemplated by the jurisprudence. They reviewed the final investigation report; they met with the complainant a number of times and reviewed the material he brought to them. His file was referred to the Raven firm, which specializes in union-side labour and employment law, to represent him. A senior lawyer from that firm, with the assistance of an articling student, again reviewed the material brought to them. That assessment culminated in an opinion by that firm that the complainant's

grievance was unlikely to succeed at the PSLRB, and the Alliance decided to not represent him at adjudication on that basis.

[307] It was not reasonable or feasible for the Alliance to attempt to conduct a separate investigation into the allegations made by Great Lakes. The CFIA has control over its workplace, and Great Lakes has control over its workplaces. The Alliance does not have that power. Neither the CFIA nor Great Lakes would have had to cooperate with the Alliance; nor did they need to allow their employees to cooperate. However, in the end, it would not have mattered because the complainant was terminated from his position on the basis of the final report. The allegations in that report led to the loss of his employment, as set out in the termination letter.

[308] The key issue in the termination and thus the complainant's grievance, as Mr. Cameron and Ms. McGregor described, were the health-and-safety issues as they related to the complainant carrying out the duties and responsibilities of his job. He was to enforce the food and health-safety regulations as they related to the pork processing plant he worked at, which included following them himself.

[309] The complainant made many allegations; however, there was little to no evidence to back them up. It was incumbent on him to bring forward to the Alliance information that would help it represent him or in short, to dispel the evidence against him. While he said that he did as much in the form of documents and witnesses, neither the documents he said he brought forward nor the witnesses he identified, as presented to this hearing, would suggest any error by the Alliance that would lead me to find that its decision was either arbitrary or made in bad faith.

[310] It is not lost on me that the complainant placed significant stock in people he viewed as crucial witnesses and critical to his case, most particularly Ms. Heaman and her statements. While this is not determinative of the question I have to answer, if there was any basis to his complaint, I would have expected to have received some evidence of the critical and key nature of the evidence of the witnesses that he referred to; there was none.

VI. Miscellaneous

A. The badge comment and the allegation of Mr. Kingston's animus

[311] I would be remiss if I did not address the badge-removal-ceremony comment, as the complainant appeared to place a considerable amount of stock in both the comment and Mr. Kingston's response.

[312] I heard only two witnesses testify about the comment, the complainant and Mr. Kingston, neither of whom was present when it was made. It was attributed to CFIA managers during a meeting with plant managers in early 2011. None of the people directly involved appeared before me, although there was a considerable amount of hearsay evidence about the comment. The complainant viewed it as being directed, at least partially, toward him. I suspect that he might have had good reason to believe that as the evidence before me indicated that the relationship between senior union representatives, such as him, who were inspectors, and CFIA management could not be described as good.

[313] That said, a CFIA manager allegedly made it long before the complainant was terminated from his employment. In addition, Mr. Kingston stated that he looked into it. The evidence did not disclose a nexus between the comment and the complaint against the Alliance. While the evidence may point to the employer having an issue with the complainant as an employee, there is no evidence connecting the decision to not represent him and the badge-removal-ceremony comment, save and except that Mr. Kingston looked into it.

[314] The fact that the complainant believed that Mr. Kingston did not look into it seriously or sufficiently or that he was collaborating with CFIA management does not make it so and does not prove that it had anything to do with the Alliance's decision to not represent him at the PSLRB hearing.

[315] Flowing from the badge-removal-ceremony issue is the suggestion that somehow, Mr. Kingston did not like the complainant and acted hostilely toward him. However, this is not borne out by the evidence.

[316] Before the complainant's case was complete, counsel for the respondents advised counsel for the complainant of his intention to bring a motion to dismiss at the end of the complainant's case, before calling any evidence on behalf of the

respondents. This required the complainant to assess his case and determine if he wished to argue the dismissal motion with only his evidence and that of Ms. Heaman and Mr. Garnett and without the benefit of the evidence of some of the potential witnesses the respondents were to call.

[317] In the circumstances, the complainant decided to call both Messrs. Kingston and Cameron to testify. While his counsel did not have the opportunity to meet with them and discuss their testimony she might have had if they were likely to be favourable to the complainant, she was given all the time she needed.

[318] Nothing in Mr. Kingston's testimony would suggest that he had an animus toward the complainant.

B. The allegation that the Alliance did not pursue the complainant's grievance for financial reasons

[319] In June of 2014, just before the complainant signed the MOA, he attended an Alliance regional meeting in Mississauga. He stated that during his discussions with several Alliance members, he was told that the Alliance would not represent him before the PSLRB for financial reasons.

[320] Mr. Garnett testified that Ms. D told this to him. He said that she told him that Mr. Kingston and Mr. Miller told it to her. Neither she nor Mr. Miller testified. If Mr. Kingston made the comment, the complainant, who called him as a witness, should have asked him about it; he did not.

[321] While Ms. D was mentioned tangentially in both the testimony and documents, the exact nature of her relationship to the Alliance, the component, or both, and her involvement in the grievance is unclear.

[322] Other than the hearsay comments that Mr. Garnett conveyed to the complainant and then to the hearing, there is no evidence that financial reasons were a factor in the Alliance's decision. Mr. Kingston, who together with Mr. Orfald decided on the Alliance's behalf to not represent the complainant at the PSLRB, provided no evidence that it was in fact the case. Ms. Devine, who is employed by the Alliance and was called as a witness, was also not asked any questions about it.

C. The allegation that the Alliance did not pursue the complainant's grievance for political reasons

[323] The complainant suggested that the Alliance decided not to represent him at the PSLRB because it was running a food-safety campaign.

[324] It is difficult to separate food safety from an inspector. The whole purpose of the inspectors' job is to ensure that to the best of their ability, food in Canada is safe. It would be difficult for someone or anyone to come forward and be against food-safety regulations that are meant to ensure the safety of the food supply and the health of Canadians.

[325] It is also difficult for it not to be front and centre for the Alliance, which represents inspectors responsible for food safety, when it represents an employee who has been terminated for not following food-safety protocols. However, this is one of the interests set out in *Sayeed*, at para. 39, quoting *Ouellet v. Luce St-Georges*, 2009 PSLRB 107 at para. 39, as follows:

> *[39] In short, the bargaining agent's obligation is to carry out its duty of representation in a reasonable manner, taking into account all the related facts, investigating the situation, weighing the conflicting interests of the employee, drawing considered conclusions as to the potential outcomes of the grievance and then informing the employee of its decision on whether to pursue the grievance.*

[326] The evidence before me was that the food-safety campaign and food safety generically and in the abstract were not determinative in the decision to not represent the complainant at the PSLRB. However, if it did come into play, the Alliance was certainly required to assess it as part of the process. When representing employees in grievances, it is not uncommon for them to have come into conflict with other members of the same bargaining unit and other members of the bargaining agent. It is the nature of the workplace and the unionized work environment.

D. The allegation that the investigation was a set-up and witch-hunt

[327] In the documents produced that were contemporaneous with the events at issue, the complainant often suggested that the Anper investigation was a set-up or witch-hunt. He made that statement in front of me as well. He also suggested that in reality, CFIA management instigated the investigation, and Great Lakes was merely

used as a puppet to allow the employer to carry out the investigation. There is no evidence of this.

[328] As I stated earlier about the potential evidence of unknown witnesses and the evidence of Messrs. E and F and Ms. C, if there was any basis to the complainant's allegations, I would have thought that by the time the hearing before me was in progress in 2018 and 2019, some evidence of a set-up or that Great Lakes was used as a puppet would have been brought before me. Nothing was presented other than the complainant's allegations.

[329] With respect to the suggestion of a set-up or witch-hunt by the employer, again, there was no evidence of it. Again, if there was any evidence, I would have thought that by the time this matter came before me, there would have been something to produce. And again, there was nothing but the complainant's allegations.

[330] Repeatedly in his testimony, the complainant often answered a question put to him by stating that the Anper investigation and the final report were biased. He confirmed that he was aware that Ms. Pereira did not work for the CFIA or for Great Lakes. However, he suggested that she was biased because she was promised future work, which he stated is reflected in emails. There was absolutely no evidence that Ms. Pereira was biased or that the CFIA promised her future work.

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

(The Order appears on the next page)

VII. Order

[332] The MOA entered into between the complainant, the CFIA, and the Alliance, marked as Exhibits C-6 and R-3, tab 83, is sealed.

[333] Exhibit R-3, tabs 24, 33, 34, 37, 39, 40, 41, 45, 48, 53, 55, 61, 62, 63, 65, 66, 67, 71, 77, 78, and 79, shall be sealed.

[334] The complaint is dismissed.

August 27, 2020.

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