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



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

BETWEEN

DENVER MARRATY

Grievor

and

**DEPUTY HEAD
(Department of Fisheries and Oceans)**

Respondent

Indexed as
Marraty v. Deputy Head (Department of Fisheries and Oceans)

In the matter of individual grievances referred to adjudication

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

For the Grievor: Leslie Robertson, Public Service Alliance of Canada

For the Respondent: Stefan Kimpton, counsel

Heard at Vancouver, British Columbia,
December 3 to 6, 2019,
and via videoconference, April 12 to 14, 2021.

REASONS FOR DECISION

I. Individual grievances referred to adjudication

[1] Denver Marraty (“the grievor”) was employed by the Treasury Board (TB or “the employer”) and worked for Fisheries and Oceans Canada (DFO) as a detachment supervisor in the Program and Administrative Services group at the PM-05 level. He was the detachment supervisor of the Aquaculture unit in Campbell River, British Columbia, in the Conservation and Protection Branch (C&P) of the DFO’s Pacific region.

[2] By letter dated February 15, 2016, his reliability status was suspended effective that day. By letter dated February 16, 2016 (“the suspension letter”), he was suspended from his position, effective that day. By letter dated July 5, 2016 (“the termination letter”), received by him on July 7, 2016, he was terminated from his position, effective February 16, 2016. The termination letter was under the name of the regional director general for DFO’s Pacific region, Rebecca Reid, the relevant portions of which state as follows:

...

This letter is a follow up to the disciplinary hearing that took place on June 10, 2016 concerning acts of misconduct including contravention of the Monitoring Letter you received on March 23, 2015 and indications that you were not forthright during the Departmental Security Office investigation process. This meeting was held in the presence of your union representative, Tom Hopkins.

After careful consideration of all of the facts and documentation before me, as well as the presentation you made at the disciplinary hearing, I have concluded that by not returning all government assets to the workplace as directed and by not being forthright during the investigation process, you were in breach of the Monitoring Letter of March 23, 2015 and both the Public Service Values and Ethics Code for the Public Service and the Fisheries and Oceans Canada, Values and Ethics Code as they relate to the values of Integrity, Stewardship and the principle of Workplace Leadership. It is therefore my opinion that these actions constitute serious misconduct which has irrevocably broken the bond of trust that must exist in an employment relationship.

In reaching this conclusion, I have considered a number of mitigating factors which include your length of service with the Department, your previous work history, and the personal difficulties which you presented through the investigation with respect to your personal and financial situation. In addition, I have

taken into consideration the apology you provided at the hearing and the rehabilitative steps that you have taken.

However, your actions and behavior conflict with the higher standard of trust, integrity, accountability and judgement that you must hold both as a Peace Officer and Detachment Supervisor. In taking such actions, you have compromised not only your credibility as a supervisor but in my opinion, negatively impacted your ability to perform any other role within the Department.

Consequently, pursuant to the authority conferred upon me under paragraph 12(1) (c) of the Financial Administration Act, you are hereby advised that your employment with Fisheries and Oceans Canada is terminated. This termination is retroactive to the date on which you were administratively suspended (February 16, 2016). In accordance with Article 208 of the Public Service Labour Relations Act and your collective agreement, you have the right to grieve this decision.

...

[Sic throughout]

[3] By letter dated July 6, 2016, the grievor's reliability status was revoked, retroactive to the date it was suspended, February 15, 2016.

[4] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* and the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2) 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").

[5] On March 3, 2016, the grievor grieved the indefinite administrative suspension without pay. On July 7, 2016, he grieved the termination of his employment as well as the revocation of his reliability status. All three grievances were referred to the Board for adjudication.

[6] The matter was heard by me in person in Vancouver, B.C., from December 3 to 6, 2019, and due to the COVID-19 pandemic, it continued and was completed by videoconference between April 12 and 14, 2021.

II. Summary of the evidence

A. Background

[7] For the purpose of understanding these reasons, the following are descriptions of some of the items that are discussed but that are likely not well known in the lexicon of the public:

- scope or rifle scope: is an optical device that is attached to the top of a firearm, in this case both rifles and shotguns, which both magnifies and aligns the target for the shooter;
- rings: are used to attach a scope to a firearm, and different scopes require different rings;
- bipod: is an item attached to the firearm, on the barrel, which looks like two legs, and is used to steady the weapon, to aim and fire it; different bipods attach to different weapons;
- boresighter: is a tool used to align the scope with the end of the barrel; in short, to allow the projectile from the weapon to hit what the shooter was looking at through the scope; and
- range bag: is a hold-all or tote bag that carries weapons and other related equipment to and from the shooting range.

[8] At the time of the hearing, and since September of 2015, Ms. Reid was the DFO's director general for the Pacific region. She testified that she is responsible for all operations in that region, which encompasses B.C. and the Yukon. Approximately 1800 people report to her either directly or indirectly.

[9] At the time of the hearing, Brian Atagi was retired. From 2010 until his retirement, and at the time relevant to the matters at issue in these grievances, he was the chief of aquaculture, C&P branch, in the DFO's Pacific region. At the time relevant to the matters at issue in these grievances, the grievor reported directly to him.

[10] At the time of the hearing, Sean Cooper was the director of corporate services at the National Security and Intelligence Review Agency. At the time relevant to the matters at issue in these grievances, he was a senior manager in the Safety and Security Division of the DFO ("corporate security") and was the departmental security officer (DSO).

[11] At the time of the hearing, and at the time relevant to the matters at issue in these grievances, Gregory Plummer was a field supervisor with the C&P branch in the Aquaculture program in the DFO's Pacific region and was a registered firearms

instructor. At the time relevant to the matters at issue in these grievances, he reported to the grievor and the Aquaculture unit's firearms officer.

[12] At the time of the hearing, and at the time relevant to the matters at issue in these grievances, Neil Jensen was a fisheries officer and a senior compliance program officer. As of the hearing, he had been a fisheries officer for 26 years, and since 2011, he had been with the Aquaculture unit in the DFO's Pacific region. At the time relevant to the matters at issue in these grievances, he reported to the grievor.

[13] At the time of the hearing, and since December 31, 1999, Robert Martimolich was retired from the DFO. He started his career with the DFO in June of 1978. During his career, he was a registered firearms officer and had trained as a firearms instructor. During the latter part of his career, he was the director of the C&P branch.

[14] At the time of the hearing, and since December 31, 2006, Terry Tebb was retired from the DFO. He joined the federal public service in 1980 and the DFO in 1982 as a senior financial officer. From 1990 to his retirement, he was the regional director general of corporate services for the DFO's Pacific region and worked out of Vancouver.

[15] At the time relevant to the facts that gave rise to the grievances, Bonnie Kurtis was the regional leader of Labour Relations (LR). She did not testify.

[16] The grievor joined the DFO in 1989 as a fisheries officer. In June of 1995, he deployed to Prince Rupert, B.C., and joined the Pacific region's Special Investigations Unit (SIU). He testified that he was promoted several times over the years, including as a field supervisor and detachment supervisor in Prince Rupert.

[17] The evidence disclosed that in or about 2009, aquaculture was determined to be a fishery, and the DFO was tasked with establishing a program for it. Its Pacific region's aquaculture program was to be based out of Campbell River, B.C., and to be part of the C&P branch. The grievor testified that in September of 2010, he was deployed from Prince Rupert to Campbell River as the detachment supervisor for the Pacific region's Aquaculture unit. He stated that it was part of his job duties to participate in determining what the unit and the program would look like. The Campbell River detachment operated out of an office and a warehouse that were in two

separate buildings in two separate locations, the office being in the city, and the warehouse being by the airport.

[18] Entered into evidence was a copy of the generic work description for a PM-05 C&P supervisor, which Mr. Atagi identified as being for the grievor's position at the time of the events that give rise to these grievances.

[19] The grievor testified that a large budget was allocated for the fit-up of the program. He said that Messrs. Atagi and Jensen were in Nanaimo, B.C. and that he was based out of Campbell River. Entered into evidence were several documents related to the purchase of equipment, including promotional material for products, bills, account statements, receipts, expenditure reports, inventory logs, and forecast spreadsheets. Much of the purchasing for the fit-up was done by the grievor and charged to his Government of Canada acquisition card ("GAC").

[20] The GAC is a credit card issued in an employee's name; however, it is for spending required for work-related purchases, for example, the rental of a vehicle and the purchase of gasoline for that vehicle. The precise process for the payment of GAC purchases was not made clear at the hearing. I have assumed that either the grievor paid the GAC and was reimbursed by the employer once he had submitted the receipts for purchases he made or that he submitted the receipts and the employer paid them.

B. The February 21, 2014, investigation report, February 2015 discipline, and March 23, 2015, letter of expectations

[21] Entered into evidence was a copy of an investigation report dated February 21, 2014 ("the 2014 investigation report"), without the appendices. It was the culmination of an investigation ("the 2014 investigation") into allegations of financial malfeasance by the grievor, which were identified as follows:

...

It was alleged that he [the grievor] purchased a number of items using his Government of Canada Acquisition Card for personal use including several purchases of fuel between January 2012 and November 2013.

*a) Specifically, it was alleged that Fishery Officer Marraty:
did not act with integrity*

*b) did not ensure that his transactions, including purchasing,
could withstand scrutiny at all times:*

- c) did not demonstrate the highest standard of observance of the laws;*
- d) did not exemplify DFO organizational values in his decision making and actions;*
- e) used his government issued credit card for purposes other than official DFO business use;*
- f) did not act in such a way as to maintain his employer's trust;*

...

[22] The summary of the 2014 investigation report made the following findings:

- that the grievor admitted to purchasing various items for his own personal use which at a minimum included: shell casing, bullets and printer ink cartridges;*
- that the grievor admitted to placing government purchased fuel in his personal vehicle on several occasions;*
- that the grievor admitted to using other government provided items, for his own personal use indicating that this was common practice with many staff;*
- that the investigation team believed that the grievor:*
 - purchased, with employer funds, certain things for his own personal use;*
 - purposely misrepresented the purchase of some items;*
 - purchased an item for himself which he later gifted to another officer;*
 - purchased certain items for personal use and subsequently returned them when he learned of the investigation;*
 - may have purchased other items for personal use but it was not evidence in the records available;*
 - lied during the investigation; and,*
 - attributed his actions to financial, personal and workplace stress;*

[23] Entered into evidence as part of the 2014 investigation report was an undated, unsigned letter that appeared to be from the grievor with respect to the investigation. At the end of the letter, the grievor wrote as follows:

...

I would like to apologize to all involved in this investigation and to the people whose trust I have taken advantage of, it was never my intent to hurt or cause harm in any way to anyone. I did not intend to disrespect or to embarrass the Department that I have faithfully

served for better than 24 years. As indicated during the investigation, this relocation to Campbell River has been very stressful and financially taxing for my family and me.

...

My entire career has been based on honesty, integrity and the willingness to serve the people of Canada; my actions do not reflect the values I was brought up with and guilt I feel daily is immense. I am truly ashamed of the behaviour I have demonstrated. I am hopeful that given the opportunity, I could rebuild your trust and continue to serve the Department in a positive, respectful and beneficial way.

...

I appreciate I made some very poor choices, and that the stress I had been experiencing can in no way shoulder the entire blame of my actions. There has not been a day over the past year that i [sic] have not thought about my inappropriate behavior and wished that I could reverse what I had done. The things I have done are constantly on my mind and I can only say that i will work diligently to carry out the expectations of the Code.

...

[24] On February 18, 2015, the grievor was provided with a letter of discipline (“the 2015 discipline”), the relevant portions of which stated as follows:

...

This letter is a follow-up to the disciplinary hearing that took place on July 16, 2014 concerning acts of misconduct including personal use of your government issued MasterCard and theft of gasoline.

Firstly, I recognize that there has been a considerable delay in rendering my decision, however, given the seriousness of the misconduct various stakeholders needed to be consulted including Corporate Security and Corporate Labour Relations among others, thereby delaying my decision. However, after careful consideration of all of the facts and documentation before me, as well as the presentation you made at the disciplinary hearing, I have concluded that in taking such actions you were in breach of DFO policies and procedures and therefore I must proceed in rendering discipline.

These breaches include:

- Breach of the Values and Ethics Code for the Public Service and the Fisheries and Oceans Canada, Values and Ethics Code, including , but not limited to Part 10, Fishery Officer Conduct, in relation to the Code of Conduct Investigation which concluded that you had falsified purchases, that you were deceitful in trying to return some items once the investigation had begun,*

and that you lied during the early parts of the investigation process.

- Breach of the Financial Administration Act in relation to misuse of your authorities and powers with regard to signing authority, purchasing and use of your Government issued MasterCard.

After careful deliberation, I have concluded that your actions constituted serious misconduct and have strained the bond of trust that must exist in an employment relationship. In determining the appropriate disciplinary measure, I have considered both the mitigating and aggravating circumstances of your situation.

I have considered a number of mitigating factors some of which include your length of service with the Department, your previous work history and disciplinary free record, as well as the sincere remorse that you have exhibited for your actions. Also, I have taken into consideration the considerable stress that you have experienced due to your personal circumstances and the rehabilitative steps that you have taken to self-correct.

Some of the aggravating factors that I have considered include that by contravening the above-mentioned codes of conduct, you have not demonstrated the higher standard of trust, integrity, and accountability that you must be held to both as a Peace Officer and senior manager of the Department. Further, in taking such actions you have compromised not only your credibility as a supervisor but as a potential witness in enforcement proceedings. I have also considered as aggravating factors that initially you were not forthcoming or truthful and that you deliberately tried to cover-up your actions.

Accordingly, I have decided to suspend you for twenty (20) days without pay.

...

As per Article 17.05 of your Collective Agreement, a copy of this letter will be placed on your personal file for a period of two (2) years and in accordance with your collective agreement you have the right to grieve this decision.

...

[25] The grievor did not grieve the 2015 discipline.

[26] Entered into evidence was a letter dated March 23, 2015, from Mr. Atagi to the grievor ("the March 23 letter"), sometimes referred to in the documentary evidence as "the letter of expectations" or "the monitoring letter", which states as follows:

...

This letter is a follow up to your disciplinary meeting with the Regional Director General on February 18, 2015. This will

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establish the monitoring and review provisions that will be in place when you return to work March 19, 2015.

Acting Assignments

The opportunity to act in a PM-06 or other higher level will not be provided until such time that it is determined that you have maintained the standard of credibility, trust, integrity and accountability expected of you as a Peace Officer and senior manager of the Department.

Acquisition Card

All expenditures must be pre-approved in writing by the Chief or designate. This card must be of the standard Government of Canada Card format and not be a non-descriptive covert card.

Vehicle fuel purchases with the Vehicle Expenditure card (ARI):

A copy of each purchase receipt and corresponding vehicle log entry for the date expenditure(s) is to be emailed to the Chief of designate.

Vessel Fuel purchases

You are not authorized to purchase any vessel fuel.

As you would be travelling with other officers this should not be required.

Other Fuel Purchases

This is not authorized and should not be an operational requirement for your duties.

Directing Purchases Through Staff

When directing purchases through staff this must be done in writing and copied to the Chief or designate.

Government Equipment or Supplies

No Government Equipment and supplies are to be stored at your personal residence.

Personal issue items may be stored in your gear locker located at the office or warehouse.

All other items including spare or unissued equipment are to be stored in the office secure room or as directed by the Chief or designate.

These expectations will remain in effect until such time a review of your performance indicates that you have re-established the expected standard of credibility, judgment and employer trust.

If you have any further questions or concerns please contact me.

...

C. The 2015 investigation

[27] Starting in the summer of 2015, a second investigation into allegations of financial malfeasance by the grievor took place (“the 2015 investigation”). It culminated in an investigation report entitled, “Final Administrative Investigation Report DFO-MPO-2015-08-628”, dated April 11, 2016, and authored by Mr. Cooper (“the 2016 investigation report”), with 15 appendices. The report, exclusive of the appendices, is 97 single-spaced pages in length, albeit included in those 97 pages are embedded emails and other documents. Including the appendices, it is 424 pages in length. Appendix “L” was removed from the report by the parties and did not form part of the exhibit entered at the hearing.

[28] On May 29, 2015, at 08:53, an email was sent by Ms. Kurtis, identified as the regional leader of LR, to Messrs. Atagi and Jensen (and another individual) about some alleged unaccounted-for purchases. On that same day, at 09:28, she again wrote to those same individuals, providing more information. While he was not specifically named, the email was about the grievor. At 12:35 that same day, Ms. Kurtis forwarded the earlier emails in an email to corporate security. The emails suggested that there might be missing equipment and that the grievor was responsible.

[29] The evidence disclosed that the suspicions set out in the May 29 emails sent by Ms. Kurtis arose out of a series of events that were summarized in a memo dated June 24, 2015, and written by Mr. Jensen. It stated as follows:

...

A new fisher officer was assigned to the Aquaculture Unit in Campbell River and her first day was May 25, 2015. Brian Atagi and I attended a detachment meeting in Campbell River that day with all members. Prior to leaving, I had a brief discussion with Field Supervisors Greg Plummer and Mike Ballard regarding making sure that the new officer was equipped with appropriate gear from the detachment inventory, including one of the spare compact Swarovski binoculars. All officers except Greg Plummer had received one of these binoculars in the past and there were supposed to be two extra in inventory.

On May 26, I received an email from Greg Plummer that there did not appear to be any extra binoculars. This was odd because Brian and I believed that a total of ten had been originally purchased by Denver Marraty, with eight of them issued. Greg Plummer had been originally issued one, but he had turned it back to Marraty. There should have been two spares. Brian spoke to Mike Ballard who confirmed that there were no spares to give to the new officer.

Due to uncertainty over how many Swarovski compact binoculars had originally been purchased, I informed Brian that I would check the GAC purchase records as I recalled seeing the receipt for the purchase during an earlier investigation.

On May 27, Greg Plummer informed me that he sent an email to Marraty asking that the binoculars that he had previously returned to Denver be issued to the new officer. Plummer did not receive a quick response from Marraty, which he noted as being unusual. Approximately a week or [sic] (Plummer would need to confirm the actual time), Marraty reportedly gave the new officer a compact Swarovski binocular.

On May 28, I began reviewing the GAC purchase records for Marraty... While reviewing the records from 2011-2013, I found purchase records for optics and looked at them to determine what the purchases contained. The first record I looked at was listed on the receipt (by Denver Marraty) as a "range finder" and was a Swarovski AVR 4-12x50 model, purchased for \$940 (pre-tax) from River Sportsman in Campbell River. The range finder label seemed to make sense as there had been equipment purchased in that time period for establishing a new rifle/shotgun training program and outfitting for marine mammal dispatch (rifle and shotgun optics/upgrades, equipment, training materials, ammunition, etc). However, a Google query of the model description found that it was not a range finder, but rather a high-end rifle scope. The detachment has two rifles, both of which were equipped with a completely different make and type of rifle scope (Leupold VX-3 2.5-8x36, \$540 each, purchased Sept. 21/11 by Marraty). I was not aware of such a rifle scope in the detachment. This discovery prompted me to carefully review all records, including the ones that had been reviewed during Marraty's previous investigation. Several purchases were noted for follow-up. With Greg Plummer's assistance as a supervisor and firearms instructor, I was able to verify several items and determine that they were not present and accounted for in the detachment inventory. The remaining items listed below were not able to be verified or accounted for in storage or with any of the staff (excluding Marraty). Given Marraty's previous history/investigation outcome, I felt there was cause for concern and informed Brian Atagi of my findings.

...

Items of Concern:

- 1. Swarovski AVR 4-12x50 (rifle scope):** ... indentified [sic] as a "range finder" ... purchased Nov. 17/11 ... for \$940 (pre tax amount)....
- 2. Leupold VX-3 2.5-8x36 rifle scope:** Purchased October 21/11 ... for \$540 (pre-tax)
- 3. Swarovski 10x42 EL WR (binoculars):** Identified as "surveillance equipment" ... purchased Feb 10/12... for \$2850 (pre-tax).

4. Leupold Rogue compact 10x25 binoculars (x4): Purchased December 12/12 for 559.92 (approx. 139.98/each, pre-tax).

5. Harris Mod.25C (bipod) and a boresighter: Purchased Nov. 5/11 ... for 109.99 and 79.99 (pre-tax).

...

[Emphasis in the original]

[30] On August 14, 2015, Mr. Cooper was sent a copy of Mr. Jensen's June 24, 2015, memo. On August 20, 2015, an investigation into alleged financial malfeasance was authorized by terms of reference, to be conducted by Mr. Cooper and one other individual. The issues identified to be investigated were listed as follows:

...

a Has Mr. Marraty been involved in any financial malfeasance, in contravention of, but not limited to, the Policy on Government Security, the Values and Ethics Code for the Public Service, and the Financial Administration Act. The investigation may include, but is not limited to:

i. A review of relevant documentation, including but not limited to, financial statements; and,

ii. Security interview(s).

b. Is Mr. Marraty in breach of any of the conditions of his March 23, 2015 disciplinary letter.

...

[31] The grievor was informed of the investigation on August 20, 2015, by letter dated that same day. On August 28, 2015, he was advised that he was restricted to non-operational administrative duties, was to return his sidearm, and was restricted from wearing his uniform. That same day, the grievor emailed Mr. Atagi, stating as follows:

...

As you are aware, I am being investigated for alleged financial maleficence, as per the letter I received, it indicates that I may not have complied with the letter you had given me dated March 23/2015, at the time you delivered the letter you asked that I send you a scanned copy of any purchases and that I send you an email or call prior to purchase, I believe i had been following that direction. The last condition on page 2 advises that spare or unused equipment be stored in the office secure room, as you are aware there is no room for an equipment locker in the secure room, given the space required for the Officers lockers, gun vaults, ammunition and radio storage. I have had a cabinet in my office

since the beginning of the program, the cabinet has been utilized for the storage of spare or unissued equipment, the lock on the cabinet is keyed the same as several other locks we use, and all Officers have access to the locker, it was the best i could do given the space we have available. You have never had an issue with Officers field testing equipment to become familiar with there operation, and I believe this has been a common practice within the Pacific Region for a very long time. If there are questions about specific pieces of equipment I wish you would have asked before venturing into an investigation. We have discussed my actions of the past and I am truly sorry for the things that I did, I have been punished both internally and externally for those actions and have tried very hard since the investigation started in 2013 to mend the relationships and move forward. I understand that a few may not be satisfied with the RDH's decision, and can only akin this latest investigation to a witch hunt. I feel that this latest letter and investigation has all the ear marks of harassment, given the timing of the investigation and knowing full well that a disciplinary letter on file, stays on file for a period of two year, and that any subsequent findings of misconduct could result in dismissal.

...

On 14/05/09 I received a copy of the fact finding investigation into my misconduct, in the report it states that an extensive review of records covering fiscal year 2011-12 to the present, a number of suspicious transactions were found. The earliest suspect purchase found was in September 2012 and the most recent one was in November 2013, as you know the investigation was concluded and I have been punished form my actions. As the most recent letter only states that recent irregularities regarding the Campbell River detachments inventory of material prompted a review. I can only ask that if you have a question about a piece of equipment please ask, as you know at the start up of the program a tremendous amount of equipment was purchased, I was asked to fit up the detachment with the equipment that may be required going forward, I did my best to ensure the program was provided with the best equipment available for the funds we had.

...

[Sic throughout]

[32] On August 31, 2015, Mr. Plummer sent Mr. Cooper an email in response to an email sent by Mr. Cooper to him about certain pieces of equipment. The August 31, 2015, email had Mr. Plummer's answers to the August 20, 2015, email embedded in the original. The answered email is as follows (Mr. Plummer's embedded answers are in bold):

...

As discussed, can you please verify inventory at the Campbell River detachment to confirm whether the following items are still missing:

- *Swarovski AVR 4-12x50 (rifle scope); **Never seen or located***
- *Leupold VX-3 2.5-8x36 rifle scope; **never seen or located (we have 2 mounted on our work rifles)***
- *Swarovski 10x42 EL WR (binoculars; **never seen or located***
- *Leupold Rogue compact 10x25 binoculars (x4); **and 1 pair was issued to [name omitted], others not located***
- *Harris Mod.25C (bipod) and a boresighter. **Never seen or located. We have 2 harris [sic] bipods on our work rifles.***

...

[Emphasis added]

[33] An interview with the grievor was scheduled for September 16, 2015, and took place that day. Mr. Cooper carried out the interview, and the grievor was accompanied by a union representative. A copy of the audio of the interview was entered into evidence in DVD format. The relevant portions of the grievor's interview are set out in the 2016 investigation report between pages 006 and 021, paragraphs 1.0 through 1.45. The following are paragraphs related to the grievor's interview by Mr. Cooper on September 16, 2015:

1.7. ... the writer noted that two Leupold scopes and two Harris bipods were purchased for the fit-up of the rifles; to which Mr. Marraty responded that he had purchased "more than that."

...

1.8. ... The writer reviewed the purchase of the Swarovski AVR 4-12x50 rifle scope ["the Swarovski scope"] Mr. Marraty confirmed that he had purchased this scope. When asked why he had purchased the scope, if the rifles already had scopes on them, Mr. Marraty advised that he had purchased "different types of optics for different types of jobs." Mr. Marraty explained that further to the discussion of the dispatch of marine mammals and the creation/building of a course, there was discourse on what type of rifles should be purchased as there were ballistic concerns and the .308 round not being enough. As a result, Mr. Marraty purchased rifled barrels for the 12 gauges. Mr. Marraty also noted that there was discussion on what optics should be used on the 12 gauges, so he purchased a Leupold (VX-3 2.5-8x36), and a NightForce rifle scope that could be adapted to night vision if required. Mr. Marraty concluded that he purchased "different optics for different jobs" "and that's what I purchased."

...

1.9. When asked if he had discussed any of his firearm accessory purchases with his firearms officer Mr. Greg Plummer, Mr. Marraty stated “no, I was a firearms instructor for many years”, that he “grew up around it. Hunted my whole life ... and I know there are different tools for different jobs ... and I purchased them.”

...

1.10. With reference to the \$1052.80 Swarovski scope noted above, the writer asked Mr. Marraty why he classified said purchase as a range finder rather than a rifle scope in his expense claim. The writer noted that this had been an issue identified in the previous investigation... When asked if he had discussed this purchase with Mr. Brian Atagi, Mr. Marraty stated “No. Nor did he ask any questions about anything I purchased.”...

1.11. When asked for the location of the Swarovski scope, Mr. Marraty responded that it was in the locker in his office... Mr. Marraty stated that further to the review of the firearms program, he purchased various scopes and bipods that do various things, but that they were never put on the rifles due to a lack of direction and policy: which stopped the review of the program. Mr. Marraty advised that the extra unissued Swarovski, Leupold and Nightforce scopes are in the locker in his office, while the EOTech scopes are on the rifled barrel 12 gages in the firearms locker. According to Mr. Marraty, the extra scopes are in the locker in his office, as there is not enough space in the secure room at the Campbell River office to store this equipment. Mr. Marraty advised that the locker in his office has been used by him for spare unissued equipment for this reason since 2011. Mr. Marraty advised that staff has access to the locker in his office, and that his office is keyed the same for ease of access... (35:33 mins.)

...

1.12. When asked if the Swarovski rifle scope was in the detachment’s inventory, Mr. Marraty stated “yeah.” The writer reviewed the inventory with Mr. Marraty, and noted that the scope only appeared on the inventory a few months before this interview (in 2015), and that it had never been on the inventory before. Mr. Marraty confirmed this fact. When asked by the writer why this was the case, Mr. Marraty advised that when he got back from his suspension, he reviewed emails from April 2015 which stated the importance of a current and up-to-date inventory. Mr. Marraty noted that a lot of equipment was purchased during the fit-up of the detachment, and due to workloads he had not previously had the time to complete the inventory... With regard to his purchases, Mr. Marraty stated that “I didn’t do it maliciously, it was a mistake ... and it’s nothing more than that.”

...

1.13. Mr. Marraty advised the writer he had personally field-tested the above noted scopes, had attached them to his personal rifle, and had taken them to the range.

...

1.14. ... When asked by he had purchased a third Leupold rifle scope, when there were already two mounted on the two rifles, Mr. Marraty advised that the third scope could be used on the three 12 gauge shotguns instead of the holographic EOTech scope, given that they had rifled barrels and "we had no idea what we would be into." Mr. Marraty advised he bought three Leupold scope in order to provide options for the three shotguns. Mr. Marraty added he bought the other two rifles scopes as options for the rifles. Mr. Marraty noted that the extra Leupold scope is in the cabinet in his office.

...

1.15. The writer reviewed Mr. Marraty's purchase of the Swarovski 10x42 EL WR binoculars. Mr. Marraty confirmed the purchase of said binoculars, and described them as "range finding" binoculars that were new to the market and were very expensive. When asked why he had indicated on the bill that the item purchased was surveillance equipment instead of binoculars, Mr. Marraty stated "correct" that "that was what they were purchased for."... When asked if the binoculars had been used by staff, Mr. Marraty stated "nope, they were never issued out because that program we never went forward with that marine mammal stuff ... The idea of the range finding binoculars, as you know looking over water it's pretty hard to tell 100 yards or if it's 200 yards sometimes." Mr. Marraty went to explain that it was the intent to use the binoculars as part of said program, and given that they were so expensive he did not want to lent them out and get them broken given that staff had already been issued with 10x42 binoculars and the boats already have image stabilizer binoculars.

...

1.16. When advised by the writer that staff were unaware of the presence of the Swarovski 10x42 EL WR binoculars within their available inventory of equipment to be issued, Mr. Marraty advised that this was incorrect, as he had told Mr. Plummer about the binoculars when he had joked that grandma had purchased them for him. According to Mr. Marraty he had often referred to the Queen as grandma over the years.

...

1.17. Mr. Marraty advised that he has personally used the Swarovski binoculars and has field tested them. Mr. Marraty advised that he has taken them home, sat on the park bench ... When asked by the writer when did he return said binoculars to the office, Mr. Marraty advised that they were returned after his suspension.

...

1.18. ... Mr. Marraty also stated that after his suspension, he returned all the government equipment he had at his home to the office. Moreover, Mr. Marraty stated that "I made the vow of I am

[expletive] if am ever going to touch another piece of government equipment if I don't need to."

...

1.22. The writer asked Mr. Marraty why he purchased five Harris bipods. According to Mr. Marraty, some of the bipods are of various sizes so that they could be used on different equipment. Mr. Marraty added that some swiveled and could be attached to equipment, depending on the requirement; they could do different things.

...

1.23. Mr. Marraty was then asked by the writer about the purchase of the bore sighter, and why it was purchased. According to Mr. Marraty, the bore sighter was purchased for when one scope was swapped off a rifle for another; you need the scope in order to set it up for the rifle before you go to the range.

...

1.38. The writer reviewed with Mr. Marraty the March 23, 2015 letter of expectations he received ... The writer noted that in the last paragraph of said letter, Mr. Marraty was directed that no government equipment or supplies are to be stored at your personal residence, and that personal issue items may be stored in the gear locker located at the office or warehouse. Further, Mr. Marraty was advised that all other items, including spare or unissued equipment, are to be stored in the office secure room, or as directed by the Chief or designate. Given the above noted, when asked if there was any government equipment at his residence at the time of the interview, Mr. Marraty stated "yes". When asked what he had at his residence, Mr. Marraty stated he had "pocket knives", "leathermans" and other government equipment which had been issued to him over his 26 year career. The writer explained that he should create a list of what he had at home, and provide said list to his management for their review; and his management would subsequently identify what he could keep at his residence, as per the direction of the March 23, 2015, letter of expectations.

...

1.39. ... when asked if all unused or spare equipment was stored in the office secure room, or as designated by the Chief or designate, Mr. Marraty stated "no."

...

1.40. Mr. Marraty noted that he and Mr. Greg Plummer do not get along; and never have.

...

[Sic throughout]

[34] In addition to the grievor being interviewed, Messrs. Atagi, Jensen, and Plummer were also interviewed.

[35] At the same time that the grievor was being interviewed, a stand-alone locked steel cabinet in his office was being opened and items contained in it inventoried by Mr. Jensen, in the presence of Mr. Plummer. Mr. Jensen took photos of the cabinet and what he found during the course of his inspection and inventorying of it on that day, copies of which were entered into evidence.

[36] He also made notes during the course of his participation in the events that led up to and included the investigation of the grievor in the spring and summer of 2015. Those notes were entered into evidence.

[37] On September 16, 2015, Mr. Plummer sent Mr. Cooper an email, at 08:53. At 11:39, Mr. Jensen sent Mr. Cooper an email, copied to Mr. Plummer. The emails stated the following:

[Mr. Plummer to Mr. Cooper, at 08:53:]

...

Items located at warehouse on Monday September 14, 2015:

- 1. 2 soft sided gun cases. I was not aware that we had these items and there is no need for them since we have 4 hard gun cases that are appropriate for our use. These items were not at the warehouse prior to April of 2015.*
- 2. 8 MTM case guard shell holders. These items are for reloading purposes which our policies prohibit the use of reloaded ammunition.*
- 3. 1 Cabela's deluxe cot and bedroll. We have no use for these items as they are typically used for camping, which we do not do. All of our accommodations (Gov't) that we utilize are fully furnished. These items have showed up at the warehouse in the last 4-5 months*

Another item not discussed yesterday was a starlight hard sided gun case that showed up in our secure room in the past 8-10 months. The issue with the case is that we did not know it existed until it appeared in the secure room, the foam padded inserts have been cut out to fit a scoped rifle, our rifles (with scopes) do not fit the cutout in the foam. I am cc'ing Neil on this e-mail so he can review MC purchases to determine when these items were purchased and by whom.

...

[Mr. Jensen to Mr. Cooper, cc to Mr. Plummer, at 11:39:]

Swarovski rifle scope found, well used and has signs of being mounted on a rifle previously.

Swarovski Binos (10x42) found, well used.

Leupold rifle scope found, well used and has signs of being previously mounted, is stainless steel colour (DFO rifles are black with black scopes, but DM has a personal one in SS).

Found a Harris 25C bipod and a BR bipod. Both show signs of having been mounted on a rifle and used. One bipod remains missing.

Only one Leupold Rogue mini binos found, one missing still.

Found a Nightforce rifle scope, model NX5, 5.5-22 power x 56mm, made in Japan, high end scope, serial number W 19027. Not expected, will have to review GAC records to find out more. Also found a set of Nightforce rings and mounting base. Signs of having been mounted and used previously. This scope is about \$2k cost online.

Of note, all items were found in one locker, apparently hidden behind other equipment at the back of the cabinet. Items had to be removed to locate the gear in question and the items were not readily accessible or obvious.

Greg [Mr. Plummer] confirms that none of the rifle scopes have been mounted on the DFO rifles.

Two extra sleeping bags were found in the cabinet, despite all officers and DM having issued ones. They may have been used.

...

[Sic throughout]

[38] With respect to the items found in the steel cabinet in the grievor's office, the grievor stated that they were there and that anyone had access to them. Mr. Plummer testified that there was a spare locker and a shelf in the secure room that could have been used to store the items found in the steel cabinet in the grievor's office.

[39] On September 17, 2015, at 11:42, the grievor emailed Messrs. Atagi and Cooper, stating as follows:

...

During my interview yesterday I was asked if I still had any government purchased equipment at my residence, I explained that I had a number of items that would include but not limited too (below). Sean explained that regardless of how old or what the equipment was, that I would still be out of compliance with my return to work letter dated 15/03/23. I was advised to gather up all items and make them available for your review and determination. Sean explained, that if an old RC holder said I could

keep something (personal issued items) as it was issued as personal gear then that was fine. As you can appreciate after 25 years, I have accumulated many items. As the pile is large I am requesting we met to review the items.

I recently borrowed a cordless drill from the warehouse to fix my fence. I will return that to the warehouse today.

- uniforms kit
- old floater suite [sic]
- old rubber boots
- assortment of knives/Leatherman
- sleeping bag
- dry bag
- Thermal underwear
- lunch kit/Thermos
- garment bag
- various hats/gloves
- flashlights
- duty/field boots
- camping gear
- travel bags
- luggage
- battery charger

...

[Sic throughout]

[40] At 14:09 on September 17, 2015, the grievor again emailed Messrs. Atagi and Cooper and stated as follows:

...

After our meeting yesterday I had been thinking about all things purchased over the years and wanted to ensure I was open and honest about everything I could remember. During the fit up of the old warehouse (Boatland) I had ordered 3 small workbenches, one flat top bench and two benches with pegboard backs from Global Industrial Canada. Upon receipt of the benches it was apparent that they would not be suitable for our use, as they had press board tops and were rather small. I subsequently asked one of our Officers [name omitted] to build two large heavy duty work benches with aluminum tops. Within a few weeks of delivery I called global to inquire about returning them, however they were a sale item and had been discontinued. Shipping and restocking fee's

nearly exceeded the cost of the benches, I took them home, and have been using them in my garage. Knowing this was wrong, I immediately purchased 2 near identical items from Home Depot in Campbell River with my personal funds and returned the unopened boxes to the warehouse. Although I only replaced two, the value was comparable to the original three I had purchased as they were sale items. I can certainly make the benches available for return, and pick up the units I personally purchased if that is deemed appropriate. I understand that this investigation is based on truth and trust, and only want to be open and honest about all previous purchase.

...

[Sic throughout]

[41] Entered into evidence was an email dated September 22, 2015, from the grievor to Mr. Atagi, attaching a list of gear returned to the DFO's warehouse. The attachment states as follows:

Brian: As per your direction, I utilized two Rubbermaid tote boxes from the warehouse and packed up everything I could find.

Black/Gray MEC roller bag: issued to all C&P Aquaculture staff, this bag contains all my uniforms, both work and dress.

- *Black/blue cabala's jacket from SIU (2005?)*

Tote tub#1:

- *Black/green MEC backpack (SIU)*
- *Green 511 duty/range bag, containing Peltor tactical ear protection, gargoye eye protection (scratched lenses), hatch sg11 gloves, torn beyond repair) from SIU/firearms instructor/PDT days.*
- *2 pair old coveralls (flashes removed) not sure how old?*
- *Blue/black sea line zipper duffel, purchased in 2010, when I was traveling to and from Prince Rupert to Campbell River) for rubber boots, and floater suite.*
- *Brown leather belt, from SIU.*
- *Green C&P duffel bag (Regina) containing C&P ball caps.*
- *2 long sleeve instructor shirts, thermal underwear (Prince Rupert days)*
- *Small therma rest mattress pad, light weight sleeping bag (broken zipper) and bivey sack cover (GIS/SIU)*
- *Sea line back pack (green) SIU*
- *light weight North Face rain jacket/pants (SIU)*
- *North face Gore-Tex runners (SIU)*

- Stormteck rain pants (GIS/SIU)
- Danner hiking boots (GIS/SIU?)
- Red/black fleece jacket (SIU).

Tote Tub #2:

- Yellow vicking rubber boots (2010, my first trip out with the Provincial inspectors)
- Lowa duty boots and super feet insoles (2013?)
- Black MEC C&P shoulder/computer bag (Prince Rupert)
- Black C&P Aquaculture jacket
- Ice breaker Marino wool underwear
- Blue U/A poly propylene underwear
- Ball caps/long sleeve shirt
- Mustang floater jacket, and bib pants (Prince Rupert)
- 2 mustang life jackets (2010?)
- 2 range bags
- Brown luggage/suite bag, fall 2010 when I was traveling to and from PR to Van, I replaced my damaged personal luggage.

Blue insulated tote:

- Colman stove
- Colman coffee maker
- Coleman lantern
- Propane tree
- Bag shower
- 2 propane cylinders.
- This was all purchased in 2010-11 when we discussed purchasing the trailer for remote use. It was purchased in PR and moved down with me in 2011, the tote was for both a cooler and storage of the equipment. It has been buried in my garage since my relocation.

...

[Sic throughout]

[42] In response to the grievor's September 22, 2015, email and list, Mr. Atagi emailed Messrs. Cooper and Jensen that same day at 19:37, and again at 20:06, stating as follows:

...

[At 19:37:]

I do not recall approving camping cook gear (stove, propane, propane tree etc). The travel trailer was only discussed as a possibility to save money in Tofino and other Vancouver Is. Locations. I am very puzzled as to why they were purchased in Prince Rupert????

Besides a travel trailer would have a full kitchen. I am curious if any of this has been used.

I would have expected this type of equipment returned (he states it was for aquaculture) as per my letter. If I was aware of it I would have insisted.

...

[At 20:06:]

Actually thinking about it more... Travel trailers have showers and water heaters. Bag (solar) showers are not required.

...

[43] On September 23, 2015, at 16:05, Mr. Jensen emailed Mr. Cooper and copied Mr. Atagi with respect to the workbenches. He stated as follows:

...

I followed up on the workbenches that Denver reported to Brian in the below [September 17, 2015, at 11:12, email] and have attached the MRS report page and invoice for your reference. The three items were purchased July 25, 2012 and it appears that they have been at Denver's residence since they were purchased. I asked Greg Plummer if he knew anything about them and he was not aware of the items and did not recall seeing them at any time at the previous or current warehouses. He did recall seeing the items in Denver's garage on previous occasions, but was not aware that they were DFO property. At present, according to his email below, the workbenches are still at Denver's residence.

According to Greg, the two Home Depot (HD) workbenches that Denver claims to have purchased to replace the three Global ones were first observed relatively recently at the warehouse. When asked about them Denver allegedly claimed that they had been purchased some time ago and had been brought from the old "Boatland" warehouse (approx. 2012-13, leased previous to our current warehouse). They were in their original packaging and were not put together. Subsequently, staff built the two HD workbenches and placed them in the new secure exhibit locker. Brian and I were not aware the Denver had personally purchased the HD workbenches as replacements for the DFO purchased property had had taken and were not aware of their presence in the warehouse.

I am unsure as to what to do regarding the benches still at Denver's residence as they may be difficult to move and the ones he

purchased personally to replace them are now in use. I am contemplating directing him to bring the workbenches at his residence to the warehouse and remove the ones he personally purchased from the DFO property. I would probably need to see some proof of purchase to ensure the HD items are in fact his personal property. I would welcome any advice you or others may be able to provide me in this regard. In any event, the work benches were not disclosed before this email and were clearly a violation of his letter.

...

[Sic throughout]

[44] On October 14, 2015, at 16:42, Mr. Atagi emailed Mr. Cooper, stating as follows:

...

Just to update you, Neil and I had the opportunity to look at the blue tote Denver identified as containing the camping equipment.

All of the equipment identified on his detailed list for this tote was present. We did not take this opportunity to inspect the other totes due [sic] time.

Upon inspection it was evident that the following are in used condition:

Coleman propane tree

Coleman propane camp stove

Coleman camp coffee maker (goes on stove)

Coleman propane lamp.

...

[45] Entered into evidence was an email dated October 21, 2015, from Mr. Atagi to the grievor, the relevant portion of which stated as follows:

...

Further to your emails of September 17, 2015, which arose from the Administrative Investigation currently underway, I would like to meet with you tomorrow (Thursday, October 22, 2015) for a fact finding meeting to discuss the following:

- *The circumstances surrounding the purchase of camping equipment in Prince Rupert for aquaculture. Possible contraventions of the conditions outlined in the March 23, 2015 monitoring and review provisions letter*
- *The circumstances surrounding the cordless drill you admitted to borrowing in your email of September 17, 2015; and*
- *The issue of the 3 work tables that are still at your residence.*

...

[46] Entered into evidence was a set of notes for the October 22, 2015, fact-finding meeting (“the Oct. 22 notes”). At the meeting were Mr. Atagi, the grievor, and by phone, Ms. Kurtis. The notes were prepared by Ms. Kurtis, and Mr. Atagi stated that the grievor was given an opportunity to review and edit them. The relevant portions of the notes state as follows:

Brian: *Referenced the March 23, 2015 letter: provided Denver with a copy; and asked Denver’s what his understanding was of the contents of the letter. Start off by March 23, 2015 letter what was your understanding of letter*

Denver: *... He thought that “no government supplies stored at your residence” meant current stuff; Acquaculture stuff. He didn’t know that meant everything until Mr. Cooper advised him it mean everything from his 25 years of service. He came forward and supplied a list of all items at his residence and he returned them. As part of this process, he remembered that he had borrowed a drill. It was not his intention to store it at his house; he realized what he did and promptly returned it. He indicated he was not thinking, hasn’t been in a good head space and has been frustrated and upset.*

...

Brian: *Asked when Denver borrowed the drill?*

Denver: *Advised that he borrowed it after he came back from holidays around August 10, 2015 and returned it on August 17th.*

Brian: *Asked Denver if he thought about asking Brian prior to borrowing it.*

Denver: *No, he never really thought about it; historically it was generally the practice, “I won’t ask, I won’t tell.” What was acceptable during his 25 years of service is not acceptable now. He is aware of a sign out process and forms, but he had never seen one of the forms filled out before. He thought that borrowing the readily available one from the Detachment vs. Driving to obtain his was more convenient. He realized “[s**t]” I did something wrong and that’s why he brought it forward in his September email.*

...

Brian: *Asked what the circumstances were around the 3 benches.*

Denver: *Indicated that he can’t remember when he purchased them specifically; it was when they were fitting up the old warehouse which had no shelf space. He bought them from Global Industrial. He opened the boxes, and built them up at the new location and realized they were not suitable he called the company and was told that they were discontinued and that it would cost*

\$200 to \$300 to send them back. This is when he decided to take them home. When he realized that this was not right, he went to the Home Depot and purchased 2, the total of which was equivalent to the 3 that were purchased from Global Industry. (Again) He indicated that he build the 3 from Global and determined they were flimsy, so they ended up buying a cabinet. He noted that he should have called Brian and asked what he should do with them. It was an embarrassment so he went to home Depot and bought the 2 and brought them to the warehouse. He said, "Did I do wrong? Yes." He indicates that he should have piled them in the corner but he couldn't see spending good money returning them.

Brian: Asked when he purchased the Home Depot tables.

Denver: Indicated that it was when C&P was fitting up the Boatland warehouse. He indicated he didn't see any practical use for them and it would be a pain in the [a**] to put them back in the boxes given the state of the boxes when he took them out. It was a few weeks later that he bought the Home Depot ones ... They were purchased sometime between August and October 2012.

Brian: Asked what the circumstances were regarding the purchase of camping equipment.

Denver: Advised that at the time he was travelling back and forth between Campbell River and Prince Rupert; there was some discussion for funds to be set aside to purchase a trailer (this did not happen). He thought because there were plans to buy a trailer, they needed camping gear. He bought a big cooler; he bought the bare minimum; including a stove and coffee maker. When they were doing the start-up it was fast and furious. He then permanently transferred to Campbell River and that time the camping equipment lived in a storage locker for about a year.

Brian: Clarified that they were purchased in Prince Rupert and stayed with his stuff in Prince Rupert.

Bonnie: Asked Denver when they were purchased.

Denver: Indicated that it was sometime in late 2010 or early 011. He thought when he flew home, "if we're buying a trailer we are going to need some stuff." The camping equipment was purchased in Prince Rupert, got moved by the movers after having been in storage, and then got buried in his garage.

Denver: Stayed with your effects; purchased in PR, got moved by movers; went to storage about 11 months; went to your new house and it was buried in the tub in my garage.

Bonnie: Asked for clarification as to why if the Detachment needed the supplies, why it didn't make it to the Detachment. After the discussion with Mr. Cooper, he thought "yep, it's here, its got to go back."

Denver: Indicated that he had no intent to buy it for personal use. He has his own; he has guns and stuff for camping. The purchase of the trailer never materialized.

Bonnie: Asked if Denver had used the camping gear.

Denver: Said no, he has his own and when he has camped with co-workers, the last couple of times, they used the other person's equipment.

Brian: Needed to work it out in his mind, they were thinking about travel, if a trailer was purchased it would contain a kitchen, a washroom, why would the Detachment need equipment like that.

Denver: Indicated that he grew up camping and hunting his whole life and there wasn't a time when he didn't have a Coleman stove, a plastic bag shower outside to rinse off: it was outside stuff, it was not inside stuff. When the topic of a trailer came up, in his head he thought camping gear.

Brain: Asked if Denver recalled where the equipment was purchased.

Denver: Indicated that it was a little propane tank place and that he had issues with his own so he went there. He saw a sale. He thought camping. He purchased the gear in Summer to Fall 2011.

Brian: Asked if Denver knew how much it was.

Denver: Didn't know specifically; it would be in the GAC register. He bought a cooler so there would be somewhere to put it and then it could be just put in the trailer.

Brain: Asked if Denver bought the cooler at the same place.

Denver: He said no, it was another store; it was a small industrial tote.

Brian: Indicated that when he looked at the equipment it had been used, but that Denver had said earlier that he hadn't used it.

Denver: Said he doesn't remember taking it anywhere but maybe. I didn't have access to it as it was in the storage locker. Denver went camping a few times with his co-worker but they utilized the co-worker's equipment. Denver indicated that if Brian said the gear was used then he must have used it because he didn't lend the gear to anyone and no one else had access to it.

...

[Sic throughout]

[47] In an email dated October 23, 2015, at 11:45, Ms. Kurtis sent to both the grievor and Mr. Atagi the Oct. 22 notes for their review and asked them to let her know if she had misrepresented anything either of them said. Nineteen minutes later, the grievor responded to Ms. Kurtis, stating this: "... fundamentally correct, I see on line 3 you have Neil, should be Brian? 3/4 down page 2 should be Garth who I asked to build the

work benches [sic].” Ms. Kurtis responded back to the grievor 9 minutes later, telling him that once she got feedback from Mr. Atagi, she would make the changes and send him a copy.

[48] On October 25, 2015, at 12:30, the grievor emailed Mr. Atagi and Ms. Kurtis. He stated that as a result of talking to his daughters, he realized that he had taken them camping in August of 2012. He said that he used the camp stove and lamp.

[49] The grievor testified that before he moved to Campbell River, while still in Prince Rupert, as part of the thought process with respect to the fitting up of the Aquaculture unit and the process with respect to the purchase of a trailer, camping gear was purchased. He said that he had the gear in his garage and had forgotten about it. When asked if he used the gear personally, he said that he had. In cross-examination, he admitted that he returned the camping gear after his interview (September 16, 2015) and agreed that it was fair to state no one else knew about the camping gear.

[50] With respect to the three benches, in his examination-in-chief, the grievor said that they were purchased in Campbell River. He said that he ordered them from Global Industrial on July 25, 2012, but that they were not as heavy duty as he had thought. He said that he called to return them but said that Global Industrial would not have them back. He said that he took them home and that he purchased new ones (“the replacement benches”) and took them to the warehouse. He said later that he had an officer build them. In cross-examination, he said that the replacement benches that he purchased, personally, were the equivalent value of the Global Industry ones. He said that he did not have a receipt and that he went to the bank to recover the credit-card statements. When it was put to him that the original Global Industry benches were at his home until 2015, he said that he did not know when he purchased them or the replacement ones.

[51] The grievor testified that it was a common practice that DFO equipment was used by employees for personal or non-DFO purposes. Mr. Martimolich, who retired at the end of 1999, testified that at a particular location he was based out of, the DFO boat was used for personal use, but that was because in that location, it was the only boat there. He confirmed that at one time, camping equipment had been purchased for work use and had been used by DFO officers in the course of their duties. Mr. Tebb,

who retired in 2006, was asked by the grievor's representative if, in his experience, fishery officers would borrow DFO equipment for personal use. Mr. Tebb responded by saying, "Yes, especially in remote areas; for example, if a tree blew down, and there was no access to certain equipment, you would borrow a chainsaw." Mr. Tebb also confirmed that the DFO used camping equipment; however, he said that it was used in only two programs, with fisheries officers in remote locations and on an undercover operation.

[52] Mr. Atagi confirmed in cross-examination that he had tested equipment, such as night-vision equipment and a camera, which he did use at home. He confirmed that his son did a school project with respect to the night-vision equipment. He did not provide specifics as to the project but did state that to understand the capabilities of night-vision equipment, you have to use it at night. Night is usually after normal working hours. He also confirmed that a number of different pieces of equipment, usually personal equipment, such as body armour and sidearms, would be at home to be able to take it and go from home.

[53] Entered into evidence was an email dated February 15, 2016, from Mr. Cooper to Ms. Reid. The email indicated that further to the preliminary findings in the investigation, sufficient information had been found to call into question the grievor's reliability status, and as such, Mr. Foster, the DSO, suspended his reliability status, pending the outcome of the investigation. The grievor was advised of this suspension by letter from Mr. Foster that same day. Also on that day, Ms. Reid wrote to the grievor, advising him that the preliminary report into his alleged financial malfeasance had been provided to her and that she was inviting him to a meeting the next day.

[54] The scheduled meeting between the grievor and Ms. Reid did take place, and the grievor was suspended from work that day, which was confirmed to him by letter dated that same day, from Ms. Reid, the relevant portions of which state as follows:

...

I have been provided a copy of the preliminary investigation report and I have had the opportunity to review its contents. In consideration of the facts established in the preliminary report, I have determined that your continued presence in the workplace presents a reasonably serious and immediate risk to the legitimate concerns of the Department, and as such, you are hereby administratively suspended indefinitely, without pay, effective today.

Furthermore, I have been advised by the Departmental Security Officer (DSO) that as part of this ongoing investigation, the DSO has made a decision to suspend your Reliability Status pending the completion of the investigation.

...

[55] By letter dated March 3, 2016, the grievor was provided with a copy of the preliminary investigation report and was asked to provide any clarifications or other comments in writing by April 5, 2016. By email dated March 30, 2016, at 12:09, he provided his written response, the relevant portions of which state as follows:

...

From the early stages of the Aquaculture program in 2010, I had been advised by Chief Brian Atagi that my job was to fit up the program with any equipment I could foresee the program utilizing going forward. Significant program funds had been allocated to purchase equipment required then and into the future. I felt an obligation and pressure to ensure program dollars were spent prior to the end of March each year. I would ask that you review budget allocation documents (RC 52361) for the Campbell River aquaculture unit for the period in question 2011-2013. Budget allocations were significant and vague as to specific equipment to be purchased. As per the financial administration act, I acknowledge my responsibilities as per section 32 and would point out, the Program Chief or his designate responsibilities under section 34, All master card purchases made by me as Detachment supervisor, required the Chief; Brian Atagi or his designate to verify each purchase for accuracy, prior to sign off. Any purchase in question should have been reviewed and brought to the attention of the card holder for clarification. At no time did the program chief question the purchases that are the focus of the malfeasance allegations please refer to Brian Atagi's statement on pg. 190. Section 34 verification prior to sign off is the primary mechanism in place to ensure purchases are legitimate for program needs.

The occasional personal use of operational equipment had been an accepted practice, and often approved under the guidelines of equipment familiarization from the beginning of my C&P career. While the policy is now under a microscope the practice may have subsided, but I would suggest that I am in no way the only Officer within the Pacific Region that has done so, this does not excuse the practice, but in some way made it acceptable. Non of the equipment used was damaged in any way, other than the one pair of Leupold rogue binoculars that can not be located, all equipment discussed at the September interview had been accounted for prior to the interview.

purchases in question:

While I appreciate purchases were not placed on the detachment tracking sheet in a timely manner, I did not intend to deceive or misrepresent any of the purchases identified during the follow up questioning. As Brian Atagi can attest, our unit struggled with Mastercard reconciliation, lost receipts and inventory control during the early stages of our program... What the investigative report has not addressed and must address is the possibility that the inventory system was poorly managed and that some items may have in fact have been lost or appropriated by other staff. The program chief is the inventory holder for all assets within the Aquaculture program, and at no time did he question the purchases or their storage location. From the early stages of the program, storage space was an issue, as the secure room was fully prescribed. Inventory of un-issued equipment was stored in a secure cabinet located in the supervisors office as space was available. All Officers had a key to this cabinet as it was keyed the same as all the equipment cabinets.

Pg 7 (1.6) this statement is false: 10 sets of compact Swarovski binoculars were purchased as part of year end spending on 2013/02/15 and identified on the detachment tracking sheet as per pg 158. and receipt on pg 134... I can state that when field supervisor [name omitted] asked for a set to issue to trainee [name omitted], I went to the storage locker and retrieved a set from inventory.

...

pg. 7: Swarovski scope 4x12x50. Purchased November 17, 2011 (pg. 146), I wrote the wrong description on the receipt. I did not attempt to hide the equipment or the receipt, the scope was stored in the equipment cabinet... The scope was purchased early on in the program fit up stage, as an option for the marine mammal dispatch program. I did mount the scope on a personal firearm and test it at the local gun range. This was done on my own time, and the scope was returned to the office in as new condition in the original box it came with. The scope was not well used or damaged in any way as was indicated by Mr. Jensen.

pg 9: leupold scope: this scope was purchased 2011/10/21 (pg 144) and was not misrepresented in any way. I had learned that RHQ had purchased a quantity of Remington 700 sps stainless steel firearms, and wrongfully assumed that our aquaculture unit would receive a couple of these rifles for program work, the stainless scope would be a logical addition to the stainless steel firearm. As discussed during the interview, I had mounted this scope on a personal firearm on my own time, tested it and returned it to the inventory in as new condition. As the marine mammal dispatch program was in its organizational stages, I understood the two Winchester model 70 rifles that were supplied were to be utilized as practice/training firearms, and that at some point new weapons would be issued. the three leupold scopes were also potions to be mounted on the Remington 870 shotgun slug barrels given their compact size.

pg.9: Swarovski 10x42 range finder binoculars. these were purchased as part of year end spending 2012/02/10. The binoculars were purchased as part of the marine mammal dispatch program, and identified as surveillance equipment. Funds were allocated during the 2012 budget review and that is why I identified the purchase as such. The binoculars were stored in the equipment locker.

pg 11. boar sighter and bi-pods; these purchases were not misrepresented in any way. The boar sighter was purchased as an alignment aid if any of the scopes were changed, prior to final sign in at an approved range. I did use the equipment and returned it in as new condition.

pg 11. Leupold rogue compact binoculars. As per receipt on pg 153, this purchase was not misrepresented, one of the four sets of binoculars purchased can not be accounted for and are missing. As per pages 11-13, I attempted to locate the missing set of binoculars, but was unsuccessful.

Pg 33-36 Night force scope: this scope was purchased as part of year end spending 2012/02/06 (pg 121) to be used in conjunction with the Swarovski range finding binoculars, purchased on 2012/02/10. Given the adjustable ballistic turret, it can be easily adjusted to acquire targets at known distances. AS stated on pg 127 the 5.5x22x56 scope provides maximum clarity and resolution. As per the receipt I had ordered a Remington 700 mount, as I wrongfully assumed that as Region had recently purchased a quantity of Remington 700sps rifles, our aquaculture unit would be issued these new firearms. It has been documented that I personally own a Remington 700 rifle. I purchased a Remington 700 in September of 2012, some seven months after the purchase of the scope and mount. This purchase was identified as rural surveillance equipment as that is how the funds were allocated during the eight month budget review.

In various places within the report it has been stated that the equipment was not discussed, nor would it have been approved for purchase. As designated RC manager for the detachment, I had approved spending authority and the funds were allocated during incremental budget meetings. Please review the detachment budget allocations for the period in question, please also review Brian Atagi's statement on page 109 where is says: "Denver Marraty was the person who did a lot of the purchasing although Brian would have selected and purchased any camera's. Denver would have looked after the rest and we bought a lot of equipment. Brain stated he never saw anything odd going through the GAC but I would not have looked super close." What is really being described here is that I was given a great deal of latitude in the amount and type of equipment I purchased for the unit. The descriptions of the equipment on receipts and invoices were acceptable to my supervisors.

...

All non issued or surplus equipment was stored in an equipment locker located in my office, and not in the secure room given the space available. This would include the extra scopes, bi-pods, binoculars, camera equipment, knives etc. In several locations within the report the writer makes the assumption that this was done to hide equipment, this is simply not the case. When I was advised to have all equipment stored in the secure room, I did not intentionally ignore the back to work directives of march 23, 2015, I simply stored the equipment where it had always been located. I should have advised or asked for approval from the program chief as indicated in the letter. Many of the items returned after the interview of September 2015 were personal issue protective clothing items that had been issued as far back as 1995 when I began working in the plain clothes unit, personal issued clothing and equipment was just that, personal issue, i had been advised that it need not be returned.

...

The camping equipment in question was purchased in anticipation of program needs, as our unit in Prince Rupert had on several occasions utilize such equipment, I did borrow the equipment for personal use in August of 2012, when my children were in Campbell River on holiday, I had forgotten that I had it, after the September 2015 interview I returned the equipment in good working order, as all the equipment was of a low dollar value, they would not have been inventory items. The work benches in question were replace in early 2013 (I have been unable to obtain the visa statement as the benches were purchased with an old credit card that I no longer have access to, I am unable to access the purchase history online). The unopened and un-assembled benches were purchased by Marraty with personal funds and delivered to the warehouse located at the Campbell River airport warehouse. I used poor judgement during that time, however the integrity of the department was not put in jeopardy.

...

[Sic throughout]

[56] Entered into evidence as a series of appendices (D-1 through D-10 and E) of the 2016 investigation report were a series of photos, promotional materials, receipts, and invoices as well as the expenditure records and inventory records for the purchase and inventorying of the following items:

- one (1) Nightforce NXS rifle scope (“the Nightforce scope”);
- one (1) Swarovski AVR 4-12x50 rifle scope (“the Swarovski scope”);
- three (3) Leupold VX-3 2.5-8x36 rifle scopes (“the silver Leupold scope”);
- one (1) Swarovski 10x42 EL WR binoculars (“the Swarovski 10x42 binoculars”);
- ten (10) Leupold Rogue compact 10x25 binoculars;
- five (5) Harris bipods; and

- one (1) boresighter.

Rifle Scopes

[57] While I did not hear from an expert in firearms, the evidence from the witnesses who were familiar with firearms and with the firearms that the DFO used, and particularly those that the Aquaculture unit was equipped with, was that not all rifle scopes are compatible with all types of rifles. As well, not all rings fit all scopes and rifles.

[58] The Aquaculture unit did not have any Remington rifles; it used Winchester 70 rifles and had two of them. Each of these had mounted on it a Leupold VX-3 2.5-8x36 scope that had been purchased by the grievor in September of 2011. They were black in colour, as they matched the colour of the Winchester rifles.

1. The Nightforce scope

[59] This was purchased on February 6, 2012, for \$2631.30, inclusive of tax. It was entered into the detailed expenditure report showing on March 31, 2012, as purchased on the date and for the amount on the invoice; however, it was not identified as a “rifle scope” but as “optics for rural surveillance equipment.” The grievor confirmed that this was a special order to purchase this scope.

[60] The literature included in the evidence disclosed that this scope is an extreme long-range military scope, stating specifically that they are “... numbered among the most advanced field tactical scopes ever produced.” It was described by more than one witness as a scope that military snipers would use.

[61] This scope was for use on a Remington 700 type rifle, not a Winchester type. The evidence disclosed that it had not been attached to any DFO rifle. Messrs. Atagi and Jensen stated that this scope would never have been approved for purchase if it was discussed with them. The grievor admitted in cross-examination that he never discussed the purchase of this scope with Mr. Atagi; nor did he believe that he discussed it with Mr. Jensen.

[62] The grievor testified that he purchased this scope and the rings to attach it to a Remington 700 rifle because he understood that the DSO would be purchasing Remington 700 rifles and that some would be supplied to their detachment. He stated

that he did research into whether this scope was adaptable to use with night-vision equipment, which he stated it was.

[63] The grievor owned a Remington 700 rifle, which he said that he purchased in either 2010 or 2011, after he had moved to Campbell River. The grievor admitted to having this scope mounted on his personal rifle and to having used his rifle with the scope, to test the scope. He said that after he did this, he removed the scope and returned it to the cabinet in his office. The cross-examination of the grievor on this point was as follows:

["Q" means a question from counsel for the employer, and "A" means the grievor's response:]

Q: You installed this scope on your on Remington 700?

A: Yes; I took it; I tested it; I took it off; I returned it to the cabinet (in his office);

Q: When?

A: Purchased in March; likely went to the range in the fall of 2012.

Q: When did you remove it from the rifle?

A: Shortly thereafter.

Q: When?

A: I can't say; I assume I took a number of different firearms to the range; I mounted the scope at home; went to the range; shot and removed the scope.

Q: Did you take it more than once?

A: I don't recall. It is possible; I don't think so but it is possible.

Q: Did you take it anywhere else?

A: I don't believe so. It is a cumbersome gun to travel with.

Q: You didn't take it hunting?

A: I don't recall.

Q: It is possible?

A: It is possible, but I typically didn't use it for hunting. I used a lower calibre.

Q: Did you mount it more than once?

A: I don't believe so.

Q: It's possible?

A: I don't believe I did.

Q: You got your Remington 700 in 2010?

A: Got it, not sure when, around 2010. I sold items when money was tight.

[64] At this point in the cross-examination, the grievor was brought to an email he sent on March 30, 2016, to Mr. Foster in which he was responding to the preliminary investigation report provided to him. In that email, he stated as follows with respect to the reference to the Nightforce scope in the report:

...

*Pg. 33-36 Night force [sic] scope: this scope was purchased as part of year end spending 2012/02/06 (pg 121) to be used in conjunction with the Swarovski range finding binoculars, purchased on 2012/02/10... As per the receipt I had ordered a Remington 700 mount, as I wrongfully assumed that as Region had recently purchased a quantity of Remington 700 sps rifles, our aquaculture unit would be issued these new firearms. **It has been documented that I personally own a Remington700 rifle. I purchased a Remington 700 in September of 2012, some seven months after the purchase of the scope and mount.***

...

[Emphasis added]

[65] At this point in the cross-examination, counsel for the employer pointed out that the grievor had just told the hearing that he had purchased the Remington 700 in 2010. In response, the grievor said this: "I don't know; I could have purchased it in 2010 and received it in 2011." Counsel then pointed to the March 30, 2016, email and pointed out that at that time, he said it was 2012, and that he had asked the grievor several times in cross-examination, and he had repeatedly said 2010. At this juncture, the grievor said that the 2012 date was likely correct.

2. The Swarovski scope

[66] This was purchased on November 17, 2011, for \$940.00 (\$1052.80, inclusive of tax). It was entered into the detailed expenditure report showing on March 31, 2012, as purchased on the date and for the amount on the invoice; however, it was not identified as a "rifle scope" but as a "range finder". The grievor admitted in cross-examination that he never discussed the purchase of this scope with either Mr. Atagi or Mr. Plummer. He confirmed that this scope was never used on any DFO-owned rifle. When he was asked by counsel for the employer if it could be used on the Remington 700, he said that he did not know. At this juncture in the cross-examination, it was

pointed out that the unit's Winchester 70 rifles had mounted upon them the black Leupold VX-3 2.5-8x36 rifle scopes, which the grievor confirmed was correct.

[67] When he was then asked if he had mounted this scope on any of his personal rifles, the grievor confirmed that he had. When asked when, he said that it could have been that fall (2011) or the following fall, stating that he went to the range with his rifles in the fall during hunting season. When the grievor was asked how long the scope stayed on his personal rifle, he said that he "really didn't know." When pressed on how many times he took it hunting, he said once; when asked how many times he took it to the range, he said this: "At least once; I don't know." When he was asked if it was possible that it was more, he acknowledged that it could have been.

[68] After pursuing this line of questioning about bringing the rifle with this scope to the range and getting the grievor to agree that it was possible that he took it to the range more than once, counsel for the employer came back to taking the scope hunting and asked the grievor how many times he took it hunting with him. The grievor answered that he did not know. He then said that he might have gone "a couple of times" and that it "could've stayed on for a week or 10 days." When pressed if he could have taken it more than once, the grievor said, "Yes." When he was then asked if he took it more than five times, the grievor said that he did not know. When asked when he removed it from his rifle, he said that he was not certain. When asked what rifle he mounted it on, he said that it could have been his Winchester or another rifle. When asked if it was possible that it remained on his rifle for more than one hunting season, the grievor said that it was possible. When asked if, after he took the scope off the rifle, he used it again, he answered that he did not know; when asked if it was possible, he agreed that it was possible but that he did not think he had done that.

[69] Counsel for the employer again brought the grievor to his March 30, 2016, email to Mr. Foster, which he had prepared after reviewing the preliminary investigation report. He brought him to his reference about the Swarovski scope, which stated as follows:

...

Pg. 7: Swarovski scope 4x12x50. Purchased November 17, 2011 (pg. 146), I wrote the wrong description on the receipt. I did not attempt to hide the equipment or the receipt, the scope was stored in the equipment cabinet. As indicated during the interview with Mr. Cooper, the lock on the cabinet was keyed the same as all the

equipment lockers, and all C&P staff had a key. The scope was purchased early on in the program fit up [sic] stage, as an option for the marine mammal dispatch program. I did mount the scope on a personal firearm and test it at the local gun range. This was done on my own time, and the scope was returned to the office in as new condition in the original box it came with. The scope was not well used or damaged in any way as indicated by Mr. Jensen.

...

3. The silver Leupold scope

[70] As set out earlier, the Aquaculture unit had two black Winchester 70 rifles that were each outfitted with black Leupold VX-3 2.5-8x36 rifle scopes. They were purchased on September 21, 2011, for \$550 each. They are entered into the detailed expenditure report showing on March 31, 2012, as purchased on that date and are identified as “Leupold VX-3 2.5-8x36m”. However, the total amount entered was the total amount of all items purchased that day by the grievor at that retail outlet.

[71] This scope, silver in colour, was purchased on October 21, 2011, exactly 30 days later, from the same retail outlet and for the same item price of \$550. It was entered into the detailed expenditure report showing on March 31, 2012, as purchased on that date; however, it was not identified as “Leupold VX-3 2.5-8x36m”, as the previous purchase had been, but as “Rifle/Shotgun”, and the total amount recorded was the total amount on the invoice that day, which included several other purchases. This scope was not individually recorded.

[72] In cross-examination, when the grievor was asked if he mounted this scope on one of his personal rifles, he said this: “I believe I did.” When asked which one, he said his Winchester. When asked if he took this scope to the range on a personal rifle in more than one season, he said that he did not know. He then said that he did not know if he had hunted with it. He volunteered at this point that one of his rifles was a high-performance rifle, although he did not say which one. He said that he recalled putting the Swarovski scope on the Winchester and then said that he would go to the range two or three times per season.

[73] Counsel for the employer questioned the grievor about the Swarovski 10x42 binoculars and discussed range shooting and then circled back to this particular scope once again and asked the grievor if he went hunting with it on his personal rifle. He

answered that he did not know. When he was asked if it was possible, he stated it was but that he did not believe he did that.

4. The Swarovski 10x42 binoculars

[74] These binoculars were purchased on February 10, 2012, for \$2850, exclusive of tax. It was entered into the detailed expenditure report showing on March 31, 2012, as purchased on the date and for the amount on the invoice; however, it was not identified as “binoculars” but as “surveillance equipment.”

[75] The evidence disclosed that at some point in time, the grievor referred to his “grandma” as having purchased them for him, which was an oblique reference to Her Majesty (“the Crown”) having purchased them. In his evidence before me, the grievor did admit to making such a reference with respect to the purchase, although he could not confirm the exact details of what he said, and when.

[76] The grievor did confirm that these binoculars were never issued to the staff for use at any time. He stated that they were purchased at the time, anticipating that they would be used in the marine mammal dispatch program. He further confirmed that he field tested the binoculars and that he later took them when he went hunting, on two or three occasions. When pressed, the grievor confirmed that the binoculars were in his possession in his home at the time he served his 20-day disciplinary suspension in February and March of 2015. He stated that they were returned to the office after he served his 20-day suspension.

[77] During the investigation, the grievor said that he field tested these binoculars by going to a park bench and looking at birds. In his examination-in-chief, he said that in fact, he did more than that — he went hunting with them and said that he did it once or twice. In cross-examination, he confirmed that it was two or three times. When he was pressed on cross-examination if he took them with him hunting more than that, he said that he did not think so. He said that he believed that he took them hunting during the fall of 2013.

[78] In cross-examination, the grievor confirmed that no one other than him took these binoculars for field tests.

[79] Mr. Plummer testified that he had never seen these binoculars before they were taken out of the steel cabinet in the grievor’s office on September 16, 2015.

5. Harris bipods

[80] The evidence disclosed that five sets of bipods were purchased in total, of which two were used on the detachment rifles, leaving three unused, of which two were found in October of 2015. There were two sets of bipods found in the grievor's cabinet on September 16, 2015. One was identified as "BR", and the other as "25C". While I did not hear a lot about the differences between the bipods, the evidence disclosed that different types of bipods had different options and specifics.

[81] When he was asked if he used them on his personal rifles, he stated that he did not believe he did but that he was not sure. When it was pointed out to him that Mr. Jensen had stated that the bipods showed signs of use, and he was asked again if he used them, he said that he did not recall but then said that it was possible and that he could have used them on one of his personal rifles at the range.

[82] At this juncture in the cross-examination, the grievor was brought to the photograph of the bipods that Mr. Jensen had taken when he opened the grievor's cabinet on September 16, 2016. When he saw the picture of the bipods in the packaging marked "BR", he said that he recalled taking these to the range and using them on one of his personal rifles. When asked when, he could not recall. When asked how often, he could not recall. When asked if it was more than once, he said that he did not have a clue.

[83] The grievor was shown a photograph of the Harris 25C bipods. He was reminded that Mr. Jensen had testified that these showed signs of being mounted. When he was asked if he mounted these on one his own rifles, the grievor said that it was possible but that he did not know.

[84] The evidence disclosed that after his interview with Mr. Cooper, the grievor advised that he had found a bipod in his range bag. He said that the bipods he found were similar to the ones he had; he said that he could not say how long they had been in his range bag. When asked when and how he found them, the grievor stated that he said that he was told to return all work-related supplies and equipment and that he went through all his gear and found them. He said that his personal bipods were on his personal weapons that were in his gun cabinet.

6. Boresighter

[85] The boresighter was purchased at the same time as the bipods. The invoice and receipt show the purchase on November 5, 2011, for \$79.99 plus HST. It was entered into the detailed expenditure report showing on March 31, 2012, as part of a larger purchase totalling \$2203.60 for the date.

[86] In cross-examination, the grievor was asked if he ever used it when mounting scopes on his personal rifles, to which he answered, "Yes." When asked how often, he answered four or five times and then stated that it was however many times he changed a scope. When asked if he owned personal scopes for his rifles, he answered "Yes" and stated that he had four or five. He confirmed that he used this boresighter whenever he changed a scope on his rifle.

[87] Mr. Plummer testified that he was unaware that the unit had this boresighter. The grievor was asked if he told Mr. Plummer about it, to which he answered, "No." He also confirmed that Mr. Jensen did not know about it either but that it was in the storage cabinet. When counsel for the employer said that Mr. Plummer had never seen it, the grievor said that he (the grievor) had borrowed it.

[88] When the grievor was asked if he recalled bringing it back, he said that he did not remember when he borrowed it and that he did not know when he looked for it. When it was put to him that he never mentioned during the investigation that he used the boresighter on his own rifles, he said that he could not remember.

[89] It was the evidence of both Messrs. Plummer and Jensen in their testimonies before me that the unit did not need a boresighter as the scopes were mounted and aligned by the RCMP. However, in the 2016 investigation report, Mr. Plummer is quoted as stating that a boresighter could be of use but that one had never been used in the past. The grievor suggested that in his opinion, they needed a boresighter. When it was put to him that the scopes on the detachment's weapons did not change, he stated that there was the belief that there would be other rifles, but that never happened.

Inventory logs

[90] Entered into evidence as an appendix to the 2016 investigation report were the Aquaculture unit's inventory logs. Mr. Jensen testified that there were a number of versions of the inventory logs attached, dated February 28, 2012, October 20, 2014,

and April 7, 2015. Mr. Jensen testified that the inventory log was modified on June 9, 2015, at 11:34. He said that items appeared on that last log that had previously not ever been recorded on any version of the inventory logs, those items specifically being the Nightforce scope, the Leupold scopes, the Swarovski 10x42 binoculars, and the Swarovski scope.

[91] In cross-examination, the grievor was brought to the inventory log, was reminded of Mr. Jensen's testimony that the log had been modified in June of 2015, and was asked if that would have been the date that he updated the log. He said that he did not know. When he was specifically asked if that was when he added the Swarovski scope to the log, he said that he did not know what items he added, or when. When pressed if he added them, the grievor said that if Mr. Jensen said that they were added on the date the log shows as being modified, he would not argue. He confirmed that the items were entered after he served the 2015 disciplinary suspension. He said that he wanted to be clear that the spreadsheet was not as up to date as it should have been. He then stated that it was updated, regularly, based on what was purchased. When he was asked if he recalled entering items in 2015, he said that he did but not with respect to specific items.

[92] When he was asked if he did so because of the 2015 discipline, he said that he did it because he was under a microscope, so he said that he took it upon himself to ensure that everything was where it was. He said that he went through cabinets, and when he saw something not in the log, he added it. He then stated that everyone had access and that he did not know when they were added but then said this: "I know I added them."

Mr. Atagi's evidence

[93] Mr. Atagi testified that he did not recall any discussions with the grievor with respect to the Nightforce scope or Swarovski scope; nor did he believe that there was a need for such scopes in the detachment. He said that rifles were part of a long-arm initiative to supplement existing firearms that were in the C&P branch. He said that the main purpose of the firearms was for defence against animals and for the euthanasia of animals.

[94] Mr. Atagi said in his evidence that he did not know that the items found in the grievor's office existed. With respect to the items set out in the email from the grievor

to Mr. Atagi dated September 22, 2015, which had attached a list of items returned in three totes, Mr. Atagi said that he did not know about the equipment listed before it was returned. With respect to the email that same date in which he mentioned to Messrs. Jensen and Cooper not approving the camping gear, he confirmed that a travel trailer was discussed but that it was never approved. In addition, he was curious as to why it was purchased in Prince Rupert. He said that that did not make any sense. He said that while travel trailers were discussed as an option, he said that the funding they had for it was erroneous, and as such, the idea came off the board. He said that he questioned the purchase of a bag shower (used outdoors) when trailers would have had showers.

[95] In cross-examination, Mr. Atagi was asked if he recalled the fitting up of the Aquaculture unit. He said “Yes”, but a bit of time had passed. He confirmed that it was done in conjunction with the grievor. When the grievor’s representative put to Mr. Atagi that the understanding between him and the grievor was that they had to buy what they needed to fit up the detachment, Mr. Atagi did not say “No”; he said, “Mm hmm.” When he was asked if, when fitting-up the unit, the grievor had discretion in purchasing what might have been needed, Mr. Atagi said, “Yes, sort of; there was a list, but there was some latitude.” He said that some things did not need approval, indicating that it meant equipment that is “regulated”, suggesting by the firearms policy, although he did not refer specifically to what exactly it was that he was referring to.

[96] Mr. Atagi stated that each region had a firearms officer, stating that this officer would set the standard. When asked about bipods being covered by this policy, he first said that he was not sure, then said that he did not recall that bipods were covered. When he was asked if rifle scopes were covered early in his cross-examination, he said that he did not know, yet at a later point, when discussing scopes again, for use at night, he said that he did not read the night-vision scopes as having to go through the firearms officer. When he was asked if he set the standard, he said that he would discuss with counterparts in Ottawa, stating further that the policy was a document that had been created but that was not updated frequently. When he was asked about the amount of the budget for the unit’s fit-up, he said that he could not recall. When he was asked if he recalled whether there was an inventory policy at the detachment when the Aquaculture unit was being fit up, he said, “No.”

[97] When it was put to him that as the chief, he was responsible for inventory, he responded by saying, “That is a good question.” He then went on to state that as the chief, he would be responsible for inventory for the area, and that he would be responsible for anything in his area. He then said that the detachment supervisor was also responsible. When he was asked about setting up the marine mammal dispatch program, he said that he did not recall it being referred to that way, and then said that he vaguely recalled it as part of “long arms” and that it was to euthanize animals. He said that mammal incursions into salmon farms could involve mammals in distress.

[98] In cross-examination, Mr. Atagi was asked if there were scenarios in which he was told after the fact that things were purchased, to which he said that he did not think so. He was then brought to the investigation interview that he participated in as part of the 2015 investigation, which references that sometimes, after that fact, he was told about purchases, and he stated that this was in fact the case. When he was asked for an example of a purchase made that they were going to return, he said that he could not remember. When he was asked if he could remember denying a purchase made by the grievor, Mr. Atagi answered in the negative. When he was asked if he could remember questioning a purchase made by the grievor, Mr. Atagi also answered in the negative. He confirmed that as the chief, he was ultimately responsible for how the detachment spent its money. When it was put to him that he would have signed off on the purchase of rifle scopes, Mr. Atagi stated that he would have signed off on the grievor’s GAC purchases. When asked the same question about binoculars, he gave the same answer.

[99] When asked about the approvals of the grievor’s purchases, Mr. Atagi confirmed that he had to approve the grievor’s GAC purchases. He also confirmed that the budget during the time of the fit-up was unexpectedly high, in the range of \$250 000, and he confirmed that most of the budgeted areas were for the fit-up of the Aquaculture unit. He could not give an exact breakdown. When he was asked if he ever identified overspending with respect to equipment, Mr. Atagi stated that he did not believe so. When he was asked if he ever had a budget surplus for equipment, he stated that he believed he did.

[100] Mr. Atagi was asked a series of questions with respect to the purchase of the bipods and boresighter, and in his answering, it was clear that he was not aware of what was needed or not needed with respect to those items.

[101] With respect to the purchase of the camping gear, Mr. Atagi stated that he did not recall signing off on it; however, he did state that he approved GAC purchases and that if something stood out, he would question it. When a question was put to Mr. Atagi about lost receipts with respect to the GAC review-and-approval process, he said that he did not recall a lost-receipts issue but did recall issues around getting the GAC reconciliation report in a timely manner; however, he could not recall any specifics.

D. Suspension from work, suspension of security clearance, and termination of employment

[102] The grievor was invited to attend a meeting on February 16, 2016. At that meeting, he was provided the letter suspending his reliability status and the suspension letter. Also on that day, before the meeting, the grievor forwarded a five-page letter via email to Ms. Reid. At the start of the second paragraph of that letter, the grievor stated, "I am sorry for not being completely truthful in the early stages of the initial investigation and have taken full responsibility for my actions ...". The following points were made by the grievor in that letter:

- he had been punished both internally and externally with respect to the 2014 investigation, as he had received a 20-day suspension from work and was the subject of an RCMP investigation that concluded with an alternative-measures process requested by the Crown prosecutor;
- the punishment he received for the misconduct identified in the 2014 investigation affected and continued to affect his daily life significantly;
- in early 2015, he sought counselling through the Employee Assistance Program, to cope with the shame and guilt he had been experiencing and to understand what might have been the cause of his "out of character actions, and destructive behaviour";
- he had been battling depression since shortly after his family returned to Prince Rupert in 2012;
- he referenced the inability to see the family home in Prince Rupert, which was the precipitating event of his family moving back there in 2012;
- he found the move to Campbell River difficult;
- he struggled with Mr. Atagi's communication style;
- all purchases he made were sent to the area chief for s. 34 (of the *Financial Administration Act* (R.S.C., 1985, c. F-11)) approval;
- it was a common practice of DFO employees, nationwide, to use DFO assets and equipment for personal use; and
- he apologized for his past actions.

[103] The 2016 investigation report was finalized and issued on April 11, 2016. A copy was sent to Ms. Reid on May 6, 2016, and by Ms. Reid to the grievor by letter dated May 18, 2016. In addition to forwarding the 2016 investigation report, the May 18, 2016, letter also advised the grievor that he had failed to respect the March 23

letter, that a pre-disciplinary meeting would be held, and that he could be accompanied by a person of his choice. That meeting actually took place on June 10, 2016. Present at that meeting were Ms. Reid, the grievor, his union representative, and a DFO LR officer and a Human Resources representative.

[104] The termination letter was dated July 5, 2016, and appears to have been received by the grievor on July 17, 2016. By letter dated July 6, 2016, Mr. Foster, the DSO, revoked the grievor's reliability status. The letter stated that this revocation was effective February 15, 2016, the date that it had been initially suspended.

[105] Ms. Reid testified that she decided to terminate the grievor's employment as she felt that the bond of trust had been broken. She said that a key consideration was the fact that despite the 2015 discipline, which was largely about his misuse of his government credit card and purchases that were inappropriate, when he wrote his February 16 letter to her, he suggested that it was Mr. Atagi who should have stopped his purchases. She said that this was a fundamental issue of trust; she said that she should be able to trust him to properly spend money, and that he should not be blaming his supervisor.

[106] Ms. Reid stated that following the 2015 discipline, the grievor was given the March 23 letter, and that it was clear that he had not been following it as he had had departmental equipment at his home. She specifically referred to the camping gear and the Global Industrial benches and his use of a drill. She further said that the reference to not being forthright in the investigation process was with respect to him stating that a number of purchases were for departmental use. She said that it was determined that in fact this was not true and that the purchases were for personal use. The purchases were not needed for the DFO and were not used by the DFO.

[107] After his termination, the grievor testified that he was required to sell the family home in Campbell River, and he has since moved to Kamloops, B.C. He said that psychologically, he was a mess. He had to move into a smaller home. He had to curtail his activities. While he did work, however, it was for less money, stating that he made half of what he did in his DFO position and that he received fewer benefits. He said that it has been a humbling experience. He said that he opted not to take his pension, as he did not want to suffer a penalty for taking it before he reached the age of 55.

[108] Entered into evidence was a copy of the “Values and Ethics Code for the Public Sector” (“the V&E code”) in effect at the time relevant to the facts at issue in the grievance. The portions relevant to this matter state as follows:

...

Objectives

This Code outlines the values and expected behaviours that guide public servants in all activities related to their professional duties. By committing to these values and adhering to the expected behaviours, public servants strengthen the ethical culture of the public sector and contribute to public confidence in the integrity of all public institutions.

...

Statement of Values

These values are a compass to guide public servants in everything they do. They cannot be considered in isolation from each other as they will often overlap. This Code and respective organizational codes of conduct are important sources of guidance for public servants. Organizations are expected to take steps to integrate these values into their decisions, actions, policies, processes, and systems. Similarly, public servants can expect to be treated in accordance with these values by their organization.

...

Integrity

Integrity is the cornerstone of good governance and democracy. By upholding the highest ethical standards, public servants conserve and enhance public confidence in the honesty, fairness and impartiality of the federal public sector.

Stewardship

Federal public servants are entrusted to use and care for public resources responsibly, for both the short term and long term.

...

Expected Behaviours

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

...

3. Integrity

Public servants shall serve the public interest by:

3.1 Acting at all times with integrity and in a manner that will bear the closest public scrutiny, an obligation that may not be fully satisfied by simply acting within the law.

3.2 Never using their official roles to inappropriately obtain an advantage for themselves or to advantage or disadvantage others.

3.3 Taking all possible steps to prevent and resolve any real, apparent or potential conflicts of interest between their official responsibilities and their private affairs in favour of the public interest.

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

4. Stewardship

Public servants shall use resources responsibly by:

4.1 Effectively and efficiently using the public money, property and resources managed by them.

4.2 Considering the present and long-term effects that their actions have on people and the environment.

4.3 Acquiring, preserving and sharing knowledge and information as appropriate.

...

Application

Acceptance of these values and adherence to the expected behaviours is a condition of employment for every public servant in the federal public sector, regardless of their level or position. A breach of these values or behaviours may result in disciplinary measures being taken, up to and including termination of employment.

...

Appendix

Duties and Obligations

Public Servants

Public Servants are expected to abide by this Code and demonstrate the values of the public sector in their actions and behaviour. Furthermore, public servants must also adhere to the behavioural expectations set out in their respective organizational codes of conduct. If a public servant does not abide by these values and expectations, he or she may be subject to administrative or disciplinary measures up to and including termination of employment.

Public servants who are also managers are in a position of influence and authority that gives them a particular responsibility to exemplify the values of the public sector.

...

[109] Entered into evidence was a copy of the DFO “Values and Ethics Code” (“the DFO code”) in effect at the time relevant to the facts at issue in the grievance. The portions relevant to this matter state as follows:

...

Application

The Fisheries and Oceans Canada Values and Ethics Code applies to every person employed by Fisheries and Oceans Canada, including students, term employees, casual employees, seasonal and part-time workers, as well as individuals working with the Department by means of a secondment or assignment or through an Interchange Canada agreement. Employees on leave including leave without pay, continue to be subject to the Code for the extent of their leave. Contractors and volunteers, including emeritus scientists, are expected to respect the intent of this Code.

All employees of Fisheries and Oceans Canada, regardless of level or position, are required to adhere to the values and expected standards of behaviour articulated in this Code as a condition of employment. A breach of these values or expectations of conduct may result in disciplinary measures, up to and including termination of employment.

*Management must ensure that this Code has been provided to and discussed with all new employees of the Department. However, it is the responsibility of every employee to be aware of the content of this Code. This Code includes the principles and requirements of the **Values and Ethics Code for the Public Sector** and the **Treasury Board Secretariat Policy on Conflict of Interest and Post-Employment** to make it a one-reference document. By abiding with this Code, employees are also fulfilling their obligation under the **Values and Ethics Code for the Public Sector** and the **Policy on Conflict of Interest and Post-Employment**.*

...

Part 1: Our Values in Practice

A) Our Values

The following values are a compass to guide us in everything we do. They will support us in all our activities and enable us to better understand expectations and responsibilities within our organization. As they will often overlap, they cannot be considered in isolation from each other. This Fisheries and Oceans Canada Values and Ethics Code is an important source of guidance for us. We are expected to take steps to integrate these values into our decisions, actions, policies, processes and systems.

...

The departmental values are based on the federal public sector values of:

1. ...
2. ...
3. Integrity
4. Stewardship
5. ...

...

3. Integrity

Integrity is the cornerstone of good governance and democracy. By upholding the highest ethical standards, public servants conserve and enhance public confidence in the honesty, fairness and impartiality of the federal public sector.

Public servants shall serve the public interest by:

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

At Fisheries and Oceans Canada Integrity also means:

- 3.5 *How we achieve results is as important as the achievements themselves.*
- 3.6 *We prevent and correct situations where there is, or appears to be, favouritism, or nepotism.*
- 3.7 *We accept responsibility for our actions and report inappropriate conduct to management in order to build and maintain trust and accountability.*
- 3.8 *We live up to our commitments within the workplace and with stakeholders.*

4. Stewardship

Federal public servants are entrusted to use and care for public resources responsibly, for both the short term and long term.

Public servants shall use resources responsibly by:

- 4.1. *Effectively and efficiently using the public money, property and resources managed by them.*

- 4.2. Considering the present and long-term effects that their actions have on people and the environment.
- 4.3. Acquiring, preserving and sharing knowledge and information as appropriate, including “corporate memory” (i.e. knowledge, skills and experience developed over time).

At Fisheries and Oceans Canada Stewardship also means:

- 4.4. Our transactions, including purchasing, contracting and travel, can withstand scrutiny at all times.

...

B) Workplace Leadership

Everyone is a model for others and, as such, is a leader. Not [sic] matter where we are or what our role is within the organization, modeling our behaviour and actions according to this Code demonstrates leadership. Ethics in the workplace is a shared responsibility.

We are expected to:

- Always strive to do the right thing;
- Exemplify our organizational values in our decision making and actions;
- Maintain open, positive communications and working relationships;
- Discuss our ethical concerns;
- Report illegal activities and wrongdoing;
- Disclose and resolve possible conflict of interest situations in which we find ourselves;
- Check with our managers and the Centre for Values, Integrity and Conflict Resolution (VICR) when we are uncertain about any aspect of this Code;
- Be prepared to cooperate in investigations regarding violations of this Code.

Supervisors and managers are visible role models, especially for those people who work directly with them, and as such are held to the highest standards. Supervisor and managers lead by example and set the tone for ethical conduct. Actions speak louder than any written code.

Supervisors and managers must demonstrate ethical leadership by:

- Acting with transparency, fairness and objectivity in all transactions and work activities, including staffing, contracting, etc.;
- Exemplifying our values included in this Code and integrating them into policies, programs and work practices;

- *Fostering a climate of trust and respect, which expects and supports ethical behaviour and in which concerns may be raised without fear of reprisal through open dialogue;*

...

- *Foreseeing consequences of actions and decisions;*

...

- *Holding themselves and their teams accountable;*

...

- *Promoting, exemplifying and recognizing best practices that contribute to a healthier workplace;*

...

C) Examples of Behaviours to Avoid

*The expected behaviours listed in this Code help define each of our organizational values. Because we might sometimes stray from our values it is important to be able to recognize what unacceptable behaviours are so that we can avoid these at all costs. These behaviours harm the workplace atmosphere and have a direct impact on productivity and employee well-being. Below is a list of examples of what **to avoid**:*

- *Attempting to cover up mistakes;*
- *Hiding information from management;*
- *Blaming others or previous regimes;*

...

- *Abusing power;*

...

- *Placing personal or unit goals ahead of Government of Canada objectives;*

...

PART 2: Guidelines and Expectations of Conduct

This part of the Fisheries and Oceans Canada Values and Ethics Code provides specific guidelines related to expected behaviours for certain circumstances. Although not exhaustive, it addresses many situations we face on a daily basis.

1. Care and Use of Government Property

Property, equipment, materials, vehicles or facilities purchased or leased by the Department are owned by the Government and, by extension, the people of Canada. They are to be used for official purposes only, unless we have received proper management authorization for any other use. In all cases, use must never be for outside business interests or for any other form of personal gain.

We are expected to account for and protect any government property and valuables under our control. If any item is lost, stolen or damaged, we must immediately report it to our supervisor. Unless we have received authorization by the delegated authority, we must return all government property received as part of our duties when we leave our position, or when we are requested to do so by a proper authority.

Government issued credit card must be used for official Fisheries and Oceans Canada business only. We are responsible for its use and for paying the invoice in a timely manner.

...

3. Providing Testimony and Information

When called upon to testify in court proceedings or to provide information in the course of an investigation, judicial inquiry, fact finding, etc., we are required to do so in a full and forthright manner. We shall not knowingly provide false, misleading, or inaccurate information. We shall conduct ourselves honestly, ethically and with integrity. We will avoid speculation or personal opinions.

...

III. Summary of the arguments

A. For the employer

[110] The employer submitted that the grievances should be dismissed.

[111] The employer referred me to the *Act* and to *Horne v. Parks Canada Agency*, 2014 PSLRB 30, *Puccini v. Deputy Head (Parole Board of Canada)*, 2018 FPSLREB 88, *Lacroix v. Deputy Head (Shared Services Canada)*, 2018 FPSLREB 75, *Canada (Attorney General) v. Bétournay*, 2018 FCA 230, *Therrien v. Deputy Head (Department of Employment and Social Development)*, 2019 FPSLREB 82, and *Lâm v. Deputy Head (Public Health Agency of Canada)*, 2011 PSLRB 137.

B. For the grievor

[112] The grievor submitted that the grievances should be granted, that the revocation of his reliability status be overturned, that the suspension from employment and termination of employment be overturned, and that the grievor be reinstated, with full pay and benefits.

[113] The grievor referred me to Brown & Beatty, *Canadian Labour Arbitration*, 5th Edition, Chapter 7:3:600 “Insubordination”, Chapter 7:4410 “Employer conduct”, and *Federal Public Sector Labour Relations and Employment Board Act* and *Federal Public Sector Labour Relations Act*

Chapter 4:4240 “Multiple penalties”, as well as *Leadbetter v. Treasury Board (Solicitor General Canada - Correctional Service)*, PSSRB File No. 166-02-28705 (19990429), [1999] C.P.S.S.R.B. No. 59 (QL), *Melcher v. Treasury Board (Solicitor General - Correctional Service)*, PSSRB File No. 166-02-27604 (19970418), [1997] C.P.S.S.R.B. No. 35 (QL), *Comeau v. Deputy Head (Correctional Service of Canada)*, 2017 PSLREB 50, *Faryna v. Chorny*, [1951] B.C.J. No. 152 (QL), *Canada (Attorney General) v. Heyser*, 2017 FCA 113, *Starkey v. Deputy Head (Department of Fisheries and Oceans)*, 2020 FPSLREB 8, *Dupont Canada Inc. v. C.E.P., Local 28-0*, 2011 CarswellOnt 3408, *Neegan Development Corp. v. International Union of Operating Engineers, Local Union No. 955 (Rogne Grievance)*, [2017] A.G.A.A. No. 8 (QL), and *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Comm.)*, [1989] 1 S.C.R. 1722.

IV. Reasons

A. Board File No. 566-02-14347: suspension without pay

[114] As set out in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 and a long line of Board cases that have applied it, for a matter not to be moot, there must be a tangible issue to be decided. The grievor was in fact terminated from his employment retroactively to the date on which he was suspended without pay. That issue is a real and tangible issue that is not only the subject of a grievance but also is a grievance before me. The relief requested by the grievor in his suspension with out pay grievance is ostensibly the same relief he requested in his termination grievance, which is to be reinstated into his substantive position and be made whole, as of the date of his suspension, which then also became the date of his termination. As such I find that that the grievance in Board File No. 566-02-14347 is moot and shall be dismissed.

B. Board File No. 566-02-14348: termination of employment

[115] Adjudication hearings with respect to discipline under s. 209(1)(b) of the *Act* are hearings *de novo*, and the burden of proof is on the employer. The usual basis for adjudicating discipline issues is by considering the following three questions (see *Wm. Scott & Company Ltd. v. Canadian Food and Allied Workers Union, Local P-162*, [1977] 1 C.L.R.B.R. 1): Was there misconduct by the grievor? If so, was the discipline imposed by the employer excessive in the circumstances? If it was excessive, what alternate penalty is just and equitable in the circumstances?

[116] As I set out the reasons, I shall, when appropriate, address issues of credibility. The test for credibility is set out in *Faryna*, 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....

...

[117] For the reasons that follow, this grievance is dismissed.

1. Was there misconduct by the grievor?

[118] In the termination letter, the employer determined that as a result of a disciplinary investigation, it was found that the grievor had contravened the monitoring letter (the March 23 letter) by not returning all government assets to the workplace as directed and by not being forthright during the DSO's investigation process. These actions were also considered breaches of the V&E code and the DFO code as they related to the values of integrity, stewardship, and workplace leadership.

i. The grievor contravened the monitoring letter (the March 23 letter)

[119] The monitoring letter was issued to the grievor on March 23, 2015, following the 2015 discipline. It set out provisions that would be in place when the grievor returned to work on March 19, 2015, and contained seven categories, as follows:

- acting assignments;
- the GAC;
- vehicle fuel purchases with the vehicle expenditure card (ARI);
- vessel fuel purchases;
- other fuel purchases;
- directing purchases through staff; and
- government equipment or supplies.

[120] As the 2015 discipline arose out of misconduct, which largely centred around financial malfeasance involving purchases, it makes perfect sense that five of the seven categories in the monitoring letter dealt with curtailing his ability to use a GAC to make purchases or to direct any purchasing. One category has to do with acting assignments and is irrelevant to the matters I have to decide, which leaves one category, which is “Government Equipment or Supplies”. This is the one that is the basis for which the employer stated that the grievor engaged in misconduct that led partially to the termination of his employment (the other being the lack of forthrightness in the investigation).

[121] Under this category, the grievor was not to store any government equipment or supplies at his personal residence. It went on to state that personal issue items could be stored in his gear locker at the office or warehouse. All other items, including spare or unissued equipment, was to be stored in the office secure room or as directed by the chief (Mr. Atagi) or his designate. The evidence disclosed that the grievor had a private office at the DFO’s location in Campbell River.

[122] The evidence also disclosed the following vagueness about this category:

- the March 23 letter did not specify a deadline within which the grievor was to comply with this instruction;
- there is no indication that the grievor and Mr. Atagi had any further discussion about this provision;
- there is no indication that Mr. Atagi, or a designate, provided any clarity about what to do with the items that the grievor might have at his residence; and
- there is no indication that Mr. Atagi had any idea of the nature and quantity of the equipment, materials, supplies, or items that the grievor might have had at his residence.

[123] In analyzing and assessing whether the grievor was in breach of this provision, the vagueness of the March 23 letter must be considered, and as such, a reasonable amount of time after he received the letter must be allowed for him to have returned the equipment. I would suggest that a period of about a month would have been more than enough in all the circumstances.

[124] For the purposes of these reasons, I shall divide the equipment, materials, supplies, or items that are at issue into these four separate groups:

1. equipment discovered at the warehouse by Mr. Plummer on September 14, 2015 (“the warehouse equipment”);
2. the equipment and material returned in three totes on or about September 15, 2015, and identified in the grievor’s emails of September 15 and 22, 2015 (“the September 15 equipment”);
3. the equipment found in the steel cabinet in the grievor’s office on September 16, 2015 (“the steel cabinet equipment”); and
4. the Global Industrial workbenches and the boresighter.

1. The warehouse equipment

[125] In an email from Mr. Plummer to Mr. Cooper, dated September 16, 2015, Mr. Plummer identified items he found in the DFO’s warehouse on September 14, 2015, which included: two soft-sided gun cases, eight MTM case-guard shell holders, and a Cabela’s deluxe cot and bedroll. The email stated that the gun cases had not been at the warehouse before April of 2015, and the cot and bedroll showed up in the warehouse sometime in the previous four to five months.

[126] There is little dispute that this equipment or these materials were at some point purchased by the grievor and were in his possession. It is far from clear when this material was returned to the warehouse. The best guess, from the email of Mr. Plummer, suggests that the materials appeared sometime around April of 2015.

[127] Mr. Plummer indicated that there was no need for the cot and bedroll or the case-guard shell holders. He was unaware of the existence of the two soft-sided gun cases.

[128] It is not clear at all that they were in the possession of the grievor at the time of the March 23 letter or when they were placed in the warehouse.

[129] I am not satisfied on a balance of probabilities that the grievor was in breach of the March 23 letter with respect to these items. It appears that they were in the warehouse in September of 2015, and by Mr. Plummer's estimation, at least the gun cases and cot and bedroll could have been there as far back as April of 2015.

2. The September 15 equipment

[130] On September 15, 2015, the grievor returned to the DFO, from his personal residence, three totes of gear. The items that were returned were documented and included a number of things that I would identify as old personal-use items that no reasonable person would consider being of any value to anyone. These include such items identified as uniforms, coveralls, old rubber boots, hiking boots, thermal underwear, wool underwear, polypropylene underwear, a lunch kit and thermos, garment bag, hats and gloves, duty and field boots, duffle bag, backpacks, bags, belt, shirts, rain gear, jackets, shoes, insoles for shoes or boots, and luggage. Many of these items were personal-use items issued over a 26-year career with the DFO.

[131] However, there were a few other items that were clearly not personal and that could have been used for or by anyone and that included the following: two life jackets, a Mustang Floater jacket, two range bags (for firearms), and camping equipment, including a Coleman stove, a Coleman coffee maker, a Coleman lantern, a propane tree, a bag shower, and two propane cylinders.

[132] All these items were clearly the property of the DFO and were not returned to DFO premises until September 15, 2015. The grievor was clearly in breach of the March 23 letter by not returning these items until close to six months after the letter.

3. The steel cabinet equipment

[133] This equipment comprises the most expensive equipment and many of the pieces that were the impetus for the 2015 investigation. They are as follows:

1. the Nightforce scope;
2. the Swarovski scope;
3. the silver Leupold scope;
4. the Swarovski 10x42 binoculars;
5. one (1) Leupold Rogue compact 10x25 binoculars; and
6. two (2) Harris bipods.

[134] The 2015 investigation began shortly after the 2014 investigation (which led to the 2015 discipline) was completed and after the grievor was given the March 23 letter

upon his return to work. Based on the evidence presented, it was clear that what set the wheels in motion was a belief that there were pieces of equipment that the grievor had purchased during the fit-up of the Aquaculture unit that did not appear to be in the possession of the unit or did not appear to be considered requisite equipment for the unit. Indeed, for want of a better term, they were identified in Mr. Jensen's June 24, 2015, memo as "Potential Irregular Purchases by Denver Marraty".

[135] On August 20, 2015, the grievor was advised that he was being investigated for "alleged financial malfeasance". Most of the employer-led evidence before me focused on the complete lack of need for the purchase of certain pieces of equipment and that some of these pieces of equipment were not known to have been in the possession of the DFO or ever used for the purpose for which they were intended. These items largely included the items I have categorized under this heading, as well as the boresighter.

[136] The evidence also disclosed that a number of these items did not appear on the Aquaculture unit's inventory until July of 2015. The grievor confirmed that he did enter them into the inventory; however, he did not know when he did so. In his evidence, he conceded that if they were entered into the inventory listing in July of 2015, he would not dispute that. In addition, it would also appear that a number of these same items, when reported as purchased in 2011 or 2012, might have been misidentified. The most egregious of these was the identification of the Nightforce scope as "optics for rural surveillance".

[137] However, except for the Swarovski 10x42 binoculars, there is no evidence

- that these items were not in the steel cabinet in or about March of 2015;
- that these items were at the grievor's residence in or about March 23, 2015;
- and
- as to when they were put in the steel cabinet.

[138] As such, the grievor was certainly not in breach of the March 23 letter with respect to having these items at his home.

[139] While the March 23 letter states that these items should have been stored in the office secure room or as directed by the chief, which they were not, and there did not appear to be any other instruction by Mr. Atagi or his designate, the grievor would therefore have been in breach of the part of the March 23 letter that states that "...

spare or unissued equipment are to be stored in the office secure room or as directed by the Chief [Mr. Atagi] or designate.” However, the grievor was not terminated for not having the materials in the proper place in, or on, the different DFO premises; the termination letter stated that he had not returned all government assets as directed. The only evidence with respect to when these items were brought to DFO premises was the grievor’s admission that the Swarovski 10x42 binoculars were returned after he had served his 2015 discipline and after his receipt of the March 23 letter.

[140] As such, the grievor is not in breach of the March 23 letter with respect to these items, except for the Swarovski 10x42 binoculars. However, while the grievor admitted to having returned the Swarovski 10x42 binoculars, the employer has failed to prove on a balance of probabilities that they were not returned within a reasonable period of time after the March 23 letter and as such, has failed to establish this ground of misconduct as well with respect to this item.

4. The Global Industrial workbenches and the boresighter

The Global Industrial workbenches

[141] According to the evidence, the grievor purchased these benches, and when they arrived, he determined that they were not fit for the purpose. He said that due to the cost consequences of returning them, he decided to keep them, and instead, he purchased another set of workbenches (the replacement benches) from Home Depot, which were found on DFO premises. When these replacement benches were purchased is not known as the grievor did not have the receipt or the statement of account for the credit card used for the purchase. The grievor’s evidence would suggest that they were purchased shortly after he determined the unfitness of the Global Industrial benches.

[142] From the evidence, the Global Industrial benches were not returned to the DFO as required by the March 23 letter. In addition, the employer’s witnesses suggested that the replacement benches from the Home Depot had appeared recently at the DFO premises, as reported as follows in Mr. Jensen’s email of September 23, 2015, at 16:05, to Messrs. Cooper and Atagi:

I followed up on the workbenches that Denver reported to Brian in the below [September 17, 2015, at 11:12, email] and have attached the MRS report page and invoice for your reference. The three items were purchased July 25, 2012 and it appears that they have

been at Denver's residence since they were purchased. I asked Greg Plummer if he knew anything about them and he was not aware of the items and did not recall seeing them at any time at the previous or current warehouses. He did recall seeing the items in Denver's garage on previous occasions, but was not aware that they were DFO property. At present, according to his email below, the workbenches are still at Denver's residence.

According to Greg, the two Home Depot (HD) workbenches that Denver claims to have purchased to replace the three Global ones were first observed relatively recently at the warehouse. When asked about them Denver allegedly claimed that they had been purchased some time ago and had been brought from the old "Boatland" warehouse (approx. 2012-13, leased previous to our current warehouse). They were in their original packaging and were not put together. Subsequently, staff built the two HD workbenches and placed them in the new secure exhibit locker. Brian and I were not aware the Denver had personally purchased the HD workbenches as replacements for the DFO purchased property had had taken and were not aware of their presence in the warehouse.

I am unsure as to what to do regarding the benches still at Denver's residence as they may be difficult to move and the ones he purchased personally to replace them are now in use. I am contemplating directing him to bring the workbenches at his residence to the warehouse and remove the ones he personally purchased from the DFO property. I would probably need to see some proof of purchase to ensure the HD items are in fact his personal property....

[Sic throughout]

[143] As the Global Industrial benches were clearly the property of the DFO and were not returned to DFO premises and not there as of the middle of September of 2015, the employer has established, on a balance of probabilities that the grievor was clearly in breach of the March 23 letter with respect to these pieces of DFO property.

The boresighter

[144] Like the items set out under the subheading of the steel cabinet equipment, I heard a significant amount of evidence about the boresighter and the necessity, or more particularly, the lack of necessity, for the DFO and particularly the Aquaculture unit to have one. In short, this item is used to align the scope to the muzzle of the weapon so that the projectile fired hits the target sighted through the scope. The evidence before me was that the DFO's weapons that would have used scopes were not aligned by aquaculture staff but by the RCMP; hence, there was no need for this item,

although during the investigation, Mr. Plummer conceded that it could be used by the unit.

[145] Despite hearing a significant amount of evidence about this particular item, specifically about why it should not have been purchased, I heard no evidence of where this item was as of the March 23 letter or during the course of the investigation period. I heard no evidence that suggested that it was in the possession of the grievor after the March 23 letter; nor that it was not in the possession of the DFO during the course of the 2015 investigation. As the employer has not proved that the grievor had not complied with the March 23 letter with respect to this item, I find that he was not in breach of the March 23 letter with respect to the boresighter.

ii. The grievor was not forthright during the investigation process

[146] The second reason cited in the termination letter for dismissing the grievor from his position was that Ms. Reid had concluded that the grievor had not been forthright during the investigative process. She said that he had said that a number of purchases were for departmental use. She said that it was determined that in fact this was not true and that the purchases were for personal use. The purchases were not needed for the DFO and were not used for the DFO.

[147] While there were a number of items that seemed to be questionable purchases, from all the evidence adduced, I have determined that the items that the employer was identifying that actually fall into that category are as follows:

- 1) the Nightforce scope;
- 2) the Swarovski scope;
- 3) the silver Leupold scope;
- 4) the Swarovski 10x42 binoculars;
- 5) the Harris bipods;
- 6) the boresighter;
- 7) the camping equipment; and
- 8) the Global Industrial workbenches.

[148] One item that appeared to be a part of the focus of the 2015 investigation and that I do not place in that grouping of questionable purchases is one set of the Leupold Rogue compact 10x25 binoculars. The evidence clearly indicated that there was a need for binoculars and that a number of them were purchased. It is also clear that one went missing. It is unclear what became of this set of binoculars, and as such, there is

not sufficient evidence to suggest that there was any dishonesty and untruthfulness about the purchase of this item.

[149] The grievor's evidence during the 2015 investigation and during the course of the hearing before me was that there was a significant budget for the purchase of equipment at the time of the creation of and fitting up of the Aquaculture unit, and as such, he purchased many items in anticipation of the needs of the unit, including the items enumerated earlier.

[150] During the course of the hearing, the term "March Madness" was referenced, usually in questions put to different witnesses, largely in cross-examination of the employer's witnesses. The term "March Madness", in the context of this case and with respect to the government's budgetary spending process, is loosely used to reference and explain away alleged rampant spending of allocated unspent budget monies near the end of the federal government's fiscal year (March 31), lest those monies be taken away.

[151] The grievor also spoke of purchases in relation to what was loosely referred to as the marine mammal dispatch program, which was the euthanizing of marine mammals that somehow interfered with aquaculture.

[152] Finally, before I review the items in his February 16, 2016, letter to Ms. Reid point by point, on the eve of his suspension and meeting with her, the grievor admitted that he had not been truthful during the investigation, albeit he did not state what exactly was the extent of his untruthfulness.

The Nightforce scope, the Swarovski scope, and the silver Leupold scope

[153] The evidence disclosed that the rifle scopes were purchased as follows: the Nightforce scope in February of 2012, the Swarovski scope in November of 2011, and the silver Leupold scope in October of 2011. In addition, the two black Leupold scopes were purchased in September of 2011. All this information is in the paperwork found during the 2015 investigation, set out in the 2016 investigation report, and entered into evidence at the hearing. All these items were purchased by the grievor.

[154] The evidence disclosed that the Aquaculture unit had two rifles. Both were black Winchester 70s. Those rifles were fitted up with the two black Leupold scopes purchased by the grievor in September of 2011. In short, no more scopes were needed.

The grievor suggested that he did purchase the other scopes in anticipation of the purchase of more rifles and perhaps different rifles. The purchase of firearms, be they handguns, rifles, or shotguns, was not done by the grievor, Mr. Atagi, or his unit. A different unit within the organization was responsible for the purchase of needed weapons. The only evidence that there was talk of the purchase of any weapons, other than the two black Winchester 70s that the unit had, was from the grievor, which was in essence that there was a belief by him that other weapons would be purchased.

[155] The Nightforce scope was not compatible with the Winchester 70 rifle. The evidence adduced at the hearing disclosed that it did fit a Remington 700 rifle. The unit did not have any Remington 700 rifles. The grievor owned a Remington 700 rifle. The grievor admitted that he purchased this scope and the rings and that he field tested it on his personal rifle. In cross-examination, he suggested that he purchased his Remington 700 rifle in or around 2010. It was then pointed out that in an email in March of 2016, he said that he purchased this rifle in September of 2012 (some seven months after the purchase of the Nightforce scope). When confronted with this difference, the grievor then stated that he purchased the rifle in 2010 and received it in 2011. When it was pointed out that this still did not coincide with the statement in the March 2016 email, he then said that the 2012 date was likely correct. The grievor then said that he had since sold the rifle and did not have any receipts or documentation.

[156] The evidence of Messrs. Atagi and Jensen was that this type of scope is very expensive, a long-range scope used primarily by military snipers, and not at all something that was needed by the DFO whether or not they had a compatible rifle. The promotional material included in the investigation report disclosed that it was something a shooter would use when needing accuracy at 2000 yards (1820 metres); that is, 1.8 kilometers away.

[157] Messrs. Atagi and Jensen both stated that they were unaware of the existence of this scope, and the evidence disclosed that it was entered into the inventory log only in 2015. While Mr. Atagi would have approved the payment of the grievor's claim for reimbursement against his GAC, this item was identified in the detailed expenditure report as "optics for rural surveillance".

[158] While this was not the only item that was allegedly misidentified by the grievor in the detailed expenditure report, I have trouble believing the grievor that somehow it

was appropriate to identify it as “optics for rural surveillance” when it was a high-end rifle scope. There is no mystery as to what it was and what it was for. If the grievor was confused, he could have asked someone.

[159] I do not believe that the Aquaculture unit needed a scope of the design, quality, and capabilities of the Nightforce scope for a rifle that it did not possess to shoot at something up to almost two kilometres away. The fact that the grievor purchased this scope well after the scopes for the unit’s actual existing rifles, in February of 2012, some five months later, that it was misidentified in the detailed expenditure report, and that it was not entered into the unit’s inventory until after the 2014 investigation and discipline with respect to the financial malfeasance by the grievor and after the March 23 letter leads me to conclude, on a balance of probabilities, that he purchased this scope for his own personal use and not for any legitimate purpose related to the Aquaculture unit or the DFO.

[160] With respect to the Swarovski scope, this was an item that was identified in May of 2015 as being an unaccounted-for purchase. Like the Nightforce scope, the Swarovski scope was misidentified in the detailed expenditure report and was not ever mounted on either of the Aquaculture unit’s two Winchester 70 rifles. This scope, like the Nightforce one, had never been seen by Mr. Jensen or Mr. Plummer. Again, like the Nightforce scope, it also did not appear in the unit’s inventory until 2015. The grievor’s evidence was that it was purchased as part of the unit’s fit-up and that it was purchased in anticipation of the purchase of a number of other potential weapons.

[161] In the investigation report, with respect to his interview, the grievor was asked about using the scope, and his answer is recorded as follows: “1.13 Mr. Marraty advised the writer he had personally field-tested the above noted scopes, had attached them to his personal rifle, and had taken them to the range.”

[162] In his March 30, 2016, email to Mr. Foster, which the grievor had prepared after reviewing the preliminary investigation report, the grievor said the following about the Swarovski scope:

...

Pg. 7: Swarovski scope 4x12x50. Purchased November 17, 2011 (pg. 146), I wrote the wrong description on the receipt. I did not attempt to hide the equipment or the receipt, the scope was stored in the equipment cabinet. As indicated during the interview with

Mr. Cooper, the lock on the cabinet was keyed the same as all the equipment lockers, and all C&P staff had a key. The scope was purchased early on in the program fit up [sic] stage, as an option for the marine mammal dispatch program. I did mount the scope on a personal firearm and test it at the local gun range. This was done on my own time, and the scope was returned to the office in as new condition in the original box it came with. The scope was not well used or damaged in any way as indicated by Mr. Jensen.

...

[163] In cross-examination, counsel for the employer pressed the grievor on the use of the Swarovski scope, and the grievor admitted that he had used it to go hunting, eventually stating that it was likely more than on one occasion, and he could not say if he used it more than one season. Nor could he state that he did not use it five or more times to go hunting. I read the 2016 investigation report and the response to it he sent via email on March 30, 2016, to Mr. Foster to suggest that the grievor bought the scope, installed it on a personal rifle, tested it at the range, and then brought it to the DFO's offices, where it stayed in the steel locker in the grievor's office.

[164] Like the Nightforce scope, the employer has proven on a balance of probabilities that the Aquaculture unit did not need the Swarovski scope. No one other than the grievor appeared to know that it existed, and no one knew it was in the grievor's office. There was no unit rifle for it to be mounted on, and it was never listed in the inventory until sometime in June of 2015.

[165] With respect to the silver Leupold scope, this was an item that was also identified in May of 2015 as being an unaccounted-for purchase. In an email on August 31, 2015, Mr. Plummer advised Mr. Cooper that he had never seen the silver Leupold scope and confirmed that the unit had two black Leupold scopes mounted on the two black Winchester 70 rifles. The grievor admitted to mounting the scope on his personal rifle and to taking it to the range to test. The grievor's evidence with respect to this scope, as with the others, was that it was purchased as part of the unit's fit-up and that it was in anticipation of the purchase of other potential weapons. The silver Leupold scope was not entered into the inventory log until 2015. Again, it appeared that no one knew it existed.

[166] In short, none of these three scopes was actually needed, and there were no weapons that these scopes were being purchased for at the time they were purchased. The grievor suggested that he purchased these scopes in anticipation of the purchase

of more rifles and perhaps different rifles. The purchase of firearms, be they handguns, rifles, or shotguns, was not done by the grievor, Mr. Atagi, or his unit. A different unit within the organization was responsible for the purchase of needed weapons. The only evidence that there was about purchasing different or other weapons, other than the two black Winchester 70s that the unit had, was from the grievor, which was in essence that there was a belief by him that other weapons would be purchased.

[167] I do not believe the grievor. All these scopes were found locked in a cabinet in his office. All were purchased in late 2011 or early 2012, after the two black Leupold scopes were purchased for installation on the unit's only rifles, the two black Winchester 70s. The grievor admitted to using these scopes on his personal firearms and in the case of the Swarovski scope, based on his testimony before me, to taking it hunting, likely, it would appear, on a regular basis.

[168] Other than the grievor's testimony, there is no evidence that the Aquaculture unit was to be the recipient of any other rifles that these scopes could be used on. The grievor's story that he purchased these scopes in anticipation of the purchase of other firearms is quite frankly not believable. Perhaps a good analogy to this line of thinking is the purchase of a full set of snow tires for a vehicle that the unit does not have, may never have, and has no control over purchasing, and the snow tires that are bought, oddly enough, just happen to fit the personal vehicle that the person doing the purchasing of the snow tires owns.

[169] I have no hesitation finding that the employer has established, on a balance of probabilities, that the grievor was not truthful and forthright in the investigation as it relates to the purchase of the three rifle scopes.

The Swarovski 10x42 binoculars

[170] The evidence disclosed that the Aquaculture unit's fishery officers were issued personal-use binoculars. The Swarovski 10x42 binoculars were expensive binoculars and like the scopes were not used by anyone other than the grievor. Unlike the three scopes I have just dealt with, it is possible that at least one other member of the Aquaculture unit knew of the existence of these binoculars.

[171] The evidence disclosed that the grievor's position and duties were more administrative and office related, yet these high-end binoculars, which he stated were good for any number of things, were not being used by the unit and were found in the steel cabinet in his office. While he did not spend all his time in the office or doing administrative duties, a review of his work description and the evidence before me would indicate that the personnel he supervised were out in the field and would logically be the ones that the binoculars would and should have been used by. Yet, they were not.

[172] The grievor was noted to state that these binoculars had been purchased by his "grandma", an oblique reference to the Queen (the employer in the guise of the federal public service) having purchased them for him.

[173] In answering questions during the 2015 investigation, the grievor stated that they were never issued because the marine mammal dispatch program never got off the ground. As well, he said that they were very expensive and that he did not want them broken, pointing out that staff already had binoculars.

[174] The grievor's statement that he was worried that they were expensive and could be broken does not make sense. Whether or not the marine mammal dispatch program got off the ground is irrelevant. If the binoculars were purchased for use by the unit personnel, it should have been made known they were available for use. Fishery officers are trained law-enforcement officers, who are trusted to carry handguns; yet, for some reason, the grievor would suggest they cannot be trusted with a set of binoculars?

[175] I do not believe the grievor when he states that they were a necessary purchase for the unit. I believe that the grievor purchased these binoculars, like the rifle scopes, to use personally. The evidence about where they were found, when they were entered into the inventory after the 2015 discipline and that no one else ever used them except him suggests that this was in fact the case and that his statements about them in the course of the investigation were not truthful.

Harris bipods

[176] As set out earlier, a bipod is attached to the end of a rifle, to steady it for shooting. While there were two extra bipods found in the steel cabinet in the grievor's

office, I am not convinced that these were not just extra supplies bought at the time of the fit-up of the Aquaculture unit. Unlike the evidence with respect to the three rifle scopes and the Swarovski 10x42 binoculars, it is possible that these were legitimate purchases, and I find that the employer has not proved, on a balance of probabilities, that the grievor was not truthful about these items during the course of the investigation.

Boresighter

[177] The boresighter was purchased in November of 2011. In the course of the investigation, the grievor indicated that this was (like the other items that were identified as problematic) purchased in the course of the fit-up as an anticipated required piece of equipment. However, the only scopes on the unit's rifles were mounted off-site and not by the unit's firearms officer. It was never used on the unit's two rifles and scopes. The evidence disclosed that the only person in the unit to use it was the grievor, and he used it only on his personal firearms. The evidence did not disclose if this item was ever actually returned during the course of the 2015 investigation or where it was.

[178] Like the rifle scopes and the Swarovski 10x42 binoculars, I find that the grievor was not being truthful about the boresighter. No one seemed to know it existed and hence never used it. The only person who ever used it was the grievor, and he used it on his personal firearms. There is no evidence that he even used it to practise with the unit's two Winchester 70 rifles. As such, I find that the employer has established on a balance of probabilities that the grievor was not truthful during the 2015 investigation with respect to the boresighter.

Camping equipment

[179] The evidence of the employer's witnesses was that there was no need for camping equipment. Again, like the other equipment purchased by the grievor that became the subject matter of the 2015 investigation, the grievor stated that there was some discussion of the unit perhaps being out in the wilderness and requiring equipment. He talked of potentially having to stay overnight in trailers. This equipment did not appear to ever have been in the possession of the unit and was only in the possession of the grievor. Trailers were never purchased, yet the camping equipment was.

[180] During the course of the investigation, the grievor initially stated that the camping equipment was not used by him personally. The evidence disclosed that it was returned to the employer some time in or about September 17, 2015, some six months after the March 23 letter, after his interview with Mr. Cooper and an exchange with Mr. Atagi with respect to supplies, equipment, and gear he had at his home. The grievor later said that he had spoken to his children, who confirmed that in fact they had gone camping and that they had used that gear.

[181] Like the other items already discussed, the rifle scopes, the Swarovski 10x42 binoculars, and the boresighter, the only evidence about the need for camping gear came from the grievor. Like these other items, they appeared to be used only by the grievor and were only in his possession. Indeed, the evidence disclosed that from the time of their purchase to the time they were returned in September of 2015, no one appeared to know that the unit had any camping gear.

[182] The grievor's evidence both before me and in the course of the investigation was that the camping equipment was something that was purchased for the fit-up of the unit. During his interview on September 16, 2015, the grievor initially said that he returned all the government equipment he had at his home. Later in that same interview, he admitted that he had not. In fact, the grievor returned three totes of materials sometime after his interview on or about September 17, 2015; included was the camping gear. On October 22, 2015, the grievor met with Mr. Atagi. Minutes of the meeting were made by Ms. Kurtis, who attended the meeting via conference call. Those minutes, the Oct. 22 notes, were reviewed by the grievor, and he had an opportunity to correct any errors, which he did. The Oct. 22 notes reveal that the grievor and Mr. Atagi discussed the meaning of the March 23 letter and what the grievor understood it to mean. The grievor said that he "thought that no government supplies stored at your residence meant 'current stuff, Aquaculture stuff'".

[183] If the grievor believed that the March 23 letter meant only aquaculture-related material and equipment, why did he keep the camping gear, as the camping gear, by his own admission, was purchased by him for the Aquaculture unit? It also is not something that can be classified as personal items such as hats, boots, and thermal underwear.

[184] As set out earlier, the grievor also seemed to change his story about when he purchased his Remington 700 rifle. The evidence in the 2016 investigation report, garnered from the interview on September 16, 2015, was that it was purchased in 2012. In front of me, he said he got it in 2010. When pressed by counsel about the discrepancy between the interview and his statement that he purchased it in 2012, he said that perhaps he purchased it in 2010 and got it in 2011. At this point in the exchange, counsel for the employer pointed out that this did not account for the statement made in 2015 (some six years earlier) that it was purchased in 2012. The grievor's rendition of the facts does not withstand the test set out in *Faryna*.

[185] In addition, during the course of the September 16, 2015, interview, in discussing the items that were identified as "questionable purchases", he said to Mr. Cooper that he would not have bought these things for himself with money from the government as he has his own "stuff", and he would show Mr. Cooper evidence of this. This evidence from the grievor was never produced to Mr. Cooper or to hearing to substantiate that statement.

[186] Like the rifle scopes, according to the grievor, the camping equipment was purchased in anticipation of the purchase of other equipment (trailers) that never materialized. The analogy that I have made about the snow tires for the vehicle that does not exist applies here as well, or to say it in a different way, it is putting the cart before the horse! Again, the grievor's version of what occurred does not withstand the test set out in *Faryna*.

[187] With respect to the camping equipment I find that the employer has proven on a balance of probabilities that it was not bought for the unit but by the grievor for his own personal use, and as such, he was not truthful during the investigation.

The Global Industrial workbenches

[188] The grievor testified that these were purchased for the Aquaculture unit. According to him, when they were received, they were determined not fit for the purpose. He said that he inquired of the supplier about returning them but that he was told that they were a sale item and that the cost to return them, something in the range of a few hundred dollars, he deemed was not worth spending. Instead, he said that he took them home and used them at his home and that instead, he had a subordinate fishery officer build a set of workbenches.

[189] He did not disclose the purchase and the retention of the Global Industrial benches to anyone, and he kept them and used them. He said that at some unknown time, he determined that this was wrong and went to Home Depot and purchased workbenches, which he brought to the warehouse. He produced no receipts for the purchase of these new benches, indicating that he did not have the paperwork and that he could not produce copies of the credit-card documentation from the bank.

[190] Like the version of the facts with respect to the rifle scopes, the Swarovski 10x42 binoculars, and the boresighter, the only evidence about the Global Industrial benches and the replacement benches comes from the grievor. There is no question that the Global Industrial benches were purchased and that the replacement benches were purchased. However, we also know that the grievor had a subordinate build replacement benches for the Global Industrial benches. I am left to ponder these things:

- If they could build benches out of the materials they had on hand, why did he buy the Global Industrial benches in the first place?
- If the Global Industrial benches did not fit the needed purpose, despite having a cost of a few hundred dollars to return, why did he not discuss it with Mr. Atagi or return them anyway? What is a few hundred dollars, when you are spending thousands on rifle scopes for weapons that do not exist?
- If he had purchased the replacement benches at a time close to that of the purchase of the Global Industrial ones, why did he not keep his documentation?

[191] The grievor's rendition of the facts does not meet the test set out in *Faryna*. I believe that on a balance of probabilities, the grievor purchased the workbenches for his personal use, and not that of the employer, and that he was not truthful during the course of the investigation.

2. Was the discipline excessive?

[192] I have no doubt that the grievor's actions of not returning certain DFO assets as instructed in the March 23 letter and of not being truthful in the investigation breached most, if not all, the parts of the V&E code and the DFO code that I set out earlier in this decision. As such, the employer has proved that there has been misconduct, and the first part of the test in *Wm. Scott & Company Ltd.* has been met.

[193] The second question is whether the discipline imposed by the employer was excessive. I do not believe it was.

[194] This case is about trust.

[195] In 2014, the grievor was investigated for financial malfeasance and was found to have acted inappropriately with respect to certain spending activities. The employer imposed a 20-day suspension on him and issued the March 23 letter. The conduct that the grievor was found to have carried out that led to the 2015 discipline was very serious as it entailed theft from his employer. There are many cases in the federal public sector in which theft from the employer has resulted in termination of employment, which have been upheld by this Board or its predecessors.

[196] When the grievor received the 2015 discipline, it should have been crystal clear to him that he had been given a second chance. He should have abided by the terms of the March 23 letter and returned everything he had, letting Mr. Atagi decide what could stay with him. He did not. He also should have been truthful during the course of the investigation; again, he was not. These incidents, while they may, if standing on their own, be seen by some as minor, in the context of the 2014 investigation that led to the 2015 discipline, they are serious, as they demonstrate that the grievor did not learn from the 2015 discipline and that he continued with the same type of behaviour that was inappropriate and that goes directly to issues of integrity and trust.

[197] This lack of integrity and trust is further magnified by his use of the DFO's cordless drill. Again, this may be something that is, in and of itself, probably seen by many as minor. However, in the context of what had just happened involving the 2015 discipline and in the face of an ongoing investigation for financial malfeasance, which also included the failure to return DFO property set out in the March 23 letter, is very serious. He had not changed his inappropriate behaviour, despite the discipline and despite what he had said to the employer during the course of the 2014 investigation in an undated and unsigned letter, which was this: "I am truly ashamed of the behaviour I have demonstrated. I am hopeful that given the opportunity, I could rebuild your trust and continue to serve the Department in a positive, respectful and beneficial way."

[198] While the grievor did admit to taking the drill home and using it, he stated in his discussion with Mr. Atagi and it was recorded in the Oct. 22 notes that he took the drill on August 10, 2015, and returned it on August 17, 2015. Yet, in the September 17, 2015, email to Mr. Atagi advising of the material he still had at his home, he said this:

“I recently borrowed a cordless drill from the warehouse to fix my fence. I will return that to the warehouse today.” Which story of the grievor should the employer believe?

[199] The taking of the DFO drill home for a week further reinforces the true character of the grievor, and I find that the employer’s determination that the bond of trust was irrevocably broken was well founded. His lengthy service and personal circumstances are insufficient to convince me that the employer’s discipline was, in the circumstances, excessive.

C. Board File No. 566-02-14346: revocation of reliability status

[200] As set out earlier in these reasons with respect the grievance against the suspension without pay, I addressed the issue of mootness. This concept is equally applicable here, as I have dismissed the grievance against the termination of employment.

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

(The Order appears on the next page)

V. Order

[202] The grievances are dismissed.

April 11, 2022.

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