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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

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BETWEEN

**PLACIDE KALISA**

Grievor

and

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

Respondent

Indexed as

*Kalisa v. Deputy Head (Canada Border Services Agency)*

In the matter of individual grievances referred to adjudication

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

**For the Grievor:** Himself

**For the Respondent:** David Perron, counsel

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Heard at Ottawa, Ontario,  
February 10 to 14, 2025.  
(FPSLREB Translation)

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**REASONS FOR DECISION**

**(FPSLRB TRANSLATION)**

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**I. Individual grievances referred to adjudication**

[1] In April 2021, Placide Kalisa (“the grievor”) referred grievances to adjudication related to his suspension and termination by the Canada Border Services Agency (“the employer”, CBSA, or “the Agency”). When he was terminated in 2017, he was working as part of a team that administered policies and programs that dealt with, among other things, the removals of people deemed not admissible to Canada.

[2] The grievor’s termination is in relation to five misconduct allegations.

[3] Some of the misconduct allegations pertain to the grievor’s use of the employer’s computer network, his title, and his contact information as a CBSA employee for purposes unrelated to his job. In addition to his CBSA job, he operated a property-management business. He was also a part-time real-estate agent. It is alleged that he used his title, contact information, and the CBSA’s computer network for those activities and that he invited clients or potential clients to the country by identifying himself using his Agency title.

[4] The employer alleges that the grievor used its databases and those of Immigration, Refugees and Citizenship Canada (IRCC), to which he had access through his work, to carry out unauthorized searches for personal reasons or for reasons related to real-estate agent activities. According to the employer, he also allegedly disclosed confidential information from a database to a third party without the employer’s authorization.

[5] It is also alleged that the grievor had a friendship and family relationship with a person suspected of committing criminal acts and that he did not inform his employer of that relationship.

[6] Finally, the employer alleges that the grievor put himself in a conflict of interest.

[7] For the reasons that follow, I find that the allegations are founded and that the grievor’s dismissal was not an excessive disciplinary measure in the particular circumstances of this case.

## **II. Summary of the evidence**

[8] The facts relevant to the allegations occurred over a long period. Six witnesses testified at the hearing.

[9] The employer's witness list included Franca Passanante, the investigator who investigated the five allegations; Richard Fehr, the grievor's manager from 2008 to 2010; Carl Desmarais, the acting director general who decided to suspend the grievor in summer 2016; and Jennifer Lutfallah, the director general who decided to terminate the grievor in 2017. From 2008 to 2010, Ms. Lutfallah was a director in the Programs Branch. Mr. Fehr reported to her at that time.

[10] The grievor testified. He also called Peter Hill as a witness. When the relevant matters occurred, Mr. Hill was the CBSA's associate vice president. He attended a meeting with the grievor in 2009.

[11] I will start by summarizing the grievor's personal and professional background, as they relate to the allegations that led to his termination. Then, I will briefly describe the investigations that were carried out with respect to him, his actions, and his associations, after which I will describe the evidence relating to each misconduct allegation. Finally, I will describe the employer's decision-making process that led to terminating his employment.

### **A. The grievor's background, role, and responsibilities**

[12] The grievor is originally from Rwanda. He came to Canada in 1992, a few years after the genocide took place against Tutsis in Rwanda. At the hearing, he self-identified as Tutsi.

[13] Rwanda's history has been marked by conflicts between the Tutsi minority and the Hutu majority. To decide the grievances before me, I need not recount the country's history. However, I cannot ignore the impact that the 1994 genocide had on generations of Rwandans. No words can adequately describe its nature and extent. The conflict's repercussions are still being felt today.

[14] For the purposes of this decision, it suffices to say that the grievor was not spared. He lost family members in the genocide, and it was clear from his testimony that the war crimes and the crimes against humanity that were committed during the genocide were still on his mind when the matters that led to these grievances occurred.

The genocide and its impacts are relevant to some of the employer's misconduct allegations, specifically to his explanations for some of his actions.

[15] The grievor began his federal public service career in 2003. At that time, he worked in Windsor as a clerk (CR-03) for what was then called Citizenship and Immigration Canada (CIC) and is now called the IRCC. When the CBSA was created in late 2003, he became a CBSA employee. He remained employed by the CBSA until he was terminated in 2017.

[16] The grievor was very involved in the Windsor region's Rwandan community. According to him, he was well known in it, and several community members knew that he worked for the CBSA. As I will explain later in this decision, at that time, certain members of the Rwandan community contacted him when they wanted information about the status of immigration applications.

[17] Over the years, the grievor climbed the ranks. In late 2007 or early 2008, he accepted a position in Ottawa, the position he held when he was terminated. He moved to the National Capital Region. He was less involved in the Rwandan community than he had been in Windsor. But he said that he was, and still is, well known in the National Capital Region's Rwandan community. At the hearing, he said that when the matters relevant to these grievances occurred, several people in the region's Rwandan community knew that he worked for the CBSA.

[18] When the grievor was suspended and his employment terminated, he was working as a senior program officer (FB-04) on the Programs Branch's intelligence and enforcement team.

[19] As it is alleged that the grievor used the employer's databases improperly and without authorization, I will digress briefly to describe the databases that he had access to.

[20] When he was a CR-03, he had access to a database belonging to what is now the IRCC, the Field Operations Support System (FOSS). It contained data about immigration applications, including applications for business, work, student, and tourism visas. When he was terminated, the IRCC was transitioning from the FOSS database to the Global Case Management System (GCMS).

[21] The grievor also had access to a CBSA database called the National Case Management System (NCMS). It has information about investigations, removals, and deportations, among other things.

[22] The grievor had access to the three databases when he was terminated, the FOSS, GCMS, and NCMS.

[23] He was part of a team that administered policies and programs dealing with investigations and removals. His duties included researching countries in crisis, whether it was a humanitarian crisis, an armed conflict, or a war. He used publicly available information for that research. If it was required, he used one of the databases to prepare statistics on the total number of people targeted by a removal order to the country being studied and how many of them were criminals or suspected criminals.

[24] The grievor used his research to recommend to the CBSA's senior management whether the removal of foreign nationals deemed not admissible to Canada to a country under review should be temporarily suspended or whether the CBSA should lift a temporary suspension of removals currently in place.

[25] A removal order is an action taken against people who are found ineligible to stay in Canada and who must leave it. According to Mr. Hill, to proceed with removals to a country in crisis, the CBSA has to make sure that the conditions in that country are adequate.

[26] A temporary suspension of removals is a temporary measure that stops all removals to a country where conditions on the ground have been deemed inadequate for removal purposes.

[27] At the relevant time, when it recommended to the Department of Public Safety to impose or to lift a temporary suspension of removals, the CBSA relied in part on research about current conditions in the country in question and on recommendations from officers like the grievor.

[28] In July 2009, Canada lifted a temporary suspension of removals to Rwanda. It meant that Canada's removals of Rwandan nationals who were found inadmissible could be resumed. The grievor participated in the process that led to lifting the temporary suspension. He researched Rwanda and the conditions on the ground there.

[29] As part of his duties, the grievor sometimes contacted embassies and high commissions located in Canada (collectively referred to as “embassies” or “an embassy” from here on). He could be required to contact them to obtain travel documents for a person under a removal order, specifically documents that were difficult to obtain but necessary for the CBSA to complete a removal. He could also be required to receive information from embassies or to respond to their inquiries.

[30] According to Mr. Fehr, who was the grievor’s manager when some of the facts that led to these grievances occurred, the embassies could sometimes proactively contact officers like the grievor, but that happened rarely. They could do so to share information about one of their nationals on Canadian soil when they believed that that national might be of interest to the CBSA. They could also request information about one of their nationals on Canadian soil. Mr. Fehr said that in both circumstances, it is very important for the senior program officer to respect the nationals’ confidentiality and privacy.

[31] According to Mr. Fehr, if a senior program officer received information from an embassy about a person on Canadian soil, they were expected to acknowledge that the information had been received and to search the person’s name in the GCMS, to confirm whether an active immigration or removal file was in progress. If so, they were expected to share the information that was received with the Agency employee responsible for the file in question. No confirmation or information was to be shared with the embassy. The officer was not to share information with the embassy about the results of a CBSA search.

[32] At the hearing, Mr. Fehr said that as a senior program officer, the grievor would have had to use CBSA and IRCC databases for two purposes, to receive and process requests that required him to contact an embassy to secure travel documents for removal purposes, and to carry out research relating to information provided by an embassy in Canada and, as needed, pass the information on to the employee responsible for the file in question.

[33] In addition to his CBSA job, the grievor had a property-management business that managed rental properties for building owners. At the hearing, he said that he launched his company around 2013.

[34] He was also a part-time real-estate agent. At the hearing, he said that he received his real-estate agent licence in 2012. He began working as a real-estate agent to better provide for his family. His clients included many Rwandans who came to Canada on visas to buy rental buildings or secondary residences.

[35] At the hearing, the grievor said that he informed three of his former managers of his real-estate agent activities. Mr. Fehr was not one of them. The three former managers did not testify at the hearing.

### **B. The investigations of the grievor**

[36] Before addressing the evidence that was presented to me about the misconduct allegations that led to the grievor's suspension and termination, I will summarize the evidence that explains when and how the misconduct allegations were raised. This background will help with understanding certain of the misconduct allegations.

[37] In 2014 and 2015, the Canadian Security Intelligence Service (CSIS) investigated the grievor. He was summoned to meetings at which CSIS allegedly asked him about a series of trips to Rwanda that he had taken recently. It appears that CSIS was interested in his participation in a meeting that took place in Rwanda in 2013 and his association with a person whom I will refer to by their initials, D.N.

[38] At the hearing, the grievor described D.N. as a long-time friend who is also married to a member of his extended family.

[39] The grievor testified that he went to Rwanda in 2013 to visit a family member. It is not disputed that D.N. made his travel reservations.

[40] When the grievor was in Kigali, he met with D.N. Together, they attended something that he described as a national-dialogue meeting. At the hearing, he said that he attended the meeting by chance. It was not planned. D.N. allegedly suggested that they attend.

[41] The meeting's nature and purpose have no direct impact on these grievances. Although the grievor testified at length about the meeting and CSIS's investigation, I do not have to decide whether CSIS had reasonable grounds to take interest in his participation in the meeting and his association with D.N. For that reason, I will not describe the evidence that was presented to me at the hearing about this matter.

[42] According to the grievor, CSIS's investigation was the trigger that ultimately led to his termination. According to him, the investigation was based on false information.

[43] At the hearing, he described widespread tension and mistrust that he said exists or existed between the Rwandan Hutu and Tutsi communities on Canada soil, and his evidence on this point was not contradicted. He laid out his theory as to how and why CSIS was interested in him. As I have indicated, he self-identified as Tutsi. According to him, it is likely that Hutus in Canada, specifically opponents of the Tutsi government in power in Rwanda, gave CSIS false information about him and that that information caught its interest.

[44] The evidence that was presented to me at the hearing shows that at some point, CSIS would have shared concerns about the grievor's security clearance with the CBSA. He had top-secret clearance and had access to sensitive and confidential documents.

[45] In May 2016, the employer carried out a review for cause of the grievor's security clearance.

[46] During that review, the grievor took part in two interviews. His use of the databases that he had access to for work purposes was verified. His use of his CBSA email address for purposes not related to his work was also verified. For this decision, it suffices to say that the interviews and verifications raised concerns for the employer about possible misconduct by the grievor.

[47] Based on the information that was gathered during the review for cause, five misconduct allegations were brought to the attention of the director general at the time. She decided to launch an administrative investigation into them. The investigation began in July 2016.

[48] The grievor was informed of the misconduct allegations that were being investigated. He was also informed that the employer had decided to suspend him without pay, pending the investigation's outcome. According to the July 11, 2016, suspension letter, management concluded that his presence in the workplace was a serious and immediate-enough risk to the employer's interests to justify suspending him.

[49] At the hearing, Mr. Desmarais testified about his decision to suspend the grievor during the investigation and about why he did not accept the grievor's suggestion,

expressed at the hearing, to reassign him to different duties during the investigation. He said that it was alleged that the grievor had abused his database access, the Agency's computer network, and his CBSA email address. According to him, it was impossible to consider reassigning the grievor to tasks that did not require access to all those work tools.

### **C. The evidence about the misconduct allegations**

[50] Now, I will go over the evidence about each allegation that led to the grievor's termination.

[51] Since the grievor's use of his work computer and email address for his real-estate agent and property-management activities is difficult to separate from the allegation that he used his CBSA title and contact information for purposes unrelated to his duties, I will address them together.

[52] Then, I will describe the evidence relevant to the allegation that the grievor made unauthorized searches in the databases that he had access to in the context of his work. Several searches were related to his real-estate agent and property-management activities. For that reason, the evidence about the allegation that he put himself in a conflict of interest is much the same as the evidence about his database searches. I will address those two allegations together.

[53] Next, I will describe the evidence relevant to the allegation that he associated with a suspected criminal and that he failed to inform the employer of it. Finally, I will address the allegation that he disclosed information that was in the CBSA's databases without the employer's authorization.

#### **1. The grievor's use of CBSA assets, his title, and his contact information**

[54] Ms. Passanante interviewed the grievor as part of the investigation. The audio recording of that interview was entered into evidence.

[55] According to Ms. Passanante, when the interview began, the grievor denied all unauthorized uses of CBSA assets, his title, and his contact information. As the interview progressed and evidence was brought to his attention, his story changed.

[56] According to Ms. Passanante, eventually, the grievor admitted that he used the CBSA's network to carry out Internet searches related to his real-estate agent activities,

used its telephones to call clients, and emailed clients and potential clients using his Agency email address. According to her, when the interview began, he reportedly said that he had removed his signature block, to hide his CBSA job. When emails containing his contact information as an Agency employee were brought to his attention, he admitted that sometimes, he probably forgot to remove his contact information.

[57] At the hearing, the grievor admitted that he used his CBSA computer and email address to send and receive emails related to his real-estate agent and property-management activities. He did it during his lunch hours and during the breaks that he was entitled to as a CBSA employee. He said that he did not know that using his CBSA email address to exchange emails with clients was prohibited.

[58] He said that he used his Agency telephone to contact clients and used the Agency's computer networks to carry out Internet searches related to his real-estate agent and property-management activities.

[59] At the hearing, he also testified that he made an effort not to show that he worked for the CBSA by removing his signature block, title, and telephone number before emailing a client or potential client from his CBSA email address. He admitted that sometimes, he might have forgotten to do it.

[60] Several examples of emails bearing the grievor's full signature block, including his title, telephone or fax number, or any combination of his contact information as a CBSA employee were entered into evidence.

[61] The evidence that was presented to me at the hearing shows that the grievor also used his work computer and the Agency's computer network to prepare, save, and send documents for personal reasons or in connection with his real-estate agent activities. Those documents, which are invitation letters, will be described in more detail in the next section of this decision.

## **2. Unauthorized database searches, and putting himself in a conflict of interest**

[62] During its investigation, the employer conducted searches of its databases, to understand whether the grievor had carried out unauthorized searches and if so, how many. Since the Agency does not control the FOSS, it asked the IRCC to search its databases and to send the search results to investigators. The verifications targeted the period from about June 2013 to June 2016.

[63] According to Ms. Passanante, when the investigation began, the grievor denied using the databases that he had access to for personal reasons. But when the investigators showed him the records of the database searches that he had carried out, he admitted that he had conducted searches for fewer than 10 people. According to Ms. Passanante, as the investigators questioned him, he revised that number, to a maximum of between 10 and 20 people.

[64] At the hearing, the grievor said that he had conducted searches in the databases that he had access to for his job. According to him, the searches were related to a number of people roughly between 8 and 20. He testified at length about some of his searches. He did not deny conducting the searches that were attributed to him in the employer's investigation report. They were carried out between 2007 and 2016, mostly between July 2013 and October 2015. His testimony was mainly about why he carried out the searches and why, in his view, they were part of his duties.

[65] I will start by describing the unauthorized searches that the employer identified through its investigation. Then, I will describe the grievor's testimony about certain specific searches.

[66] During its investigation, the employer identified 39 unauthorized searches. They included the following:

- 32 searches over 69 days about a person whom I will call A.K.;
- 2 searches carried out 44 days apart about A.K.'s spouse, whom I will call J.U.;  
and
- 5 searches over 31 days about a person whom I will call R.N.

[67] At the hearing, Ms. Passanante said that in her opinion, the number of unauthorized searches that the grievor carried out would certainly be much higher than what the investigation had identified.

[68] At the hearing, the grievor admitted that he used the FOSS, an IRCC database, to carry out searches that had no direct link to his duties as a senior program officer. He admitted to carrying out searches since 2003, when his career began.

[69] According to Ms. Passanante, since the Agency does not control the FOSS, the investigators had to provide specific search parameters to the IRCC and had to restrict the request's scope. At the hearing, she said that she did not ask the IRCC to verify all the grievor's searches since his career began. She targeted the names of people that he

appeared to have recently contacted for reasons unrelated to his work, using his CBSA email address. She also targeted specific periods, dates that generally corresponded to the dates of communications between him and those third parties.

[70] As indicated earlier, several people in the Rwandan-Canadian community knew that the grievor worked for the CBSA.

[71] At the hearing, the grievor said that throughout his CBSA career, even when he worked for the CIC in Windsor early in his career, people contacted him for information about the status of their immigration applications. He said that he searched the databases for the applications' statuses but that he did it without disclosing to those concerned information contained in their files. He informed each of them only that the application was being processed, and if required, he gave them an IRCC telephone number that they could call for more information about their application.

[72] He said that he conducted the searches to find out why there might have been delays processing the applications of the people who had contacted him. He said that he wanted to know if the processing was delayed because the person in question had, or was suspected of having, committed a war crime in Rwanda. At the hearing, he was unable to specify how many searches he carried out over the years in response to such requests.

[73] At the hearing, the grievor also testified that acquaintances sometimes asked him to write an invitation letter to support their visa applications. Visa applicants may present invitation letters. According to the grievor, presenting an invitation letter may enhance a visa application by alleviating certain concerns that Canadian authorities may have. The invitation letter has to be from someone in Canada, and it can include a variety of information about the visa applicant, particularly their relationship to the letter writer, the trip's purpose, where they will live while in Canada, and approximately how long they will stay.

[74] At the hearing, the grievor said that when someone asked him to write an invitation letter, he searched the databases that he had access to for that person's name.

[75] During the investigation, the grievor admitted that he wrote invitation letters for seven people who wanted to come to Canada for some reason, including A.K., R.N., and J.U. At the hearing, he admitted that he wrote the letters sometime between 2010 and 2016. He also admitted that he made searches about each of those seven individuals.

[76] In the invitation letters that the grievor wrote, he identified himself as a CBSA employee. He indicated his Agency position title. Some of the letters were saved to his personal drive on the CBSA's computer network.

[77] At the hearing, the grievor testified that every time someone called him for help or asked him for a favour, his reflex was to wonder whether there was a hidden motive, an unknown reason for which they had asked for his help. He was especially preoccupied by the idea that he might inadvertently help someone who had been involved in the Rwandan genocide. He said that throughout his career, he checked the databases to avoid problems for him and for Canada. According to him, anyone who was able to stop a war criminal from entering the country had to act. In his view, it was a moral obligation.

[78] At the hearing, when the employer's counsel asked the grievor to explain how his database searches were related to his tasks as a senior program officer, he said that it was possible at first glance to think that his searches had nothing to do with his duties. But according to him, his searches pertained to the country's security. He felt compelled to carry out the searches to keep this country safe, and therefore, in his opinion, the searches were part of his duties as a CBSA employee.

[79] Now, I will describe the evidence that was presented to me at the hearing about certain specific unauthorized searches that the employer identified and that the grievor admitted, at the hearing, to carrying out.

[80] He carried out unauthorized searches on acquaintances and members of his extended family. At the hearing, he said that he provided an invitation letter to a person whom I will call F.K. He allegedly provided it in 2014 or 2015. He had taught F.K. when he lived in Rwanda. Before giving F.K. an invitation letter, he searched the FOSS to confirm F.K.'s statement that some time before, Canada had issued them a visa to enter the country.

[81] He also admitted that he conducted searches pertaining to his wife's uncle before writing an invitation letter at that person's request. He allegedly carried out those searches in 2010 or 2011.

[82] At the hearing, the grievor testified about his searches with respect to A.K. In 2014, A.K., a long-time acquaintance, contacted him. He wanted to come to Canada with his spouse, J.U., to buy a condominium. But his visa application had been denied.

[83] When A.K. called him, the grievor wondered whether A.K.'s visa application had been denied because he had had any part in the genocide. A.K. is Hutu. The grievor searched the FOSS, several times. He said that he wanted to understand why the visa application had been denied. The explanation in the FOSS was long, and he had to access A.K.'s file more than once to read it all.

[84] At the hearing, the grievor said that he did not remember how many times he conducted searches about A.K. He did not state that the number of searches that the employer identified was incorrect — 32 searches in more than two months, from September 12 to November 20, 2014.

[85] After reading the reasons in the FOSS for denying the application, the grievor asked a colleague, another real-estate agent, to sign an invitation letter for A.K. and his spouse, J.U. At the hearing, the grievor said that he thought that an invitation letter could not have come from him. Since A.K. wanted to come to Canada to buy a condominium, and the grievor was to be his real-estate agent, it would have been a conflict of interest for him to sign the invitation letter. That was why he asked a colleague to sign it.

[86] At another time, in 2014 or 2015, the grievor wrote an invitation letter for A.K. In it, he identified himself as a CBSA employee. He gave his title and the directorate that he worked in. In the letter, he did not mention his real-estate agent or property-management activities.

[87] At the hearing, the grievor said that when he wrote the invitation letter, he did not think that A.K. wanted to come to Canada to buy a property. He did not believe that preparing the letter was a conflict of interest.

[88] When A.K. arrived in Canada, he informed the grievor that he wanted to buy a property while he was in the country. At the hearing, the grievor said that to avoid

putting himself in a conflict of interest, he did not participate in the real-estate transaction. He gave up a large real-estate commission. He asked a colleague to take care of the transaction. Although he did not participate in the transaction, he still concluded a property-management contract while A.K. was in the country.

[89] Based on the evidence, it is not entirely clear whether the grievor searched the databases again with respect to A.K. His and Ms. Passanante's testimonies were vague on that point.

[90] Now, I will move to another situation in which the grievor admitted to carrying out an unauthorized search.

[91] Around 2015, a long-time friend, V.B., contacted the grievor about his partner, R.N.'s, visa application. The couple wanted to come to Canada to buy a property, but R.N.'s visa application had been denied.

[92] At the hearing, the grievor said that he searched a database to find out why the application was denied and to make sure that there was nothing compromising in R.N.'s file. Once he was satisfied with the search results, he advised V.B. that R.N. should present an invitation letter, to support her visa application.

[93] At the hearing, the grievor said that when V.B. asked him for an invitation letter, he asked a representative from the real-estate agency that he was affiliated with to provide the letter for him. According to the grievor, had he provided the letter, he would have put himself in a conflict of interest because he was going to be V.B. and R.N.'s real-estate agent. According to him, by doing what he did, he avoided any conflict of interest.

[94] The next parts of the evidence summary address the grievor's association with D.N. and the unauthorized disclosure of information to him, among others. For that reason, I will address the evidence about the grievor's unauthorized searches about D.N. in the part of the evidence summary about the allegedly unauthorized disclosure of information.

### **3. Association with a suspected criminal**

[95] In the evidence summary pertaining to the investigations into the grievor, I described his friendship and family relationships with D.N., and CSIS's investigation in

2014 and 2015. In order to summarize the evidence with respect to the allegation that the grievor neglected to inform the employer about his association with D.N., I have to go back in time, to well before 2014.

[96] As indicated earlier, the temporary suspension of removals to Rwanda was lifted in 2009. Shortly after that, the Rwandan embassy in Canada asked the CBSA to explain why it had been lifted. A meeting took place at the embassy. The CBSA's associate vice president, Mr. Hill, was present, as was the grievor.

[97] At the hearing, Mr. Hill said that the embassy had concerns about the number of presumed Rwandan war criminals on Canadian soil. At the meeting, it was agreed that the embassy would send the CBSA a list of those Rwandan nationals whom it suspected of having participated in the genocide and who were on Canadian soil.

[98] According to Mr. Hill, during the meeting with the embassy, it was also agreed that the grievor would search the CBSA's databases to find out if the people who were named were living in Canada, if there were any indications of criminal behaviour in their files, and if their names were on the inventory of Rwandan nationals targeted for removal to Rwanda.

[99] Shortly after the meeting, the list of names was sent directly to the grievor. D.N.'s name was on the list. The grievor wrote down the list of names and saved it in an electronic document entitled, "Rwanda war criminals". He shared a copy with his manager. He searched the CBSA's and IRCC's databases for each person named on the list.

[100] The grievor did not inform his manager that he knew D.N. At the hearing, he said that he did not inform his employer of his friendship and family relationship with D.N. because he was sure that D.N. was not a criminal. He did not suspect D.N. of being involved in such activities. According to him, only the embassy suspected D.N. of being involved in criminal activities.

[101] At the hearing, the grievor explained the reason, according to him, for D.N.'s name appearing on the embassy's list. He said that D.N. had worked at a Rwandan embassy in the Middle East shortly after the genocide. According to him, some might have misinterpreted D.N.'s job as an association with the government responsible for the genocide.

[102] He also said that he did not inform his employer of his relationship with D.N. when he received the embassy's list because the only thing that he had to do in the context of his work was to verify the names on the list. He was not asked to look into D.N.'s file or to build a file on him.

[103] At the hearing, Mr. Fehr said that he did not know that the grievor knew someone named on the list. He indicated that the grievor should have informed him right away that he knew D.N., so that another officer could be assigned the task. According to him, in such circumstances, it would have been imperative to reassign the task, to avoid a conflict of interest, guarantee the integrity of the process, and make sure that no current or future investigations were compromised.

[104] Between 2009 and his suspension in 2016, the grievor continued to spend time with D.N. regularly. There is no indication that he informed his employer that he had a friendship or family relationship with a suspected criminal.

[105] At the hearing, the grievor said that at some point that he did not specify, he informed a manager that he knew D.N. and that he had removed himself from a task that required him to handle information about D.N. That manager did not testify at the hearing, and there is no indication that the grievor shared that information with the investigators or the employer during the disciplinary process that led to his termination.

#### **4. The disclosure of database information to unauthorized persons**

[106] At the hearing, the grievor said that at some point, D.N. contacted him about his refugee-status claim. His claim had been rejected, while some of his family members' claims had been accepted.

[107] At the hearing, the grievor said that D.N. had received the reason that the claim had been rejected. Specifically, he said that D.N. had been informed that it had been rejected under "1F". That code presumably refers to Article 1F of what is commonly called the *Geneva Convention* (the *1951 Convention Relating to the Status of Refugees*, 189 U.N.T.S. 2545, entered into force on April 22, 1954, and incorporated by reference to s. 98 of the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27)), which provides that a person who has committed a war crime or a crime against humanity cannot be a refugee.

[108] At the hearing, the grievor said that the reasons for rejecting an immigration application that are given in the IRCC's databases are generally more detailed than the reason for the rejection that the applicant receives in writing.

[109] He said that he searched the databases to understand the reason for the rejection. He read the explanation in D.N.'s file, more specifically, that the claim was rejected because D.N. had worked for a Rwandan embassy during the genocide. At the hearing, the grievor said that he explained to D.N. why his claim had been rejected. According to the investigation report, he conducted that search in 2010, which he did not deny or contradict at the hearing.

[110] At the hearing, the grievor testified that he did not share information with D.N. that D.N. did not already have access to. D.N. had received the reason that his claim was rejected, and the grievor merely confirmed what D.N. already knew. At the hearing, the grievor said that he advised D.N. to write the IRCC a letter, explaining that his embassy work was for the government that replaced the one that was in power during the genocide.

[111] Now, briefly, I turn once more to another type of unauthorized disclosure that the employer investigated. As I have described, the grievor said that for the entire time that he was employed by the CBSA (and before that, by the CIC), from about 2003 until his suspension in 2016, he responded to requests from people who contacted him for information about the status of their immigration applications.

[112] During her investigation, Ms. Passanante found that the grievor's responses — assuming that he did say only that the file was being processed, which she could not confirm — also constituted unauthorized disclosures. According to her, he was not authorized to share information about applications — and that disclosure was not part of the duties of the position that he occupied.

#### **D. The decision-making process that led to the termination**

[113] The investigation into the misconduct allegations concluded in March 2017.

[114] In June 2017, the grievor was summoned to a meeting to discuss the investigation report findings that all the allegations against him were founded. Ms. Lutfallah, as the director general, met with him, to discuss the investigation's preliminary findings and to gather more information from him, as needed.

[115] The grievor prepared a rebuttal report that he gave to Ms. Lutfallah. It and the information that he communicated to her during their meeting appear largely similar to his testimony at the hearing, as described in this decision.

[116] At the hearing, Ms. Lutfallah testified about why she decided to terminate the grievor's employment. She said that he contravened the CBSA's *Code of Conduct* ("the *Code of Conduct*"), the *Values and Ethics Code for the Public Sector* ("the *Values and Ethics Code*"), and the Agency's *Policy on the Use of Electronic Resources* ("the *Policy*"). He committed many serious acts of misconduct over a long period. He accessed the CBSA's and IRCC's databases to carry out searches that were not required or related to his CBSA work. He made them for personal reasons, either to help acquaintances or to benefit his real-estate agent activities. He also associated with a suspected criminal and shared information with that person, without authorization. At the hearing, she said that he did not seem to understand how serious his misconduct was.

[117] On July 28, 2017, the grievor's employment was terminated. The termination was retroactive to the date of the unpaid suspension. His security clearance was also revoked, but that is not the subject of the grievances before me.

[118] A few days later, he filed a grievance with his employer, challenging his termination. For a reason that was not explained to me at the hearing, almost four years passed before his grievances were referred to adjudication before the Federal Public Sector Labour Relations and Employment Board ("the Board", which in this decision also refers to its predecessors).

### **III. Analysis**

[119] The grievor contests his unpaid suspension and his termination. As his termination was retroactive to his suspension date and the allegations that led to both measures were essentially the same, I will start with the termination.

[120] The Board has to examine the grievor's termination with three questions in mind. Did his behaviour justify imposing discipline? If so, was the discipline imposed — in this case, the termination of his employment — excessive in the circumstances of this case? If so, what measure should have been imposed? Those three questions reflect the three-part test set out in *Wm. Scott & Company Ltd. v. Canadian Food and*

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*Allied Workers Union, Local P-162*, [1977] 1 C.L.R.B.R. 1 at para. 13 (“*Wm. Scott*”), which the Board has applied many times.

[121] Before the hearing, the parties prepared lists of decisions that they considered relevant to this case. For this analysis of the evidence and their arguments, I will focus on the decisions that according to me are most relevant.

**A. The grievor’s behaviour justified imposing discipline**

[122] To decide whether the employer met its burden, I must determine whether it established, on a balance of probabilities, the facts that justified imposing discipline.

[123] The termination letter refers to five acts of misconduct. They are the following:

- private conduct and association;
- the misuse of CBSA databases;
- the misuse of federal government assets and a position title;
- unauthorized disclosure; and
- conflict of interest.

[124] It does not describe the misconduct allegations in detail. Their timing is not specified, meaning that the letter does not indicate when the misconducts that founded the grievor’s termination occurred. That said, it refers to the investigation and the disciplinary hearing at which the grievor was given the opportunity to comment on the misconduct allegations described in the investigation report. I accept that the allegations that the termination letter refers to are those described in the investigation report, and I accept too that the dates in the investigation report are those on which the alleged misconducts occurred.

[125] The employer’s investigation report describes behaviours that occurred between 2003 and 2016.

[126] The employer had the burden of proving that the grievor’s behaviour constituted misconduct when the behaviours that he is accused of occurred, meaning that it was up to the employer to submit in evidence a code of conduct, a policy, or any other employer directive in force when the alleged behaviours occurred and that might support a finding that the behaviours constituted misconduct.

[127] At the hearing, the employer presented me with a version of the *Code of Conduct* dated July 2016. It was admitted into evidence. It states that it is a revised

version of the earlier code, which came into force on September 5, 2012. At the hearing, Ms. Passanante said that the provisions of the 2016 *Code of Conduct* that the employer used in its investigation were also in the 2012 version. At the hearing, the grievor did not contest her testimony on that point.

[128] The employer did not present me with evidence about its expectations of its employees before the 2012 *Code of Conduct* came into force. In other words, I received no evidence that could demonstrate that before September 5, 2012, the behaviours described in this decision constituted misconduct. That might have been so, but the employer provided no evidence to that effect.

[129] While testifying at the hearing, one of the employer's witnesses briefly referred to the application of the *Values and Ethics Code* to Agency employees. Although a version of the *Values and Ethics Code* from 2011 was included in a book of documents submitted to the Board before the hearing, it was not admitted into evidence, and the witness did not describe its contents to me.

[130] The employer also presented the *Policy* to me, specifically a French version dated May 13, 2013, and an English version dated June 2013. Both documents, which were admitted into evidence, indicate that the *Policy* replaced a previous version dated January 2011. I received no evidence with respect to the differences or similarities between the 2013 and 2011 versions. I do not know what the 2011 *Policy* stated or whether there was a similar instrument in place before 2011.

[131] To summarize, I do not have any concrete evidence about the employer's requirements for its employees and about Agency employees' obligations before September 5, 2012. Some of the grievor's behaviours for which he was reproached occurred before September 2012.

[132] For that reason, I will review each misconduct allegation. For each one, I will decide whether the employer proved the misconduct and demonstrated that it justified imposing discipline.

[133] But first, I wish to address an argument that the grievor made at the hearing. It was about the connection between CSIS's investigation and the employer's administrative investigation.

[134] He said that in the course of their investigation, the CBSA's investigators used information that CSIS had collected. He also said that CSIS's investigation was based on false information and that it was politically motivated. Although he did not say it outright, it is clear from his arguments that according to him, the investigation that led to his termination was flawed and that the investigators' findings were irreparably biased.

[135] A Board hearing about a grievance that was referred to adjudication is commonly described as a *de novo* hearing. It means that the Board examines the allegations made against the grievor solely considering the evidence and arguments that are presented at the hearing. It is not bound by the findings or conclusions of the employer's administrative investigation (see *Klouvi v. Canada (Attorney General)*, 2024 FCA 80 at paras. 3 and 4).

[136] My conclusions must be based on the evidence and arguments that were presented to me at the hearing. I must analyze the evidence and arguments that were presented to me, to determine whether the grievor committed one or more acts of misconduct that justified imposing discipline, and if he did, whether his termination was excessive in the circumstances of this case.

[137] For that reason, it is not necessary that I decide whether CSIS had reasonable grounds to investigate. It is also unnecessary that I decide whether the investigators' findings were biased.

[138] Before addressing the first misconduct allegation, I will briefly describe the grievor's arguments at the hearing.

[139] In his opening statement, he denied all the allegations set out in the termination letter. But in his testimony and closing argument, he admitted that he made unauthorized searches of CBSA and IRCC databases. He explained why he did it, and he sought to put his actions into context. He also admitted that he used his CBSA email address for his real-estate agent activities but argued that he went to great lengths to always delete his CBSA title and telephone number from the emails. He admitted that sometimes, he might have forgotten to.

[140] He also admitted that he used the Agency's computer networks and his work computer and telephone for his personal business activities. He said that his use of them was limited and was done mainly during his breaks and lunch hours.

[141] Although he admitted to some of the actions that the employer accused him of, the grievor denied that his actions constituted misconduct that justified imposing discipline. In his opinion, a reminder or warning would have been enough to correct his behaviour. He also outright denied taking certain other actions that the employer accused him of, namely, associating with a suspected criminal, placing himself in a conflict of interest, and disclosing information from the databases without its authorization.

### **1. The grievor's use of CBSA assets, his title, and his contact information**

[142] As mentioned, the grievor admitted that he used his CBSA computer, telephone, and email address to communicate with clients or potential clients as part of his real-estate agent and property-management activities. He also admitted that he used the Agency's computer networks to carry out Internet searches as part of his real-estate agent and property-management activities.

[143] The grievor said that he obtained his real-estate agent licence at some point in 2012 and that he launched his property-management business in 2013. The use of CBSA assets for personal and business purposes that he has been accused of was related to those two activities.

[144] Most of the evidence that was presented to me at the hearing about the grievor's use of CBSA assets, his title, and his contact information was about uses between 2012 and 2015. It is uncontested that many of the uses that the grievor admitted to took place while the *Code of Conduct* and *Policy* were in effect.

[145] The *Code of Conduct* states that employees must use CBSA computer systems solely for operational purposes that the employer authorized. The *Code of Conduct* defines "[translation] computer systems" as including, among other things, the network, hardware, Internet, email, and telephone. According to the *Code of Conduct*, personal use must be limited.

[146] The *Code of Conduct* also states that employees must use Agency assets solely for their official duties and never for any personal ends or gain. Employees must

obtain the employer's authorization before using Agency assets, including computers and software, for anything other than official purposes.

[147] The *Policy* also contains related instructions. It states that using the Agency's email system for personal or business purposes is strictly prohibited.

[148] At the hearing, the grievor said that he used the employer's assets and electronic networks approximately five to six hours per week. He said that he would have stopped emailing from his CBSA address had the employer told him to. He said that he did not know that he was prohibited from using his CBSA email address to contact clients. He said that he never received any "[translation] serious" training on it. According to him, his personal use was not excessive because it was for about an hour a day, mainly during his lunch break.

[149] I will return to the question of the training that the grievor received later in my analysis. For now, suffice it to say that I need not decide whether five to six hours per week constitutes excessive personal use. He admitted to using the CBSA's assets and computer systems for personal and business purposes without the employer's authorization. He did it continuously over an extended period, for personal gain in the course of his personal business activities. He contravened the *Code of Conduct* and the *Policy*. That was misconduct that justified imposing discipline.

[150] As I will explain later in this decision, the grievor made some efforts to hide his employment relationship with the Agency when he emailed clients or potential clients from his CBSA email address. If he did that, it is because he knew to some extent that his employer would not look kindly on him using his work email for his personal business activities. On that point, I find that his evidence that he did not know that he was prohibited from using his CBSA email address to contact clients lacks credibility.

[151] In any case, ignorance is not and has never been a defence for misconduct (see, among others, *N.L. v. Treasury Board (Department of National Defence)*, 2023 FPSLRB 119 at para. 128; and *Stokaluk v. Deputy Head (Canada Border Services Agency)*, 2015 PSLRB 24 at para. 160).

[152] Now, I will discuss the grievor's use of his signature block, title, and contact information as an Agency employee.

[153] The *Code of Conduct* includes information about CBSA employees' obligations when using their professional titles. It states that they must not use their professional titles or Agency identification for purposes contrary to the CBSA's interests or to benefit or appear to benefit from a privilege or favour for themselves or others.

[154] At the hearing, the grievor said that he understood and accepted that CBSA employees must not use their roles or professional titles for personal gain. He admitted that sometimes, he forgot to remove his signature block or his CBSA telephone number before emailing a client or potential client.

[155] I accept that the grievor made some efforts to remove his CBSA job title and contact information and to replace them with his real-estate agent contact information. I also accept that he made some efforts to hide his Agency employment.

[156] I recognize that the grievor failed to delete his CBSA job title and contact information in only a few emails. However, he still contravened the *Code of Conduct's* requirements. An employee's use of their CBSA signature block, title, or contact information in personal and business communications is incompatible with the integrity value set out in the *Code of Conduct*.

[157] The grievor also admitted that he used his title and identified himself as an employee of the Programs Branch's intelligence and enforcement team in the invitation letters that he prepared to support the visa applications of his extended family members, acquaintances, clients, and potential clients. The invitation letter that he wrote for A.K. is an example of one in which he identified himself using his CBSA title.

[158] For the purposes of this analysis, although I can accept that it is common practice for authors of invitation letters to indicate their titles or employers, I find implausible the grievor's testimony that he simply did not think to identify himself as a real-estate agent or property manager in the invitation letters. He sometimes wrote letters for his current or potential clients. It is reasonable to conclude that he had his real-estate agent activities in mind when he wrote them.

[159] As the grievor indicated at the hearing, a good number of his clients were Rwandans who came to Canada on visas, to buy rental properties or secondary residences. To purchase a property, the buyer must be in Canada when the transaction is carried out.

[160] I am satisfied that when he identified himself using his Agency title and named the directorate for which he worked, he did so to obtain a benefit for his clients or potential clients, and therefore, indirectly, for himself.

[161] I accept the employer's argument at the hearing that when he used his title in a letter supporting a friend's, client's, or potential client's immigration application, the grievor did so in an effort to increase the chances that it would be approved. If it was approved, and the client or potential client became able to travel to Canada to view properties, the grievor could gain a personal and business advantage, whether in the short or long term. For A.K., the advantage was a property-management contract that was finalized after A.K.'s immigration application was approved.

[162] The grievor contravened the *Code of Conduct*, which justified imposing discipline.

## **2. Unauthorized database searches**

[163] The *Code of Conduct* states that CBSA employees are permitted to consult official information only when necessary for their jobs and when they have received the required authorization. They are prohibited from, among other things, improperly using official information for personal reasons, for personal or financial gain, or for others' personal or financial gain.

[164] Section 10 of the *Policy* states that CBSA employees must not under any circumstances consult Agency information about, among other things, any person unrelated to their CBSA work, "[translation] ... except when consulting that information is directly related to an authorized program or an activity that the person is expressly authorized to carry out". The CBSA's computer systems, including databases, must be used strictly on a "[translation] need-to-know" basis.

[165] At the hearing, the grievor admitted that he searched the databases for reasons not directly related to his position and duties.

[166] He admitted that he searched the databases when members of his extended family, friends, acquaintances, or current or potential clients asked him to write an invitation letter supporting a visa application. At the hearing, while testifying about the searches that he carried out after receiving an invitation letter request, the grievor said

that he made databases searches on 8 to 20 people. Most were done between 2013 and 2015.

[167] He also admitted to searching the databases when people contacted him with questions about the status of their immigration applications. He said that he had done it since his public service career began in 2003. He was unable to estimate how many such unauthorized searches he might have carried out during his career. He was also unable to specify how many people were targeted by the searches.

[168] The grievor explained that he carried out those searches to make sure that no war criminals could enter Canada without his knowledge. He said that he felt a moral obligation to look into those persons' files, to make sure that anyone who asked him to write an invitation letter was not wanted by Canadian or foreign authorities. He wanted to make sure that the questions that he was asked about the status of immigration applications were not intended to secure information that would allow the person to evade Canadian authorities.

[169] I will focus mainly on the database searches that he carried out when responding to an invitation letter request. I will take that approach because it is clear that most of those searches were carried out after September 2012, which is the period for which the employer presented evidence with respect to the existence of a *Code of Conduct* prohibiting unauthorized searches. It appears from the grievor's testimony that during that period, he also made certain searches in response to questions asked of him about the status of immigration applications. However, his testimony and the evidence that the employer presented to me are unclear as to how many of the searches took place after September 2012 and how many took place before.

[170] Putting aside for the moment the reason that the grievor made the searches, it is clear that his employer did not authorize the searches.

[171] At the hearing, Mr. Fehr and Mr. Desmarais described the situations in which the employer authorized the grievor to search the databases. He was authorized to conduct searches for very limited and specific reasons, to prepare a request addressed to an embassy in the goal of obtaining travel documents for the purposes of removing a person targeted by a removal order, or to search through information that an embassy in Canada had provided to the CBSA and, when necessary, forward that information to the CBSA employee responsible for the file in question.

[172] His searches had nothing to do with his duties as a senior program officer. He was mainly responsible for researching countries in crisis, using publicly available information, and for recommending whether removals to the country being researched should be temporarily suspended or whether a suspension of removals should be lifted.

[173] I cannot accept the grievor's argument, expressed at the hearing, namely, that the searches were about this country's security, so they fell within the scope of his duties as a CBSA employee.

[174] The grievor was not responsible for conducting searches to identify people suspected of having committed war crimes or for investigating whether people were admissible to Canada. He was not involved in processing removal orders. His position was part of a team that administered policies and programs related to investigations and removals. I cannot conclude that carrying out those searches was implicitly or explicitly part of exercising his duties.

[175] Searching databases for personal reasons is prohibited. CBSA employees may only access the information in the databases to which they have access when that access is necessary to perform their duties and when they have received authorization. The *Code of Conduct* and *Policy* make that clear.

[176] At least once, in 2014, the grievor received training on the employer's expectations for CBSA employees' use of computer systems and databases. Many of the searches described in the summary of the evidence were carried out shortly after he took that online training. At the hearing, he did not argue that he failed to understand the employer's expectations for using its computer systems and databases. He admitted that he took the training but suggested that it was not "[translation] serious" training. According to him, had the subject matter really been important to the employer, it would have included a test that had to be passed for the training to be considered completed.

[177] I conclude that the grievor did not comply with the employer's expectations. He committed misconduct, and he did so repeatedly.

[178] The Board has reached the same conclusion in other fact situations involving allegations that a grievor carried out unauthorized searches (see, for example,

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*Woodcock v. Canada Revenue Agency*, 2020 FPSLRB 73; *Campbell v. Canada Revenue Agency*, 2016 PSLREB 66; *N’Kombe v. Deputy Head (Department of Citizenship and Immigration)*, 2023 FPSLRB 93; and *Klouvi v. Deputy Head (Department of Employment and Social Development)*, 2023 FPSLRB 88).

[179] Before analyzing the next allegation, I will briefly turn once again to the reason that the grievor made the searches. I accept without hesitation that the grievor was concerned that he might inadvertently help someone who had been involved in the Rwandan genocide. He felt obligated to take steps to make sure that he was in no way helping war criminals.

[180] That said, at this point in my analysis, I must decide whether the employer demonstrated that the grievor committed misconduct that justified imposing discipline. This is not the first case in which a grievor has argued that they carried out unauthorized searches because they felt a moral obligation to make them (see, for example, *N’Kombe*, in which the grievor admitting to carrying out unauthorized searches because he was motivated by a desire to help others, which arose from his religious beliefs). The reason that the grievor carried out the unauthorized searches did not make his actions compliant with the *Code of Conduct and Policy*.

[181] I will return to the grievor’s explanation to justify his actions at the second step in the analysis of the *Wm. Scott* test.

### **3. Association with a suspected criminal**

[182] The grievor categorically denies the allegation that he associated with a suspected criminal, D.N., and that he failed to inform the employer of it.

[183] At the hearing, he argued that his relationship with D.N. was not an “association”. He testified at length about why he did not share the Rwandan embassy’s and CSIS’s concerns about D.N. at the time. I will address these two matters in order.

[184] D.N. is a long-time friend of the grievor. He is also a member of the grievor’s extended family. At the hearing, the grievor said that he saw D.N. regularly, approximately every two months. The evidence that was presented to me at the hearing shows that D.N. booked the grievor’s travel when he went to Rwanda in 2013.

It is undisputed that he attended a meeting in Kigali in D.N.'s presence. In light of all these findings, I find it undeniable that they have an "association".

[185] Now, I will address the grievor's argument that he was not required to inform the employer of his association with D.N. because he did not suspect D.N. of being a criminal or war criminal. He argued that it was unreasonable to expect him to cut D.N. out of his life and stop associating with him because some misinformed people suspected D.N. of being a war criminal.

[186] The *Code of Conduct* contains an entire section dealing specifically with off-duty conduct by Agency employees. It states that they must avoid activities that damage the Agency's reputation and programs, among other things. It specifies that they must avoid any activity that makes them or the Agency vulnerable by associating, outside their official duties, with people who have, or are suspected of having, ties to criminal activities.

[187] The *Code of Conduct* expressly states that employees are required to report to their managers any contact that they had outside work with people who have, or are suspected of having, ties to criminal activity. This is to protect the employees and the Agency.

[188] It is undisputed that the *Code of Conduct* has contained obligations of this nature since at least September 2012.

[189] Determining whether certain conduct discredits the employer's reputation is a question that requires common sense and discernment (see *Tobin v. Canada (Attorney General)*, 2009 FCA 254 at para. 62). It can be determined by assessing whether the conduct could reasonably be expected to have had a damaging impact on the employer's reputation, its products or services, or its operations (see *A.B. v. Treasury Board (Department of National Defence)*, 2024 FPSLRB 153 at paras. 92 and 93).

[190] I accept Ms. Lutfallah's testimony that an interpersonal relationship between a CBSA employee and a person involved or suspected of being involved in criminal activities may expose the CBSA to significant reputational risk, regardless of the crime or crimes committed. It is reasonably foreseeable that such a relationship could raise doubts about the integrity and impartiality of the Agency's programs and activities.

[191] The grievor knew that D.N. was suspected of having ties to criminal activities. His name was on a list of suspected war criminals that the Rwandan embassy gave the grievor in 2009. He continued to spend time with D.N. without informing his employer that they were friends and related.

[192] After they attended a meeting together in Kigali in 2013, the grievor also knew that CSIS suspected D.N. of having ties to criminal activities. He did not inform his employer of his association with D.N.

[193] The evidence that was presented to me at the hearing also shows that in 2015, D.N.'s name appeared in a reputable Canadian newspaper's article about alleged Rwandan war criminals. The grievor knew about the article. He had saved a copy of it.

[194] At the hearing, the grievor challenged the basis and legitimacy of the information in the article. He also challenged the basis and legitimacy of the embassy's and CSIS's concerns about D.N. However, he did not deny that he knew about the concerns.

[195] From his testimony at the hearing, it arises that the grievor is certain that D.N. is not a war criminal. He is also convinced that those who suspected D.N. of war crimes when the facts relevant to these grievances arose relied on false information or a mistaken understanding of the facts.

[196] For the purposes of this decision, I do not have to decide whether D.N. is a war criminal. That is not my role. I also need not decide whether the Rwandan embassy and CSIS had reasonable grounds to believe that D.N. had been involved in war crimes or other criminal activities. The important thing is that he was identified as a suspected war criminal, and the grievor knew it. He should have informed his manager about his relationship with D.N. He did not.

[197] Accepting the grievor's argument that he did not have to inform his manager because he was convinced that D.N. did not commit war crimes would mean accepting an argument that complying with the obligation set out in the *Code of Conduct* is contingent on the employee's opinion as to whether it is reasonable to suspect the person in question. I cannot accept that interpretation of the obligation in question. The employer is entitled to protect the integrity of its reputation, programs, and

activities by obligating its employees to report any off-duty contact that they have had with people suspected of having ties to criminal activities.

[198] In the circumstances of this case, it was not for the grievor to decide whether the embassy was right or wrong to include D.N.'s name on a list of suspected war criminals. The *Code of Conduct* is clear. He was obligated to inform his manager of his association with D.N. He did not. Therefore, he denied the employer the opportunity to know the facts and to draw its own conclusion as to whether his relationship with D.N. was a reputational risk for it and its programs, and if it was, to determine whether measures could be taken to mitigate the risk.

[199] As indicated in the summary of the evidence, at the hearing, the grievor said — for the first time — that at some point, he had informed a manager that he knew D.N. and that he had removed himself from a task that required handling information about D.N.

[200] It is curious that the grievor recalled that earlier disclosure of his connection to D.N. at the hearing, several years later. However, I emphasize that, in his testimony at the hearing, he did not state that he informed his manager that D.N. was suspected of being a criminal or war criminal. He said only that he had informed the manager that he knew D.N. and that he should remove himself from a task that involved handling information about D.N. There is no indication that that earlier disclosure had the effect of alerting the employer that the grievor was associated with a person suspected of having ties to criminal activities. It does not change my conclusion that the grievor committed misconduct when he associated with a person suspected of having ties to criminal activities and failed to inform the employer of it.

#### **4. Conflict of interest**

[201] The Board's case law is clear — a conflict of interest, even if it is only apparent, is considered serious misconduct (see, among others, *Viner v. Deputy Head (Department of Health)*, 2022 FPSLREB 74 at para. 331). A conflict of interest is considered serious misconduct because it involves a significant lack of judgment that calls into question the integrity of the person who is the subject of such an allegation. Avoiding real or apparent conflicts of interest goes to the core of the integrity required from public service employees (see *Brazeau v. Deputy Head (Department of Public Works and Government Services)*, 2008 PSLRB 62 at para. 187).

[202] The *Code of Conduct* contains an entire chapter on conflicts of interest. It defines that term as follows:

...  
*... is a situation in which the public servant has private interests that could improperly influence the performance of his or her official duties and responsibilities or in which the public servant uses his or her office for personal gain.*  
...

[203] Among the responsibilities that the *Code of Conduct* sets out is that CBSA employees must never knowingly use, for personal gain, information that they have access to for their jobs and that is not readily available to the public, must never use federal government assets for purposes other than those officially approved, and must not help persons in their dealings with the federal government if it could result in preferential treatment.

[204] At the hearing, the grievor denied placing himself in a conflict of interest, and he based his arguments at the hearing on two main points: his communications with clients, and the invitation letters.

[205] He said that he was always careful to avoid conflicts of interest as part of his real-estate agent and property-management activities. He removed his CBSA title and contact information when he emailed from his Agency address as part of his real-estate agent and property-management activities.

[206] He also said that he did not provide invitation letters to people who wanted a visa to come to Canada to buy property from him as a real-estate agent. He asked another real-estate agent to do that. He also said that he gave up a substantial amount of money, his commission, to avoid placing himself in a conflict of interest.

[207] The grievor appears to favour a narrow interpretation of the idea of a conflict of interest. I will explain, using the example of his interactions with one of his clients, A.K.

[208] Two invitation letters for A.K. were presented to me at the hearing. The first was signed by the grievor, and the second by his colleague. I will focus on the second letter.

[209] At the hearing, the grievor acknowledged that it would have been a conflict of interest had he given A.K. an invitation letter after A.K. declared his intention to come to Canada to buy a property with the grievor's help as a real-estate agent.

[210] Because of the different positions that he held with the Agency over the years, the grievor knew of certain information that if it were included in an invitation letter could reassure the Canadian authorities processing immigration applications. At the hearing, he described some of it.

[211] The evidence that was presented to me at the hearing indicates that the grievor prepared the invitation letter and then asked his colleague to sign it. By asking his colleague to provide the invitation letter, he might have avoided a blatant conflict of interest, but he did not shield himself from one. He did indirectly what he knew he could not do directly. He used acquired knowledge about that information to make it easier for A.K. to come to Canada for personal business reasons. He received a commission from the sale of a property.

[212] At another point, A.K. wanted to return to Canada. According to the grievor, A.K. had not told him that he wanted to return to Canada to buy a property. The grievor gave him an invitation letter, the first of the two letters that I referred to earlier. In it, he said that one of the reasons that A.K. wanted to come to Canada was to do business, but he did not set out more detail. When he testified at the hearing, the grievor did not clarify what he meant by "[translation] business", presumably to avoid suggesting a possible intent to complete a real-estate transaction. Almost all the grievor's testimony about A.K. concerned real-estate transactions and rental-property management, which makes his testimony on this matter unpersuasive.

[213] In the invitation letter, the grievor did not identify himself as a real-estate agent or property manager, which he likely would have done had he been as concerned about avoiding a conflict of interest as he claimed at the hearing. Instead, he identified himself as a senior program officer on the CBSA Programs Branch's intelligence and enforcement programs team. In my opinion, he used his title and identified his work team and branch to add weight to the invitation letter and to increase his client's chances of being admitted to Canada.

[214] Although the grievor was not involved in a real-estate transaction during A.K.'s second visit, and according to him, he "[translation] sacrificed" a commission, he still

benefited financially by inviting A.K. to the country. He signed a property-management contract with him during the trip. Had the grievor genuinely been concerned about avoiding a conflict of interest, he would have refused to sign the contract.

[215] Both situations were conflicts of interest, meaning situations in which the grievor put his interests as a real-estate agent and property manager in conflict with his obligations as an Agency employee.

[216] The grievor also admitted that he looked up at least one friend, R.N., to find out why their immigration application had been denied. He admitted that he advised R.N.'s spouse and suggested a course of action. His suggestion was clearly intended to increase the chances that the immigration application would be allowed. I note that when he advised on R.N.'s application, in 2015, she had already expressed the intention to come to Canada with her spouse, to buy a property. The grievor was R.N.'s real-estate agent. He stood to benefit financially were R.N.'s application allowed.

[217] I find that the grievor put himself in conflicts of interest several times. That misconduct justified imposing discipline.

##### **5. Disclosing database information to unauthorized individuals**

[218] As previously indicated, it is alleged that the grievor disclosed information to D.N. about his refugee-status claim. It is also alleged that the grievor disclosed information, without the employer's authorization, to an undefined number of people who contacted him about their immigration applications during his career.

[219] According to the evidence that was presented to me at the hearing, information was disclosed to D.N. around 2010. Since the alleged disclosure took place well before September 2012, when the earlier version of the *Code of Conduct* that was admitted into evidence came into effect, I will not say any more about this allegation. The employer did not meet its burden; specifically, it did not present evidence to support a finding that the alleged conduct in 2010 constituted misconduct.

[220] The other disclosures took place between 2003 and 2016. I cannot pinpoint exactly when. That said, the grievor's testimony generally indicates that people contacted him about their applications fairly regularly. It is reasonable to conclude that some of them contacted him after September 2012. The *Code of Conduct* states that CBSA employees must have the employer's express authorization to disclose

information obtained about Agency clients and any other official information that is not publicly available only if they have been expressly authorized to.

[221] The grievor does not deny the actions that he has been accused of taking. However, he denies that they were misconduct. According to him, giving a third party information that confirms what that person already knows is not an unauthorized disclosure of information.

[222] At the hearing, the grievor said that after searching the databases, he merely confirmed to the people concerned that their applications were being processed and, if necessary, gave them an IRCC telephone number to call, for more information about their applications. He said that he merely confirmed the information that those people already knew, which was that their applications were being processed.

[223] I note that the grievor said that he had answered immigration application questions since 2003. He was suspended from his position in 2016, meaning that he apparently did it for 13 years. It appears from his testimony at the hearing that he was well known in his community, both in Windsor and then in the National Capital Region. Although he did not say it outright, his testimony at the hearing left me with the distinct impression that those who contacted him for information about their applications did so because, through word of mouth in the community, they had heard that he could help them.

[224] It seems unlikely to me that that trend would continue for 13 years, in two different geographic regions, if the grievor was merely confirming to those concerned that their applications were being processed. I find that it is more likely than not that he shared additional information not available to the public about the status of the applications in question.

[225] Even if that were not so and I accepted that the grievor simply informed them that their applications were being processed, I would still be of the opinion that he shared database information with them that was not publicly available.

[226] At the hearing, the grievor stated that often, the people who contacted him had not received any updates from the IRCC about their applications. They did not know the status of their applications, and they contacted him for more information.

[227] By informing them that their applications were being processed, the grievor shared information that they otherwise would have had no access to. The employer had not authorized him to do that. He contravened the *Code of Conduct*.

**B. In the circumstances, the grievor's termination was not excessive**

[228] Since I have concluded that the five misconduct allegations against the grievor are founded and justified imposing discipline, I will now address the second part of the *Wm. Scott* test, which is whether the disciplinary measure that was imposed — in this case, the termination of his employment — was excessive, in the circumstances of the case. If it was not, the grievance must be denied. However, if it was excessive, I must analyze it to identify a disciplinary measure more appropriate in the circumstances. The employer has the onus to justify the choice of the disciplinary measure that it imposed.

[229] The grievor argues that his termination was excessive. In his view, his suspension without pay was already an appropriate and reasonable disciplinary measure, a measure that would have corrected his behaviour. Alternatively, he argues that the employer should have considered a demotion to warn him about his behaviour or terminating him without revoking his reliability clearance in order to allow him to seek employment elsewhere in the public service. He argues that since he was a long-time employee with a clean disciplinary record, his employer should have given him the chance to correct his behaviour.

[230] The grievor submitted a list of case law. However, he did not address those decisions in his closing argument; nor did he explain how they are relevant or apply to the facts that gave rise to the grievances before me. That said, some decisions, namely, *Larson v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2002 PSSRB 9, and *Wm. Scott* set out or apply well-established principles relevant to disciplinary matters.

[231] The employer relied on a good number of cases that dealt with fact situations involving one or a combination of the acts of misconduct at issue in this case (see, for example, *Gravelle v. Deputy Head (Department of Justice)*, 2014 PSLRB 61; *Ontario Power Generation v. Power Workers' Union* (2004), 125 L.A.C. (4th) 286; *Telus Communications Inc. v. Telecommunications Workers Union* (2005), 143 L.A.C. (4th) 299;

and *Stokaluk*). Those decisions are useful, but as none of them deals with the combination of acts of misconduct at issue in this case, their relevance is limited.

[232] The grievor and the employer view the seriousness of the grievor's misconduct differently. According to him, the acts of misconduct — if any — could have been adequately handled with a warning, suspension, or, at worst, demotion. The employer argues that the nature and extent of his acts of misconduct demonstrated a lack of judgment, integrity, and professionalism that broke the trust relationship between them, beyond repair.

[233] For the reasons set out in the previous section of this decision, I accept without reservation the employer's assessment that the grievor's acts of misconduct, taken as a whole, were numerous, significant, and concerning. Some occurred over several years. Significant discipline was called for.

[234] When I analyze whether the grievor's termination was excessive in the circumstances, I must consider both the mitigating and the aggravating factors. I will start with the mitigating factors.

[235] The grievor had 14 years of service when he was terminated. He had a clean disciplinary record. His manager said that his performance was good and that his colleagues seemed to like him.

[236] The grievor argued that the financial impact that his termination had on him and his family should be a mitigating factor. I accept that the grievor had difficulty finding another job and that losing his job caused financial hardship for him and his family. I also accept that special financial hardship related to a grievor's situation can constitute a relevant mitigating factor (see *Brazeau*, at para. 179; see also Brown and Beatty, *Canadian Labour Arbitration*, 5th ed., at paragraph 7:74).

[237] Generally, it appears from the grievor's testimony at the hearing that the suspension of his security clearance — a matter that is not before me — and not the loss of his job with the Agency made it difficult for him to find a new job and magnified his termination's impact on him and his family.

[238] Even were that not the case, for financial hardship to be qualified as "special", there must be evidence of hardship beyond what would normally result from losing a job. The evidence that was presented to me was insufficient for me to conclude that

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the financial hardship that the grievor suffered was such that it must be considered a mitigating factor.

[239] At the hearing, the grievor testified at length about the two reasons that he conducted unauthorized searches of the databases that he had access to. Although he did not say it outright, I infer from his testimony and arguments at the hearing that he wanted to invoke those reasons both to support his position that his actions were not misconduct justifying the imposition of discipline (an argument that I have already addressed and dismissed) and to support his alternate argument that his employer should have given him the chance to correct his behaviour. In other words, he implicitly argued that those were mitigating factors.

[240] His main reason was that he wanted to make sure that he did not inadvertently help people who might have committed war crimes in Rwanda. He said that he acted because he had a moral obligation.

[241] I accept the grievor's testimony that he cared about this country's security and that he thought that he was doing the right thing by carrying out some unauthorized searches, to make sure that he did not inadvertently invite into Canada a war criminal who had been involved in the Rwandan genocide. I accept that he felt a certain moral obligation because of the genocide's impact on him, his family, and his home country.

[242] But good intentions may not be enough to mitigate the nature and extent of misconduct. This is not the first case in which the Board has upheld the termination of a grievor for actions that were motivated — in whole or in part — by their values or beliefs. *N'Kombe* is one example. In that case, the Board upheld the termination of a grievor who had searched his employer's databases without authorization because he wanted to help others.

[243] In the particular facts of this case, I would add that the evidence about the moral obligation that the grievor felt was intertwined with, and inseparable from, his real-estate agent and property-management activities. He carried out some of the unauthorized searches to put himself at ease about writing invitation letters for clients or potential clients. Although he might have been partially motivated by a moral obligation, he still carried out unauthorized searches on clients, to make sure that he could invite them to Canada. He could benefit financially. His moral obligation was not quite as pure as he suggested at the hearing.

[244] The grievor's second reason to explain his unauthorized searches was that no one had informed him that it was prohibited to search the databases that he had access to for his CBSA job.

[245] That reason is unpersuasive. The *Code of Conduct* and *Policy* could not be clearer. They have been in effect since at least 2012 and 2013, respectively. The grievor said that he read the *Code of Conduct*, although it was clear from his testimony that he did not give it much attention or weight.

[246] The grievor also took online security-awareness training shortly before carrying out some of the unauthorized searches described in this decision. The training covered authorized and unauthorized database use, among other things.

[247] At the hearing, the grievor said that he did not remember the training clearly. However, he said that when he went through online training, he usually moved quickly from one page to the next. His main objective was to get to the end, so that he could print the certificate that attested that he had completed it. According to him, if the training's subject were truly important, the employer would have incorporated tests that had to be passed before employees could move on to the next module or before they could receive the completion certification. He said that if an online training course did not include a test, he sometimes paid little attention to it.

[248] It is untrue that no one would have informed him that searching the databases was prohibited. It is more accurate to say that he did not give importance to the instructions in the *Code of Conduct* and to his training. This is not a mitigating factor. Rather, the grievor's behaviour was careless and lacked professionalism.

[249] I will now analyze the other aggravating factors.

[250] The employer demonstrated that the grievor's alleged behaviour occurred over several years, which he did not dispute. He admitted at the hearing that from in the start of his career, he carried out searches similar to those constituting the misconduct that led to him being disciplined. Despite his previously described good intentions, he displayed a lack of judgment and integrity over many years.

[251] It is also worrisome that the grievor continues to state that his unauthorized searches were within the scope of his duties as a CBSA employee because according to him, he carried them out to protect Canada. As described earlier, this argument is

unfounded. In addition, it shows that he does not understand the seriousness of his misconduct and indicates to me that he still does not understand the reputational and operational risk that his misconduct might have posed to his employer.

[252] Now, I will discuss what I consider is the most important aggravating factor, which is a lack of honesty.

[253] As indicated earlier, I found that the grievor's testimony in some respects was implausible or unpersuasive. Moreover, it is clear that he was not entirely honest about his misconduct from the earliest opportunities that he was given.

[254] As indicated earlier, the investigation interview's audio recording was admitted into evidence. During it, the grievor's answers to many questions were inconsistent, specifically when he was presented with evidence that contradicted the answers that he had given before. He denied using the databases for reasons unrelated to his work, only to admit at the hearing that since 2003, he carried out searches similar to those constituting the misconduct for which he was disciplined and for an indefinite number of people. He also denied all use of CBSA assets for personal reasons, only to admit that he had used the Internet and his Agency computer, telephone, and email address for his real-estate agent and property-management activities.

[255] Progressive discipline is based on the principle that employees deserve an opportunity to demonstrate that they can correct their conduct if the employment relationship is not irreparably damaged. Progressive discipline is not required when the breaches are as significant, varied, and numerous as those in this case (see *N'Kombe*, at para. 134; see also, among others, *Woodcock* and *Campbell*). That is so in this case. The aggravating factors outweigh the mitigating factors.

[256] I conclude that the grievor's termination was not excessive in the circumstances.

### **C. The grievor's suspension-without-pay grievance**

[257] The grievor argues that his suspension without pay pending the investigation was excessive. According to him, he should have been warned and given the opportunity to correct his behaviour. He argues that he could have been reassigned to tasks that did not require database access.

[258] On July 11, 2016, the grievor was suspended without pay, pending the outcome of the employer's investigation. On July 28, 2017, he was informed of his termination, which was backdated to take effect on his suspension date.

[259] The employer argued that the grievance against the suspension should be rejected as moot. I agree.

[260] At the moment the grievor was suspended, the employer had a full picture of his misconduct and knew the facts related to each ground of misconduct that it had set out. The results of the review for cause had given it that picture, even if it did not yet know the extent of some of his acts of misconduct.

[261] The employer had sufficient grounds to terminate the grievor's employment. His alleged misconduct was serious enough to justify his termination as of the suspension date.

[262] I find that the employer had cause to backdate the termination date to the date on which the suspension without pay began. Therefore, the suspension-without-pay grievance is denied.

#### **IV. Request for a confidentiality order**

[263] At the hearing, the employer requested that those about whom the grievor made his unauthorized searches be identified in the Board's decision by only their initials. In accordance with the Board's *Policy on openness and privacy*, which states that the Board endeavours to include personal information only to the extent that is relevant and necessary to determine a dispute, I have identified those persons by their initials in this decision.

[264] In a confidentiality request made verbally at the hearing and later in writing, the employer asked that certain personal information about the grievor be redacted, such as his home address, personal record identifier (commonly known as a PRI), Human Resources Management Information System number, and his user ID for the databases that he had access to.

[265] It also requested that the personal information of those about whom the grievor made his unauthorized searches, that is to say CBSA and IRCC clients, be redacted. The information covered by the request includes names, birthdates, home and email

addresses, client identification numbers for CBSA and IRCC computer systems, refugee-status or asylum claim numbers, and reasons which applications were granted or rejected.

[266] The employer also requested that certain documents admitted into evidence at the hearing be sealed. It requested that two exhibits (Exhibits E-6 and E-20) and specific pages of another exhibit (850 to 852 of Exhibit E-18) be sealed.

[267] Exhibit E-6 and the two pages of Exhibit E-18 are very similar. According to the employer, they are lists of suspected war criminals. One of the documents is the list that the grievor received from the Rwandan embassy, to which he added a summary of the information that he found in the databases about each of those people. The other is a copy of the list that the investigators forwarded to the IRCC, to verify the grievor's FOSS searches. The documents contain the personal information and immigration histories of several persons who made refugee-status or asylum applications and were denied and who are alleged to have, or are suspected of having, ties to criminal activities.

[268] Exhibit E-20 has more than 20 pages. It comprises many internal documents that are bound together and that contain the travel histories of several persons whom the grievor and his real-estate brokerage invited to the country, several of whom are referred to in this decision by their initials. The documents contain, among other things, names, birthdates, citizenship, and dates and times at which the persons presented themselves at a Canadian border crossing. According to the employer, the documents also contain codes that the CBSA uses to review, assess, and process immigration applications.

[269] The employer argues that court openness poses a serious risk to an important public interest, namely, the grievor's and CBSA and IRCC clients' privacy and the protection of information about the CBSA's operations in the context of removals and asylum claim reviews.

[270] The grievor did not object to the confidentiality-order request.

[271] The employer's written request was accompanied by redacted versions of the exhibits. That said, the redaction has deficiencies. Certain information covered by the request is not redacted uniformly or exhaustively.

[272] With respect to the request to seal Exhibits E-6, E-20, and pages 850 to 852 of Exhibit E-18, the reasons supporting the employer's request are so insufficient that the Board requires additional submissions to make a decision.

[273] The Board will send the parties instructions for the filing of additional written arguments pertaining to the employer's confidentiality-order request. The exhibits will remain sealed pending the Board's decision on the request, which it will remain seized of until a decision on it is rendered.

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

*(The Order appears on the next page)*

**V. Order**

[275] The grievor's suspension and termination grievances are denied.

[276] Until the Board renders a decision on the employer's confidentiality-order request, the exhibits will remain sealed.

[277] The Board will remain seized of the employer's confidentiality-order request until a decision on it is rendered.

February 19, 2026.

FPSLREB Translation

**Amélie Lavictoire,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**