

**A. Advanced Representation Training for Stewards (ARTS)
Pre-course Assignment (emailed in advance)**

Following is a short assignment that should prepare you for, and inform you throughout, the PSAC ARTS course. If you need assistance with this questionnaire, please contact your Component Labour Relations Officer, your Local or Branch President or Regional Vice President/Director or your Chief Steward. You can also contact your PSAC Regional Representative for assistance.

Please ensure you bring a copy of your collective agreement as well as this completed questionnaire, with you to the course.

1. What labour legislation are you covered by?
 - Public Service Labour Relations Act
 - Canada Labour Code
 - Provincial / Territorial Labour Code

2. What human rights legislation are you covered by?
 - Canadian Human Rights Act
 - Provincial/Territorial Human Rights Act
 - Other? _____

3. What health and safety legislation are you covered by?
 - Canada Labour Code Part II
 - Provincial/Territorial Health and Safety Act
 - Other - Please explain _____

4. Does your employer have an harassment policy? Yes No
If yes, what grounds are covered in the policy?

What is the internal process for filing an harassment complaint/grievance where you work?

5. Are there measures in place where you work for informally resolving conflict between employees? Yes No

If yes, what are they? How does one avail themselves of these measures?

Are the measures in place effective? Why/why not?

6. Are your members covered by an Employee Assistance Program?

Yes No

If yes, who is the provider? _____

What is their contact number? _____

Would you feel confident referring someone to your workplace EAP program?

Yes No

If no, what alternatives are there that you would be confident to refer Local members to?

7. List any other important workplace policies or programs that you should be aware of as a union Steward.

8. What collective agreement(s) are Local members covered by?
9. How many steps are there in your grievance procedure?

10. Is there a complaint stage? Yes No
Is it mandatory? Yes No
11. Based on established practice, who hears grievances (which Employer representative and which Union Representative) at what step of the grievance procedure? At what level is each step heard (i.e. Local, Regional, National)? If you don't know the specific individual's name, you can provide their position title.

Step 1 is heard at the _____ level

by _____ (management) and
_____ (union)

Step 2 is heard at the _____ level

by _____ (management) and
_____ (union)

Step 3 is heard at the _____ level

by _____ (management) and
_____ (union)

Step 4 is heard at the _____ level

by _____ (management) and
_____ (union)

Other _____

18. What is the process in your Local for settling a grievance during the initial phases of the grievance?

Who is authorized to sign-off on such settlements?

19. What is the process in your Local for transmitting grievances to another step?

Who is authorized to transmit grievances to the next step?

20. How are Stewards s/elected in your Local/Component?

21. Who is the Chief Steward in your Local? _____

22. How many Stewards are there in your Local? _____
Who are they?

23. Are there regular Steward meetings? Yes No

If yes, do you regularly attend the meetings? Yes No

If not, how do you dialogue with other Stewards and/or union representatives in your Local?

#7 Legal Definitions for Stewards (separate document to be handed out after exercise is complete)

Final Level Reply

- *The Employer's response to the grievance issued at the final step in the internal grievance process.* The date and content of this reply are very important as this reply triggers the deadline for referral to adjudication/arbitration.

Referral Deadline

- The date by which the union must refer the grievance to the next step in the grievance process.

Deadline Extension

- An agreement reached between the union and the employer to extend the deadline of any step in the grievance process.

Due Process

- A person's right to representation and to a fair process in matters of a disciplinary nature

Hierarchy of legislation

- Which law trumps? For example, collective agreement language can be better than employment standards legislation (which contains minimum standards), but cannot contradict or undermine labour legislation. For the purposes of workplace rights, the hierarchy would be as follows; Charter, Human Rights, collective agreement, employment standards legislation.

Mitigating Factors

- Factors that would be taken into consideration in favour of an individual, when determining the severity of a person's actions. For instance, if this is the first infraction or if they did not receive proper training and their error in judgement was related.

Aggravating Factors

- Factors that would be taken into consideration weighted against an individual, in determining the severity of a person's actions. For

instance, if their action was pre-meditated as opposed to spur of the moment.

Heightened Responsibility

- For the purposes of accommodation, when representing members with mental health and/or addiction issues, there is an expectation that the union representative, and the employer, will go beyond what is normally expected, in both identifying a need for accommodation, and in ensuring proper measures are in place, to accommodate.

Dignity of Risk

- Refers to the right of an individual with a disability to assume a higher risk to themselves than might normally be considered acceptable in a workplace. This concept extends only as far as it does not cause serious risk to co-workers or the general public. As well, it must be reasonable.

Estoppel

- Where one party to a legal/contractual relationship has, by words or conduct, made to the other, a commitment affecting the legal/contractual relationship between them, then once the other party has taken him at his word, and altered his position on the strength of the words or conduct, this party is not allowed to alter the commitment so long as it is inequitable to do so. Case law is inconsistent in application of Estoppel and in most cases, notice of a change of practice would suffice in its termination.

Precedence

- A principle or rule established in a previous legal case that is either binding on or persuasive for a court or other tribunal when deciding subsequent cases with similar issues or facts.

Progressive discipline

- A disciplinary system that provides a graduated range of responses to employee performance or conduct problems. Disciplinary measures range from mild to severe, depending on the nature and frequency of the problem.
- Generally, systems of progressive discipline have several steps which may include a verbal warning, a written warning, and

suspension. Dismissal should be considered only where employees fail to respond to these measures by improving job performance and avoiding rule violations.

Just Cause

- The test set out in most collective agreements that gives the employer the legal and lawful right to impose discipline including termination. It can be one serious infraction such as theft, fraud, dishonesty, conflict of interest or willful misconduct or it may be a series of less serious infractions.

Constructive Dismissal

- In a constructive dismissal, the employer has not directly fired the employee, but has failed to comply with the contract of employment in some major respect or has unilaterally and substantially changed the terms of employment or expressed an intention to do either of these. In such a case, the employee must clearly indicate within a short period of time, that he or she does not accept the new conditions of employment. Often the employee feels compelled to resign rather than accept the new conditions of employment. This may constitute constructive dismissal.

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#11 Recourse Route Scenarios Answer Sheet

Following is a series of short scenarios which require a Steward's intervention. Please discuss the possible recourse routes for each scenario that you think will work best based on the information provided.

1. A member has been given a ten-day suspension for insubordination. She refused a direct order to work overtime because she had previously arranged to visit her sick mother out of town.
 - Check to see if there is any other discipline on file (progressive discipline) and obtain proof of the mother's medical condition.
 - You should file a grievance citing unfair discipline. While insubordination is rarely excusable, you may be able to mitigate the discipline.
 - You should also note that this is an issue of family responsibility and consult an expert as to whether or not this would constitute discrimination based on family status.

2. The employer is terminating a long-standing practice of allowing members to merge their lunch and coffee breaks so that they can have a longer lunch-hour. '
 - Your best bet is to try to deal with this situation by referring it to the Executive for a union management consultation meeting.
 - If no notice was given of terminating the practice, this may be an estoppel argument for a grievance.
 - However, in the end, upon giving notice to the parties that they are stopping the practice, the employer would be in their rights.

3. The employer has instigated a new policy on e-mail etiquette but did not consult with the union on its content. Members are upset because it changes the rules about receiving personal e-mail at work.
 - Try to deal with this by referring it to the Executive for a union management consultation meeting.
 - If the collective agreement has strong language regarding consultation – you may, as a secondary plan, be able to file a

- grievance on the lack of consultation and you may also have grounds for an estoppel argument.
- However, in the end, keep in mind that the employer has the right to create reasonable policies about use of their computers and systems in the workplace.
4. A member feels she has been unfairly screened-out of a job interview because she is pregnant. She has heard from some women in the workplace that the Supervisor in the section she applied for has previously made comments about how difficult it is to have to replace women on maternity leave.
- You will want to start by investigating the allegations about comments made by the Supervisor by identifying and interviewing witnesses.
 - You will also want to look at the history of hiring in the section in case that uncovers discrimination.
 - If you do have a case, you would file a grievance that cites a violation of human rights based on gender. In most jurisdictions you may also want to consider filing a complaint with the relevant Human Rights Commission.
 - You would obtain support and advice from your Chief Steward and/or Component Service Officer, particularly if wanting to file a Human Rights complaint.
5. A member is very upset that one of his work colleagues (another member) yelled at him in front of his co-workers. Things are very stressful at work because the employer announced they will be cutting back staff in the coming months.
- The best resolution for resolving this kind of conflict between members would be mediation; providing both parties agree.
 - Obtaining an apology from the member who yelled would likely add to a quicker resolution.
 - You will also want to address the underlying problems that the announcement has created.
 - This should start by referring the matter to the Executive for consultation with the employer, where the parties jointly put measures in place to deal with the after effects of such an

- announcement. For example; joint workplace information meetings regarding membership rights and the process in place for cut backs, access to the Employee Assistance Program (EAP) or other counselling options, a clear understanding of the number of cutbacks and how they are going to occur, etc.
6. The employer has implemented a new electronic system for tracking reports which requires advanced technological skills and has increased the workload by about 25%. Job descriptions in the section don't reflect these new duties.
- Conduct a thorough investigation by interviewing affected staff. Be clear about what duties exactly have been added and how much more work they are generating.
 - Check your collective agreement for language regarding technological change or changes in job duties to see if there has been a violation.
 - Check your union-management consultation minutes to see if this was discussed.
 - Start with referring this to the Executive for consultation. You will want to deal with issues of workload and with updating job descriptions.
 - You may have to file a grievance if the employer refuses to update the job descriptions.
 - Eventually, you may want to consult a classification expert to see if the changes result in a change in classification.
7. A member injured herself at work and as a result has to take time off. She is a fairly new member with very little sick leave accumulated.
- Since the member injured herself at work, this is a workers' compensation issue. Contact a union representative on the workplace Joint Occupational Safety and Health (JOSH) Committee to advise of the accident and request their assistance in filing a compensation claim.
 - If no JOSH committee exists, refer the member to the Union Occupational Safety and Health Representative or someone in the Local, Component or PSAC Regional Office who can assist her

- with a workers' compensation claim (if she hasn't already filed one).
- You may have to assist in obtaining evidence for the claim (proof of accident, including witnesses, accident report, etc.)
 - In the short term, check the collective agreement to see if the member can borrow sick time until the claim is actioned.
8. A member has been on sick leave for three months and has advised the employer that she will be returning to work next week. The employer has asked that before returning, she obtain a second medical opinion stating she is capable of returning to work. She doesn't understand why.
- You may want to meet with the employer to find out why they think a second medical opinion is warranted.
 - Check your collective agreement and see if there is any language restricting the employer from obtaining a second opinion.
 - If not, check to see if there are provisions allowing them to seek that opinion from a medical practitioner of their choosing.
 - If there is no language restricting them from asking for a second opinion, and the employer is still adamant, you should advise the member that the employer is within their rights.
 - If the employer does not have the right, or is not insistent that the member go to a medical practitioner of their choosing, advise the member to ask for a referral from their own doctor.
9. Your supervisor has refused to let you attend a disciplinary meeting with a member; citing operational requirements as a rationale for the refusal. There are no other union representatives in the building.
- Start by trying to have the meeting re-scheduled and by letting the employer know that conducting the meeting with the member, without a union representative present, would be ill-advised.
 - Contact a member of your Local Executive and advise them of what is happening.
 - File a grievance about the refusal to let you represent the member and consult with a Local Executive member, Component Service Officer or PSAC Regional staff person about whether or not you

should file a complaint to the labour board for interference with the union.

- Follow-up with the member, who can also file a grievance.
- If discipline is pending, your grievance will also cite the violation of the member's right to union representation.

10. There is a really bad smell in the building and members are coming to you complaining that it is making them sick.

- Contact a member of the Local Health and Safety (H&S) Committee as soon as possible.
- If you cannot get hold of someone from the H&S Committee, contact a member of the Executive.
- If that fails, contact your Component Service Officer or a staff person at the PSAC Regional Office.
- Call the employer and ask if members can be excused from the workplace until the problem has been investigated and dealt with.

Additional Notes:

I. Employer's typical grievance responses:

- A. Grievance denied (with reasons why)
- B. Grievance partially sustained (they will grant some but not all of the requested corrective actions and may provide reasons why they won't grant the other requested corrective actions)
- C. Grievance sustained (they will grant all of the requested corrective actions)

II. Union's next steps following receipt of one of these responses:

- A. Grievance denied – review the reasons provided by the employer;
 - if you agree with their response, discuss your rationale with the grievor and then withdraw the grievance. Keep the grievance response in your file along with any notes of your review and conversation with the grievor. Close your file.
 - if you don't agree with their response, discuss your rationale with the grievor and if they wish to pursue the grievance OR if it is the union's best interest to pursue the grievance, then

forward grievance to the next level. Keep copies of all documents in your file.

- B. Grievance partially sustained – review the response looking at what was agreed to and what wasn't;
- If you agree that the corrective actions agreed to are sufficient, discuss your rationale with the grievor, confirm that the agreed to corrective actions have been implemented fully and then close your file. Keep the grievance response in your file along with any notes of your review and conversation with the grievor.
 - If you don't agree that the corrective actions agreed to are sufficient OR if the grievor is convincing in their arguments that this should proceed further, then forward the grievance to the next level. Keep copies of all documents in your file.
- C. Grievance sustained – review the response to ensure all corrective actions have been agreed to. Check with the grievor to ensure that the actions have been fully implemented and then close your file. Keep the grievance response in your file along with any notes of your review and conversation(s) with the employer and grievor during implementation process.

III. Settlements

Sometimes, following discussions with the employer and the grievor, it is possible to reach a solution that the parties (employer, grievor and union) agree will resolve the issue on a one-time basis. Duty to accommodate situations are good examples of where a settlement may be the resolution. These agreements should be done in writing with the parties all signing and dating the document. This document should contain all the details regarding the settlement. It should also include the timeframe (if applicable) that the agreement will cover.



CAUTIONS:

Never agree to a settlement that gives away any rights under the collective agreement.

It is a good practice to have any proposed settlement language reviewed by your Component Service Officer or a PSAC Regional Rep or PSAC Grievance and Adjudication Officer before signing on behalf of the union.

Always ensure that “without precedent and without prejudice” is contained in the document.

When in doubt, check with someone with more experience or authority within the union. Remember that the PSAC is the bargaining agent (except for in the Northwest Territories and Nunavut). Only the bargaining agent has the authority to sign an agreement that impacts on collective agreement rights.

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#18-A Case Scenarios – Step 1 Information (separate handouts by scenario to be distributed during exercise)

Scenario A – Context Information

(All)

Hand this out at Step 1.

This is information that would already likely be known by the Steward, Member and Employer by virtue of their daily work experience but is being provided as context for the practice sessions on this course. A partial work description covering the specific issues to be dealt with is included in this section.

There are eight employees who hold Mechanical Manufacturing and Design Technologist positions (EG-4) working in the Prototyping Service for DEPT X in Gatineau, Quebec.

Alphabetically, they are: Tony Belleville, Patrick Bonaparte, Guy-Philippe-Dagenais, Daniel Delacourt, Pascal Ducharme, André Hood, Alain Jawaney and René Matthews.

The applicable collective agreement is between the Treasury Board and the Public Service Alliance of Canada for the Technical Services Group, which expired on June 21, xxxx.

The applicable collective agreement provision is Article 57, which reads as follows:

ARTICLE 57 STATEMENT OF DUTIES

57.01 *Upon written request, an employee shall be provided with a complete and current statement of the duties and responsibilities of his or her position, including the classification level and, where applicable, the point rating allotted by factor to his or her position, and an organization chart depicting the position's place in the organization.*

These employees have selected Alain Jawaney to be their spokesperson.

Work Description

Mechanical and Design Technologist

EG-4

Prototyping Service

DEPT X

Gatineau, Quebec

Page 2

Design, develop, manufacture and test prototypes of devices and systems used to carry out experimental work.

Key Activities:

- . . .
- Design, develop and carry out experiments, in the laboratory and in the field, in support of research and development.
- . . .
- Test a range of materiel, devices and components for technologists, engineers or scientists.
- Collaborate with team members to contribute to the advancement of research and development projects.
- Write memos and technical notes and provide information about preparing scientific and technical reports and work documents.
- Maintain, calibrate and inspect sometimes sophisticated equipment.
- Advise less-experienced employees or students.”
- Program machining centres (CNC) according to complex designs, detailed plans, sketches or oral instructions using the latest software.
- Examine and evaluate the conditions or changes in laboratory installations and mechanical prototypes to ensure their safe operation or use

Information for the Use of Others:

- As a member of a team, collect data through experiments and then sort, organize and analyze the data. The results are submitted to project leaders, scientists and colleagues. The data are used in research and development activities, to resolve problems, to enhance the performance of equipment or to develop new procedures.

- Provide advice and recommendations to researchers or technical personnel about technical and operational matters, which includes instruments, protocols, methods, procedures and project specifications. That information is used to establish the best methods for conducting experiments and for performing operational tasks.
- Draft documents describing technical data and techniques that technologists, engineers and scientists use to identify best practices and techniques.
- Write, as co-author, technical notes about the progress and conclusions of experiments. Departmental scientists and engineers use that information to address deficiencies, enhance existing systems, or develop new and more efficient systems.
- . . .
- Search specialized books (or any other information source) to provide judicious advice to requesters about selecting metals and appropriate treatments.
- Respond to requests for technical information from technologists, students, project partners and external clients about the requirements or activities ... required to ensure that the laboratory or field tests are carried out as expected.
- . . .
- Make health and safety recommendations to management to correct potentially dangerous situations in the section's workshops and laboratories.
-

Page 3

- As a member of a team ...

Human Resources Leadership:

- Explain the technical and laboratory work and safety practices and procedures and follow up with colleagues, new research personnel and guest workers.
- Participate in project teams or work groups and contribute to developing new skills by providing technical guidance to members.”
- . . .

Page 9

Intellectual Effort:

- . . .
- Plan the manufacturing method and ensure accuracy, quality and precision in the parts to be produced.
- Detect and analyze technical problems and develop practical and effective solutions ... Judgment is also required to analyze the behaviours of materials and to evaluate completion times based on the techniques used.
- Analyze options to establish the best measures to take to resolve technical problems (for example, analyze unknown components or adapt materiel for use in conditions for which it was not designed). This activity is performed in spite of frequent interruptions by colleagues and of tight deadlines.
- Analyze and resolve problems with materiel or prototypes ...

Job Content Knowledge:

- Knowledge of the methods, basic theories, and principles and practices of analysis in a specific technical field (for example, physics, chemistry, mechanics, biology) ... That knowledge is required to collect, compile and analyze test results for scientists, engineers or project officers. Those people use that data to make decisions and to prepare publications.
- . . .
- . . .
- Technical and practical knowledge of specific military systems or subsystems ... of munitions or vehicles is required to link the system and experiments and to evaluate equipment performance during testing.
- Knowledge of commercial software and related programming practices along with the practices of device interfaces and related software to be able to control commercial and prototype equipment and to integrate and process diverse related data while gathering, reviewing, analyzing, interpreting and highlighting data.

Sustained Attention:

- ...
- ...
- Sustained attention is needed when ... analyzing a problem ... based on tight deadlines.

Client-Service Results:

- Provide technical advice and services to scientists, engineers, project officers and other clients within or outside the government, in support of research and development.
- ...

Communication:

Communication out:

- Oral and written communication skills are required to advise scientists, researchers and technicians about technical and operational matters. Communicate information, opinions and technical instructions as well as the results, conclusions and recommendations from studies to scientific personnel.
- Oral and written communication skills are required to communicate, accurately and precisely, questions and concerns of a technical and scientific nature to clients who may or may not have technical knowledge, managers, colleagues, team members, consultants, and contractors.
- ...

Well-being of Individuals:

- Monitor partners daily to reduce risks during work ...
- ...

Ensuring Compliance:

- Monitor team members, including contractors and persons not from the unit, and ensure that they respect the provisions of the Canada Labour Code, the Workplace Hazardous Materials Information

System (WHMIS), environmental impact assessments and standard operating procedures (SOP) for storing, using, handling and disposing of hazardous materials and equipment, some of which are experimental or unique. Has the authority to stop work when corrective measures are not taken.

- ...

Money:

Spending of Funds:

- Identify supplies, components and equipment and verify that the material received meets specifications.
- ...

Scenario A – Steward Information

(Steward/Member)

Hand this out at Step 1.

Alain Jawaney is coming to talk to you because members in his section feel that their job description should be amended. He is representing himself, and others in his work section.

You do not work in the same section as the member who is coming to discuss a work description with you. You do not understand at all the work that they do. This is the first time anyone from this section has come to talk to the Union.

In his initial call to you, Alain Jawaney advised that three of the employees have been more involved in providing background on the matter and he gave the following information to you:

Mr. Dagenais holds two diplomas of collegial studies (DCS), one in pure sciences and one in mechanical engineering. He has worked for DEPT X since January 2001. He describes his work succinctly as designing, developing, manufacturing and testing research prototypes.

Mr. Matthews worked at DEPT X Gatineau for 34 years before retiring in 2012. He holds an ACS in mechanical engineering. His work experience includes mechanical design, manufacturing and metal heating. For the period covered by the grievances, he was working in the manufacturing techniques department. For 10 to 15 years, he was in charge of the heat treatment department. He was involved in a number of prototype field tests and handled mechanical and prototype assembly. He was responsible for updating the software for the water-jet cutters used in manufacturing.

He (Alain) has been a DEPT X Gatineau employee for 32 years. He worked in the manufacturing techniques section. He had worked earlier in design, metrology, all the machining centres, and in the plastics and heat treatment departments. For the past four years, he has worked in the “Electronic Discharge Machine” (EDM) department, of which he stated he is in charge.

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#18-B Case Scenarios – Step 1 Information (separate handouts by scenario to be distributed during exercise)

Scenario B – Context Information

(All)

Hand this out at Step 1.

This is information that would already likely be known by the Steward, Member and Employer by virtue of their dealing with this accommodation situation for several years. It is being provided as context for the practice sessions on this course.

Doug Normandy began his employment with Service Canada in 1986 and at the time of these events his substantive position was as a Service Delivery Representative (CR-05), which required production quotas, significant computer work, client interaction and significant regular overtime.

Kelvin Morgan was Doug's supervisor throughout the entirety of these events, with the exception of the period of time Doug was seconded in early 2012.

Accommodation & Health Background Information:

He started to experience severe pain in his neck and symptoms of burn-out in late 2011 and requested accommodation for his physical condition. The employer accommodated him through approved sick leave, breaks at work and an ergonomic chair. He used all his sick leave and used the ergonomic chair intermittently. However, his condition deteriorated, prompting him to seek accommodation through a different work activity.

From January to March 2012, Doug was seconded to a job in a new program with no clients and less stress but with more computer work and a similar work intensity. He felt the job was not what had been described to him; therefore, the accommodation was not appropriate. He sought another change in work.

In March 2012, Dr. Janet Brannigan said that Doug was unfit to work due to a lack of accommodation. The employer extended Doug's secondment but would not allow Doug to return to his substantive position unless he could do the complete job.

Doug went on indefinite sick leave on April 4, 2012. He was on EI Sick Benefits and on May 2, 2012 he applied for Sun Life Disability which was granted on December 6, 2012, retroactive to June 30, 2012.

In July 2012, the employer advised Doug that effective September 1, 2012, his position would be reclassified from CR-05 to PM-01.

In January 2014, the union contacted the employer to discuss Doug's pending return to work because his disability benefits were going to expire in six months. He had been advised by Sun Life that he had to return to work by June 30, 2014.

On March 14, 2014, Doug was diagnosed by a physical therapist who recommended an ergonomic assessment of Doug's workstation before he returned to work.

Current Accommodation & Health Information:

In April 2014, the Union and employer discussed Doug's return to work. The employer required him to undergo a fitness-to-work evaluation by an independent medical examiner, Dr. Douglas Granger.

On May 5, 2014, Dr. Granger met with Doug and issued a report. He determined Doug was fit to return to work and provided written recommendations for accommodation which include

- a vocational rehab assessment and program,
- a functional assessment,
- retraining,
- pushing Doug to consider other positions,
- a less-demanding position for him,
- adapting him to less stringent duties and performance, and
- a gradual return to work.

On June 25, 2014 – Dr. Germaine (Doug's family physician) sent a notice to Mr. Morgan stating that Doug was not able to return to work without accommodation.

On June 26, 2014 – The Union gave Ms. Mortimer, the employer's representative, an extensive list of accommodations required by Doug. The accommodations addressed medically documented physical and mental disabilities as set out by Dr. Granger.

On June 30, 2014 – Doug’s disability benefits ceased.

The parties have agreed to have a meeting on July 17, 2014.

Additional Common Documents:

Collective Agreement:

19.01 There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practiced [sic] with respect to an employee by reason of ... mental or physical disability ...

Employer’s Accommodation Policy (October 1, 2009):

Department Head Obligations:

The department head and delegates must do the following:

...

- *after general barriers have been removed and general accommodation measures have been put in place, proceed with individual accommodation requests of persons with disabilities by:*
 - *consulting with the employee to identify the nature of the accommodation,*
 - *if necessary, consulting appropriate medical and rehabilitation advisors and others, with the employee's consent, to determine the accommodation appropriate to that person and*
 - *accommodating the employee ...*

...

- *consult and collaborate with bargaining agents and other employee representatives where accommodation affects other employees or where the employee being accommodated requests that the bargaining agents or other employee representatives be consulted*

...

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Scenario B – Steward Information

(Steward/Member)

Hand this out at Step 1.

Mr. Morgan (Doug's supervisor) has advised you that the employer wants to meet with Doug in a couple of weeks (July 17) to discuss Dr. Granger's report and what Doug's return to work will look like.

Given the fact that the previous accommodation caused further harm to Doug (back in 2010 and 2011), you want to have a discussion with Doug to ensure that he knows the union is supporting him.

Your task is to meet with Doug, get his reaction to Dr. Granger's report and also to prepare him for the meeting with the employer.

You also need to start a file for his return to work.

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#18-C Case Scenarios – Step 1 Information

(separate handouts by scenario to be distributed during exercise)

Scenario C – Context Information

(All)

Hand this out at Step 1.

This is information that would already likely be known by the Steward, Member and Employer by virtue of their daily work experience but is being provided as context for the practice sessions on this course.

The workplace is a port of entry, Canada Border Services Agency (CBSA).

The port of entry employs about 30 people who work on two shifts. Four to five Border Service Officers (BSOs) work on the day shift and two or three BSOs work on the night shift.

BSOs are peace officers responsible for processing travelers and goods into Canada, collecting applicable taxes and duties and enforcing legislation. The BSOs at the port of entry are not armed nor have they received firearms training. They do carry defensive weapons such as a baton and pepper spray.

Project Owl:

In June 2011, the Royal Canadian Mounted Police (RCMP) made a series of arrests on charges relating to drug trafficking and involvement in a criminal organization. The arrests were the result of a 16-month investigation known as Project Owl that targeted criminal organizations operating across the country and internationally. It utilized police agents, undercover police officers and investigators.

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Scenario C – Steward Information

(Steward/Member)

Hand this out at Step 1.

Jason Smith (**member**) has contacted you regarding a meeting that his supervisor has asked him to attend on October 23. His supervisor has advised him that he had a right to have a steward attend the meeting with him.

You know that Jason has been disciplined previously for minor infractions. These minor infractions have been grieved and are making their way through the grievance process.

Jason is a vocal Steward in the Local.

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#18-D Case Scenarios – Step 1 Information (separate handouts by scenario to be distributed during exercise)

Scenario D – Context Information

(All)

Hand this out at step 1.

This is information that would already likely be known by the Steward, Member and Employer by virtue of their daily work experience but is being provided as context for the practice sessions on this course.

The work location is the Halifax Enforcement Centre (HEC) in the Security Monitoring Unit (SMU).

The SMU is responsible for the monitoring of individuals subject to a "Security Certificate" (ISSC) issued by the Minister of Citizenship and Immigration or the Minister of Public Safety. The Security Certificate is a tool used with respect to individuals who are deemed to be a threat to the national security of Canada. If the Federal Court determines that a Security Certificate issued with respect to a person is reasonable, that person can be removed from Canada to their country of origin. Cases involving an ISSC are generally high profile, complex and quite litigious and get frequent media attention.

The SMU provides compliance monitoring of ISSCs 24 hours a day, 7 days a week (24/7), through a continuous on-shift and on-call process involving Inland Enforcement Officers (IEOs) and managers. IEOs are designated peace officers.

As part of the compliance monitoring, ISSCs are fitted with global positioning system (GPS) ankle bracelets. The ankle bracelets send continuous information back to the SMU, which is monitored on a computer system. This is done daily and in the evenings by IEOs at the SMU and by supervisors during off-duty hours. Each IEO and supervisor who works at the SMU has their own login code, which identifies them in the system. IEOs are required to log in when they want to monitor or view the information and are required to log out when they are done. There is therefore a record that captures who logged into the system, on which date and at what time, and when they logged out.

The GPS ankle bracelets generate an alert if the bracelet is being tampered with ("tamper alert"). In addition to the tamper alert being generated on the live computer feed, it is also sent via telephone to designated SMU telephone lines. When a tamper alert is received, standard procedure is for an IEO on duty to contact the ISSC to confirm the whereabouts and then to attend with a fellow IEO the place of residence of the ISSC to ensure the ankle bracelet is still intact and attached to the ISSC.

Some ISSCs also have video surveillance cameras installed in their residence. As part of the monitoring coverage, the IEOs monitor live feed video and as well as review the recorded video.

The IEOs record any pertinent information they see either in the video surveillance or the GPS surveillance in their notebooks, into the daily logbooks for each ISSC and into a Word document report, which is maintained on the SMU computer system "G drive."

The IEOs are also responsible for responding to calls from ISSCs.

The HEC is located in a large facility known as the International Centre. The SMU office is located in the same building as the HEC, but is a separate and secure office. It is located on the 2nd floor of the HEC. There are only two doors that permit access to the SMU. Both of these doors are accessed through the same hallway. These doors are identified as "JFO staff entrance No. 1" ("JFO 1") and "JFO staff entrance No. 3" ("JFO 3"). JFO 1 is the closest entrance to the stairway from the first floor of HEC.

To access the SMU through either JFO 1 or JFO 3, an employee must have an electronic access card ("key card") and must swipe the key card at the card reader adjacent to the door to unlock it. If entering through JFO 1, an entrant to the SMU is immediately required to go through a second locked door, "JFO staff entrance No. 2" ("JFO 2"), which is also locked and can only be opened with the key card at the card reader adjacent to it. The entrance to the SMU at JFO 1 and JFO 2 is commonly known as the front entrance and the entrance to the SMU at JFO 3, which is a little further down the hallway, is commonly known as the back entrance. Use of a key card is not necessary to exit the SMU offices.

The CBSA staff have their own reserved parking lot, which is controlled by key card. This parking lot is directly adjacent to the HEC entrance known

as "2C." Entrance 2C is the closest entrance into the HEC to allow access to the SMU office.

The entrances to the HEC and SMU offices that require a key card electronically record all key card activity. Each employee's key card contains information specific to identify that employee. When the key card is swiped at an access point, the electronic record created identifies the following:

1. key card no.;
2. identity of the employee issued the key card;
3. location the key card is being used; and
4. date and time the key card is used.

Most but not all entrances into HEC are monitored by video cameras, which are date and time stamped. The entrance at 2C has a video camera monitoring it.

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Scenario D – Steward Information

(Steward/Member)

Hand this out at step 1.

Ian Martinelli has contacted you regarding an upcoming meeting that his supervisor has asked him to attend. His supervisor advised him that he had a right to have a steward attend the meeting with him.

He doesn't really know what the meeting will be about but he tells you that there was an incident with a monitoring alarm on November 7 so he thinks the meeting might have something to do with that.

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#18-E Case Scenarios – Step 1 Information (separate handouts by scenario to be distributed during exercise)

Scenario E – Context Information

(All)

Hand this out at Step 1.

This is information that would already likely be known by the Steward, Member and Employer by virtue of their regular work for Canadian Border Services Agency (CBSA). It is being provided as context for the practice sessions on this course.

Pearson International Airport (PIA) is a 24 hours, 7 days per week operation. To cover the operational requirements necessitated by the workplace, the Collective Agreement is built around a rotating shift plan - Variable Shift Schedule Agreement (VSSA).

In addition to the rotation, the shifts are irregular and unpredictable. At the present time, full-time employees rotate through 6 different start times over the course of days, afternoons, and evenings with no predictable pattern. Also, employees work different days of the week throughout the duration of the schedule. This schedule is based on a 56 day pattern. Border Services Officers (BSO) are given 15 days' notice of each new shift schedule. The employer can change the schedule with 5 days' notice.

A full-time position as contemplated per Article 25.13 of the Collective Agreement is 37.5 regularly scheduled hours per week, based on an 8 hour day that includes an unpaid 1/2 hour meal break. Any employee who works less than 37.5 hours per week is considered part-time. Any employee who works more than 37.5 hours per week is paid overtime.

Overtime hours are required as a BSO. The requirement for overtime is often unpredictable, as it may arise due to job duties at any given time in particular circumstances that cannot be foreseen, e.g. the detention of goods or persons. Sometimes employees know ahead of time, or are called in by management to work on an overtime basis due to workplace demands as they arise.

The mandate of the CBSA includes the screening and processing of travelers and goods entering into Canada at each of its airports and land borders on a 24 hours a day, 7 days a week basis.

The busiest of these airports is PIA. The Passenger Operations District, a component of the CBSA's operations in the Greater Toronto Area (GTA) region, oversees these functions at PIA.

Passenger Operations is currently one of the three main operational districts within the GTA region of the CBSA. The other two are Commercial Operations and Greater Toronto Enforcement Center (GTEC). GTEC does not employ BSOs. In addition to these districts, the GTA region has a number of other divisions including the Investigations Division, the Intelligence Division, the Compliance and Verification Division, the Planning and Program Integration Division, and the Corporate Services Division (Human Resources, IT, Finance and Administration).

Of these, only Passenger Operations and Commercial Operations employ BSOs. The International Mail Processing Centre (Gateway) is included within Commercial Operations.

Passenger Operations at PIA is responsible for processing passengers in the two terminals (Terminals 1 and 3). Passenger Operations also has responsibility at the East Hold, a building on the air field where small aircraft cross-border flights arrive. Passengers on these flights are met and taken by bus to Terminal 1 for processing. Fixed base operators (private jets) arriving with passengers are processed through Commercial Operations. Air Canada's U.S. and international flights operate through Terminal 1, and most other airlines operate through Terminal 3.

Commercial Operations is responsible for processing cargo from commercial aircraft and sufferance warehouses [facilities established for the landing, storage, safekeeping, transfer, examination, delivery and forwarding of imported goods before they are released by the CBSA], outports, a marine component and a railhead with locations in Concord and Brampton. The bulk of the work of this district is done at the PIA on the other side of the airfield from the terminals. BSOs in Commercial Operations performed counter duties for the public and examination of freight at warehouses with a view to determining whether to seize, hold or release goods.

The work of the BSOs at Gateway is to sort and examine mail, documents and parcels coming to Canada through a primary processing area belt and then through secondary examination. Documentation is prepared on larger

shipments that are held until duties are paid. Workers at Gateway work static shifts.

The BSO work performed at Gateway, Passenger Operations, and Commercial Operations is set out in one universal job description and all are classified similarly.

There are 10 Chiefs within Passenger Operations: 3 per each of the two Terminals; one Chief of Enforcement; one Chief of Corporate Services; one Chief of the Redevelopment Program; and one Chief responsible for Immigration Policy.

The Superintendents in the Terminals are responsible for the day to day management in their Terminals and supervising the BSOs on their crews. In the corporate area, they prepare shift schedules, manage the performance appraisal system, and monitor the program. There are currently two Superintendents who specifically manage any accommodation requests by employees asking to be relieved, for whatever reason, from the VSSA schedule.

BSOs each are assigned to crews within which they worked at the Primary Inspection Line (Primary), or Secondary counter (Secondary) processing passengers for entry into Canada. Each crew has approximately 8 employees. Management tries to balance gender and experience on the crews, as well as ensure language capability.

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Scenario E – Steward Information

(Steward/Member)

Hand this out at Step 1.

Fiona Noble has come to you for assistance with a scheduling matter. She needs to have a specific static schedule because she has two children and she has only been able to arrange childcare on Fridays, Sundays and Mondays.

You have dealt with other scheduling issues as a steward and you know that the employer has agreed to other static full-time shifts that are not in keeping with the VSSA.

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#19-A Case Scenarios – Step 2 Information (separate handouts by scenario to be distributed during exercise)

Scenario A – Member Information

(Member)

Hand this out at Step 2.

This is information that you know but that the Steward doesn't ... the Steward needs to ask questions to draw this information from you.

Alain Jawaney (**you**) has been selected by the other 7 grievors as the spokesperson for the group.

The members want 3 of the duties contained in their work description amended including adding certain tasks which they believe are not in the work description that have to be added to it.

They are willing to provide whatever evidence is needed to support their request.

1. Add the bolded words to the second paragraph of the “Key Activities” section of the work description (page 2):

***Plan, design, develop, coordinate** and carry out experiments, in the laboratory and in the field, in support of research and development.*

2. Add the bolded words to the fourth paragraph of the “Key Activities” section (page 2):

***Analyze, evaluate and test** a range of materiel, devices and components for technologists, engineers or scientists.*

3. Add a new paragraph to the “Key Activities” section. The proposed paragraph is:

Manage the activities of a specialized laboratory or a mechanical manufacturing request or a test facility.

Alain should provide the following “evidence” to support their requested changes:

Change No. 1

Mr. Dagenais provided a list of projects he carried out between 2007 and 2010 when he was assigned to drafting.

In support of adding the word “plans,” Mr. Dagenais provided documents related to a return trip from the DEPT X to Montreal with the purpose of casting a block of Crytérion at a contractor’s site. The documents are the following: an order form and travel request form; a mission order form (planning); an email addressed to Myriam Bedard, an administrative assistant for two scientists, about the mission order; a request to use a DEPT X vehicle (request for mobile support materiel); an itinerary from Gatineau to the contractor’s address from Google Maps; a confirmation of a hotel reservation made by Mr. Dagenais; and casting and demoulding procedures prepared by Mr. Dagenais. He prepared the procedures so that others could do that work. According to him, coordination is important because several people are involved in a project.

When he receives work from Mr. Roundhouse, Mr. Dagenais contacts the client and plans and coordinates a meeting to set the project’s objectives. He manages all requirements of a project. He looks after the design process with a scientist or engineer, as the case may be. Mr. Roundhouse verifies and approves his plans but he does not review everything when Mr. Dagenais carries out the design for a project. Work priorities are set by computer.

Mr. Dagenais defined these terms as follows:

- “design” involves working from an initial idea to imagining moving parts in order to build a prototype to meet the client’s needs. If a prototype exists commercially, it involves improving it.
- “manufacture” involves the DEPT X’s manufacturing machines and the employees responsible for assembly.
- “test” corresponds to the process of ensuring the prototype operates properly
- “carry out experiments” corresponds to completing an assembly.

Mr. Dagenais explained the rotation system for EG technologists. Some technologists worked on rotation only on the machines and that they had to hold an attestation of collegial studies (ACS) as a machinist. Some

technologists worked on rotation both on the machines and in design and that they had to hold a DCS. Finally, some technologists did not work on rotation but held specific positions.

Mr. Dagenais states there is no difference between the positions classified at the EG-6 group and level and those classified EG-4 in manufacturing. He states that the DEPT X operates by priority, based on tasks appearing on a computer, and not according to differences in duties. In his opinion, the members perform the same tasks as the EG-6s who work in design and manufacturing. His supervisor is Pierre Gabour, the head of the Prototyping Service (ENG-5) and Mr. Dempster is his senior manager.

Mr. Matthews states that design is the essence of the job. Since the job requests sent to the members are quite brief, it is necessary to meet with the people making the requests, either scientists, technicians or clients, to plan the steps in the project, accounting for electronic components, dimensions and weight. Sometimes, the work involves modifications, and sometimes, it involves new designs. It is necessary to feed ideas to the researchers.

Mr. Matthews described one job request to manufacture a camera case. He had to meet with the requesters, who were a scientist, a technologist and the client. He had to plan and organize the steps, taking into consideration the 12 electronic components and the appropriate dimensions and weight. The planning and coordination kept the work moving forward. Each project follows somewhat the same path. Sometimes changes are involved and sometimes there are new designs. An analysis must be done in order to provide ideas to the researchers.

Mr. Matthews also described a project involving installing an acoustic weapons detection system called "Ferret" in a specific location that required field tests. He said that the project lasted four weeks and involved teamwork. He testified that he had to anticipate everything, including planning the tools. He had to contact the requester, a researcher, and meet with his technicians.

Mr. Matthews stated that J. Lamont, classified EG-6, was the project leader for the manufacturing techniques department. His role was to organize the work according to the priorities. Until the design stage is completed, the scope of the project is unknown.

Mr. Matthews sees no difference between employees classified EG-4 and those classified EG-5 who work in mechanical design. Mr. Roundhouse once assigned him a project that had been started by an EG-5. The employer never told Mr. Matthews not to do a job because of his classification or because it was an EG-5 job. When he worked with Mario Guevremont, an EG-5 responsible for the metrology department in engineering techniques, Mr. Guevremont did not supervise him, and they did the same work. In addition, when Mr. Guevremont was absent, his work was assigned to Mr. Matthews. The work he did in Mr. Guevremont's absence involved no responsibilities other than his own.

Mr. Matthews confirmed that he has never been told to stop doing any job.

Mr. Matthews said that the employer required him to perform what is indicated in the second paragraph of the key activities of his work description. He defined these terms:

- “design” means taking a job request and developing a workable and viable plan for the requester, who is usually a scientist, an engineer or a technician. Since scientists do not always have time to meet with Mr. Matthews, he sends his technician.
- “develop” does not include analysis. In his opinion, it is necessary to analyze, plan and coordinate before developing.
- “manufacturing” requires some analysis to determine the machine to use and the required tools, parts and personnel support, which is done case-by-case.
- “develop” means identifying needs point by point, to perfect the design.
- “carry out” means participating in an experiment and backing up the scientist or technician.

According to Mr. Jawaney, the project leader enters the work to be done in the request management system (RMS). He collects the work from the RMS and prepares the programming using the computer-assisted design (CAD) and computer-assisted manufacturing (CAM) software. Once the programming is complete, Mr. Jawaney sends it to the EDM, adjusts the necessary parameters and saves the program.

Mr. Jawaney provided documents related to three projects.

The first project involved modifying a testing bench to allow attaching a projectile support for motorized rockets. The project leader, Mr. Roundhouse, introduced Mr. Jawaney to an outside client, Michel Stark, from the firm Nautilus, who explained his request to him. The testing bench in question had to be assembled at the military base. Mr. Jawaney was able to acquire a testing bench on which to attach the projectile support. While taking the necessary measurements, he noted that holes were missing to attach the support. He had to ask Mr. Roundhouse to have someone to drill the holes. He coordinated the work with a member of the military to obtain the measurements of the motorized rockets. He then prepared the design and the pattern, with sights adapted to each motorized rocket. After manufacturing, Mr. Jawaney coordinated the preassembly of all parts before the test. For the tests, Mr. Jawaney had to arrange with the Munitions Experimental Test Centre (METC) to transport the parts to the military base. On-site, he coordinated the parts assembly. After each test, he had to check the apparatus. He had three people to help him. He was responsible for coordinating repairs if any breakage occurred.

The second project involved constructing a small-calibre impact chamber that had to be assembled on-site before beginning the design. Mr. Jawaney planned his work by visiting the site where the impact chamber would be located. A gantry and mobile crane were needed to lift the parts. Mr. Jawaney prepared 37 drawings of the parts required and wrote technical notes on them. He coordinated the assembly on-site with two welders and an assembler.

The third project involved injuries from explosions. The evidence showed the work rollout planning required for the project. Among other things, five pages were provided, dated between March 28 and May 5, each containing the process to follow and annotations from Mr. Jawaney about the changes that had to be made throughout the process.

Mr. Jawaney defined these terms:

- “design” means imagining a part
- “develop” refers to the step at which the design is started and is then developed according to the client’s requests,
- “Manufacturing” comes after the design step, followed by testing the prototype.

For the projectile support project, Mr. Jawaney said that a team of 12 was present at the test. A member of the military acted as the test manager and coordinated the general activities. However, Mr. Jawaney was responsible for the mechanical aspects, including assembly. Someone else was in charge of the electronics aspects.

Mr. Jawaney described the role of the test manager, who dealt mainly with safety. Before the test, the test manager met with those involved in the test. He summarized the test and identified the lead people in each group, including the mechanical group. He also identified the people working with each lead person. He then described how the test would run and clarified the test dates so that the lead persons would be prepared. After the meeting, Mr. Jawaney verified that the equipment was ready.

When they arrived at the test site, each lead person looked after their equipment. Mr. Jawaney, not the test manager, directed the assembly. The test manager did not have the knowledge required to handle the assembly, the imaging or the metrology. Once the structure was assembled, Mr. Jawaney informed the test manager, as did the other groups. The test manager then evacuated the testing bench site and took cover in the fortified shelter. He carried out the firing countdown. When the test was completed, the test manager authorized the employees to return to the site to check the testing bench. For his part, Mr. Jawaney checked the mechanical system. When that was complete, Mr. Jawaney informed the test manager that everything was good in his section. The test manager also checked with the other section leads. Mr. Jawaney affirmed that the process was the same each time he was at the site.

Change No. 2

Mr. Dagenais provided a job request to design and manufacture a mounting for four cameras, including a system of motorized polarizers. The goal of the project was to propel a part at the highest possible speed at the lowest cost. It was necessary to analyze and evaluate the force and path of the actuator and to choose the pulleys and belts before ordering them. Testing was not possible without first performing an analysis or an evaluation.

Mr. Matthews referred to heat treating metals and to metal tests. He said that he had to research materials in specialized books or on the Internet. A situation has to be analyzed and evaluated before proceeding to testing.

Mr. Jawaney stated that he had to insert certain parts in the Gimbal. To that end, the firm provided him with a drawing so that he would know the limits within which the parts had to be inserted. A sketch gave him the weight parameters along with additional information provided by an electro-optical technician. Another drawing was provided to determine the device's centre of gravity, to balance it. He had to evaluate and analyze the parts to preserve the Gimbal's centre of gravity.

A client could bring a motor or other device to him be checked, which requires analysis and evaluation.

Change No. 3

Mr. Dagenais gave as an example of a specialized laboratory the heat treatment laboratory or the inspection laboratory. He said that he worked intermittently in the inspection laboratory, where he could have operated a number of machines, and that several years ago, he did the same work as Mr. Guevremont (EG-5). He added that he might not have managed in the same way as Mr. Guevremont.

In support of managing a mechanical manufacturing request, Mr. Dagenais stated that he accesses the RMS, selects a job and collects the manufacturing drawing. He then decides the machine he will use, along with the tools and the speed. Mr. Dagenais provided an email dated January 25, 2010, addressed to Mr. Roundhouse and Mr. Lamont, informing them of his observations of a job to be done along with a list of materiel required and his estimate of the time required to complete the task.

Mr. Dagenais stated that he has worked intermittently in the metrology laboratory. According to him, in 2003, he performed the same work as Mr. Guevremont, who was in charge of the laboratory.

As for managing a test facility, Mr. Dagenais referred to documents about a test in which he had to improve the performance of a drop tower by changing several parts and by developing a technique to hold a mannequin

used in the test. He also had to alter the tower's design because of broken parts.

For a specialized laboratory, Mr. Matthews referred to the heat treatment centre. He said that he was in charge of it, ensured that the metal was in good condition and scheduled the maintenance that he identified. For managing the furnaces, he gave as an example that he had to calibrate them via tests. He had to find replacement parts when needed. Although he had to submit a parts order to a project leader to obtain approval for a purchase, Mr. Matthews stated that "manage" constitutes ordering the appropriate parts and ensuring that the proper software is available and keeping it updated. Mr. Matthews stated that he had an access code for the software provider and that for free software, he could download it and explore it to ensure its optimum use.

With respect to managing a test facility, Mr. Matthews referred to the Ferret project, in which he had to anticipate everything and plan the tools.

According to Mr. Matthews, if a machine in the heat treatment centre breaks, he has to repair it. If software does not work, he can contact the technician at the informatics company that supplied it. If the advice from that technician does not resolve the problem, he has to go through the project leader.

Mr. Jawaney testified that for the past four years, he has managed the EDM department and has been responsible for laboratory operations and for maintaining the two machines, namely, C and F. He ensures that both machines are operational. If a problem arises with the C machine, he contacts the technician directly at the company that manufactured it. Mr. Jawaney provided a series of emails showing that when he needed parts, he asked Mr. Lamont to order them.

Mr. Jawaney also referred to an email dated March 27, 2009, which he received from Denis Leduc, a technician in the Weapons Protection and Effects section about the work Mr. Jawaney did preparing armour plates for a testing program. Mr. Jawaney stated that that constituted managing the project for Mr. Leduc.

Mr. Jawaney added that he managed a test facility, specifically, modifying a testing bench.

Mr. Jawaney stated that he has managed mechanical manufacturing, referring to a project about injuries from explosions. Mr. Jawaney said that for that project, he made most of the decisions and managed the steps to respect the client's priorities.

The reference to the "EDM laboratory" indicates that it is indeed a laboratory.

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#19-B Case Scenarios – Step 2 Information

(separate handouts by scenario to be distributed during exercise)

Scenario B – Member Information

(Member)

Hand this out at Step 2.

You want to get back to being a productive employee working for your employer as soon as possible. You are willing to do what is necessary to achieve that goal. However, you also insist that you need to be protected from further injury by being accommodated in accordance with the medical information already provided by your doctors and even the independent medical examiner, Dr. Granger.

You feel that Dr. Granger's report adequately sets out the requirements for your accommodation although you are a bit concerned about the comment that you need to be pushed to consider other positions.

You are adamant that you will not return to work in any position unless there are accommodations in place.

You are very concerned that the employer doesn't seem willing to do an ergonomic assessment of your workstation until after you have returned to work when the medical opinion is that the assessment needs to take place and accommodations put in place prior to your return.

You wondering if the employer is setting you up to fail again and if they are trying to make things difficult so you will simply quit or medically retire.

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#19-C Case Scenarios – Step 2 Information (separate handouts by scenario to be distributed during exercise)

Scenario C – Member Information

(Member)

Hand this out at Step 2.

This is information that you know but that the Steward doesn't ... the Steward needs to ask questions to draw this information from you.

You are a Border Services Officer (BSO) (FB-03) at a port of entry, Canada Border Services Agency (CBSA).

You were hired by CBSA as a summer student in 2002 and worked for two summers. In 2004, you were appointed to a full-time term BSO position. On June 27, 2007, you were appointed to an indeterminate position as a BSO.

You received training at the CBSA training centre in Rigaud, Quebec.

You work with a partner, David Boulder.

Your home phone # is 555-555-1212.

You are a shop steward for your Customs and Immigration Union (CIU) local. At a Town Hall meeting in 2010, employees voice concerns about problems at the worksite. Given your role as a shop steward, you have been very vocal and feel that you have suffered repercussions from some of your superiors as a result.

You have filed many complaints in relation to your work environment including two with the Public Sector Integrity Commissioner for reprisal. The complaints have all been dismissed, but your work environment has become quite toxic between management and employees involved in the union. You have been disciplined for minor issues that normally would not attract any discipline.

You are aware that several people that you know were arrested by the RCMP in an operation known as Project Owl last summer:

Rebecca Smith – your first cousin whose common-law spouse is Travis Green, her house was searched as part of Project Owl, and she was arrested but not charged.

Travis Green – you have known him for several years and you have socialized with him and your cousin approximately once per month; you have visited each other's homes.

Keith Romero – you don't have a personal relationship with him but you know of him through other friends; you both may have been in the same place at the same time, but you are not sure.

Frank Mussolini – you have known him for about 10 years or since you were 17 years old. You were present at his birthday party in 2008 but you left before he was tasered by police and arrested. You heard about it later. You are aware that he travels frequently but you don't know how he finances this travel. Following his arrest in last summer, you visited him twice in jail and he called you from jail to wish you a happy birthday. You took his mother and sister to visit. From what you know, he lives at home with his mother and works two jobs. You know he travels a lot but you as far as you know the money comes from the two jobs. You and Frank socialize a lot and regularly go to bars and parties together. You regularly talk with Frank on the phone but never during work hours and always from your home phone.

Maria Mussolini – Frank's sister ... you've known her for a similar length of time as you've known Frank but are not friends with her

Your knowledge of the Project Owl arrests in 2012 comes from talk around town, and information from Ms. Smith's sister or friends. You learned about the 2011 arrests from the media and information on open source media sites.

You have never used your CBSA badge to prevent someone being arrested. You were not in the bar in the incident Ms. Palmer will ask you about.

You have a facebook page that contains pictures of you and other colleagues, friends (including Mr. Mussolini) and family. It also includes a picture of you wearing a CBSA cap at a golf tournament. You are not concerned about the pictures or facebook postings.

You told Robert Lemmon, your superintendent, about your friendship with Mr. Mussolini.

You also told Mr. Gremlin of your friendship with Mr. Mussolini.

Mr. Gremlin asked you to post the lookouts for Mr. Green and Mr. Romero. Mr. Gremlin is an intelligence officer and it was common practice for him to phone the border post and ask whomever was on duty to post lookouts. You happened to be on duty and answered the phone on the day in question.

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#19-D Case Scenarios – Step 2 Information

(separate handouts by scenario to be distributed during exercise)

Scenario D – Member Information

(Member)

Hand this out at step 2

This is information that you know but that the Steward doesn't ... the Steward needs to ask questions to draw this information from you. You know you've done something you shouldn't have done but you really don't think it is a serious matter. This isn't the first time you have left work early, but your timecards do not reflect any early departures. You are OK with this because there is a bit of an un-written rule on afternoon shift that employees leave early if it is a slow night. You all cover for each other so this isn't information you are willing to share – at least not at this point.

You have contacted the union regarding an upcoming meeting that your supervisor has asked you to attend. Your supervisor advised you that you have a right to have a steward attend the meeting with you.

You aren't really sure what the meeting will be about but you have told the union steward that there was an incident with a monitoring alarm on November 7 so you think the meeting might have something to do with that.

You have been employed by the Canada Border Services Agency (CBSA) as an Inland Enforcement Officer (IEO) {FB-03} at the Halifax Enforcement Centre (HEC) in the Security Monitoring Unit (SMU) for four years.

On Sunday, November 7, you were working in the SMU on the evening shift (4:00 p.m. to midnight). Even though there are supposed to be two IEOs on duty during the evening shift, you were working alone.

At 11:10 p.m., a tamper alert was generated from one of the GPS ankle bracelets worn by an ISSC. You received the tamper alert on your work cell phone. Your supervisor, Ms. Symmond, also received the alert via email.

At 11:11 p.m., she contacted you to confirm you had received the alert and to confirm that you were required to attend at the ISSC's residence to check the ankle bracelet. You advised Ms. Symmond that you were about to contact the ISSC to confirm his whereabouts.

Upon completing your telephone call with the ISSC, you called Ms. Symmond back and confirmed that the ISSC had advised you he was at his residence and that he had accidentally knocked the ankle bracelet on a bathroom fixture. Ms. Symmond instructed you to go into her office and obtain the name of another IEO whom you should contact to meet up with. Together you were to attend at the ISSC's residence to confirm that he was still there and the ankle bracelet was still intact.

Upon receiving the instruction to go to her office, you advised her that you were not at the SMU, having left early because you had worked through your meal break.

You were on your regularly scheduled days of rest the next two days.

Ms. Symmond reports to Madeleine Knight, Chief of Operations for the SMU.

On November 10, when you returned to work, Ms. Symmond placed you on restricted duties. You are not permitted to work on your own and have only been scheduled to work when a supervisor is present in the SMU. You are also not permitted to carry out any escort duties.

Also on November 10, you were asked by Ms. Symmond to prepare a report (attached) as to what occurred on November 7, 2010. Your report does not reference your early departure from the SMU before the end of your shift.

On November 26, you participated in a meeting with Ms. Symmond with respect to the events of November 7. During this meeting, you were asked questions about your work hours and attendance on November 7. You confirmed that your hours of work that day were from 4:00 p.m. to 12:00 midnight (the evening shift) and that you departed work just before 11:00 p.m. You also confirmed that you did not seek authorization from your supervisor to leave work early and said that you left early because you worked through his lunch break.

During that meeting, you were asked if you recalled the September 24 email (attached) about the requirement of receiving pre-approval before working through a meal break. You responded by stating that there were several policies about lunch, and as such, you weren't sure which one was being followed. You were also asked if you had ever left work early on

other occasions. You said no. At the end of the meeting, Ms. Symmond asked you if the information you provided was true and correct to the best of your knowledge, and you stated that it was.

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Scenario D – Additional Information

(Employer/Member)

Hand this out at step 2 (Member) and step 4 (Employer)

This email sets out the expectations for employees.

Date: September 24 @ 10:43 a.m.
From: Madeleine Knight
To: SMU Employees
Subject: Procedure Reminders

. . . text redacted

Lunch Allowance and OT:

Several employees are working during their lunch period while on an outing or surveillance activity. The dedication to the performing of your duties is greatly appreciated, however you are entitled to eat and have a break for lunch. It should be on very rare occasions that the Supervisor approves your working through lunch.

Effective immediately please ensure that you take the meal you are entitled to. Pre-approval to work through your lunch must be sought beforehand.

. . . text redacted

Your adherence to these procedures is necessary to ensure the SMU meets its mandate and continues to operate in the efficient and effective manner.

Madeleine Knight
Chief of Operations, SMU

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Scenario D – Additional Information (cont’d) (Employer/Member)

Hand this out at step 2 (Member) and step 4 (Employer)

This is the Incident Report provided by Ian after he is requested to provide it by Ms. Symmond.

**Incident Report – November 7
Submitted by Ian Martinelli
November 10**

On Sunday, November 7, I was working in the SMU on the evening shift (4:00 p.m. to midnight).

At 11:10 p.m., I received a tamper alert from the GPS ankle bracelet worn by JK, an ISSC, on my work cell phone.

At 11:11 p.m., I received a telephone call from Ms. Symmond, my supervisor. She said that she was calling to confirm I had received the alert and she advised that I was required to attend at the ISSC's residence to check the ankle bracelet. I advised her that I had just been about to contact the ISSC to confirm his whereabouts.

I then called the ISSC on his home phone. He confirmed to me that he was at home and advised that he had accidentally knocked the ankle bracelet on the tub.

I then called Ms. Symmond back and confirmed that the ISSC had advised me that he was at his residence and that he had accidentally knocked the ankle bracelet on a bathroom fixture.

Ian Martinelli

Ian Martinelli
IEO, SMU

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#19-E Case Scenarios – Step 2 Information

(separate handouts by scenario to be distributed during exercise)

Scenario E – Member Information

(Member)

Hand this out at Step 2.

You are a Canada Border Services Officer (BSO). You have been in the employ of CBSA since April 14, 2003. You are presently working part-time hours. You work in Passenger Operations at the Pearson Airport Terminal (PIA) in Toronto, Canada.

You are an exemplary employee, often exceeding your superiors' expectations and noted for your diligence, excellent results, and acumen for your work duties.

You have been married to Jason Noble (Jason) since December 2007. Jason is also a BSO working for CBSA as a Supervisor at the PIA.

You have two children, born two years apart. They will be school age (full days) in 3 and 5 years respectively. You have just returned to work from maternity leave following the birth of your second child.

With the exception of a short stint working part-time when you first started working in 2003, you have worked full-time on a schedule of 5 days on, 3 days off rotating shifts governed by the VSSA.

Jason also works regularly scheduled full-time hours on rotating shifts governed by the VSSA, and he works an additional 10:00 am shift. Due to his supervisory duties, he is also required, from time to time, to attend meetings and training sessions on his days off and travel to other ports during job actions.

Prior to going on your first maternity leave and again as you were returning from it, you sought accommodation from CBSA due to your new child-rearing responsibilities. Your request was denied.

You are again asking for the same type of accommodation upon your return to work from your second maternity leave. As before, your request is denied and you are again faced with an unwritten policy of CBSA that will not provide full-time hours to those requesting accommodation on the basis of child-rearing responsibilities.

The accommodation you sought was full-time static shifts. You wanted to work 3 days per week, 13 hour days, so that you could remain full-time. A 13 hour shift would include one 1/2 hour unpaid meal break. You did not specify a preferred start time.

When you were advised by CBSA that this was not possible, you then made an alternate request of 3 days per week, 12 hour days.

Although you recognize that this second request is for part-time hours, you are trying to maximize the hours you work in order to have as little negative effect on your pension and benefits as possible.

The reason you are asking to work over a 3 day period, is that these are the 3 days per week during which you can arrange alternate child care. You have three family members who are willing to care for your children one of the three days each. You have no family assistance for a fourth day.

You have tried to arrange third party childcare but have been unable to do so. You have discovered, however, that the ordinary daycare hours of any registered facility were 7 am to 6 pm Monday through Friday.

The scheduling difficulties of a rotating shift schedule make those hours impossible. You have had no greater success on a static shift schedule that was outside normal third party care hours, and that could be unpredictably extended due to overtime requirements.

Even unlicensed daycares or private daycare providers will not provide childcare on an unpredictable and fluctuating basis, usually not at all on weekends, and certainly not overnight.

You then turned to your family members, and you have been able to get childcare coverage for unpredictable hours, including overnight, on three days per week.

Jason's shift requirements also as a BSO at PIA, albeit as a Supervisor, are in many ways more onerous than yours. Your and Jason's schedules typically overlap about 60% of the time, but they are not coordinated in any manner. Jason cannot provide the childcare needed on a reliable basis either.

The alternative of a live-in nanny or childcare provider is not an option for you due to the expense and the necessity that you and your family would

have had to move into a home that could accommodate another adult person. Not many workers can afford this option either.

You have been able to arrange childcare coverage on Fridays, Sundays and Mondays.

At this point, because you cannot work either full-time or 36 hours, you are working 10 hours each on Fridays, Sundays and Mondays.

You have asked your employer if you can remain on full-time status and characterize the 7.5 hours not being worked as leave without pay. You are aware that leave without pay is pensionable.

If the employer won't authorize the leave without pay, then you are wondering about "topping- up" the difference to enable you to keep the equivalent of full-time pension benefits.

If you are allowed to work full-time hours over the three days you have requested, you will find a way to handle your childcare responsibilities to be able to work those days.

The employer has made no enquiry with respect to your specific situation.

By forcing you to work part-time, you are missing out on training opportunities, are not permitted to become an acting Superintendent, nor work on Special Teams. You are also missing out on overtime opportunities.

You enjoy your work as a BSO and are proud of your accomplishments in the workplace. You have made a long term commitment to your role as a BSO, and intend to make this your lifelong career.

You want to return to work putting in full-time hours, but need to serve those hours over 3 days. You have not specified the starting times for those 3 days, nor are you insisting on returning to the duties you performed before. What is uppermost in your mind is working at least 37.5 hours per week, and maintaining your pension and benefits and opportunities for training and advancement.

It is undisputed that CBSA has an unwritten policy that anyone seeking accommodation in order to care for children may be accommodated by being given static shifts, but must also go to part-time hours to a maximum

of 34 hours per week. This unwritten policy does not allow employees to have static shifts with full-time hours if the reason for the request is childcare responsibilities.

It is also undisputed this unwritten policy is applied unevenly. There are CBSA employees working part-time at 36 hours per week, employees working full-time static shifts, and others who have been allowed - although part-time - to maintain the equivalent of full-time pension and benefit entitlements. CBSA may want to discourage these anomalies but these exceptions do continue to exist.

You know of and are willing to name workers who have returned to work from maternity leave and been given full-time static shifts at PIA.

You also know of and are willing to name BSOs in other operations that work 13 hour shifts such as in Niagara Falls, ON and Estevan, SK.

You know of approximately 20 other couples where both partners work as BSOs at PIA. Most of these couples do not have children under school age. You don't know of anyone who has a similar situation to you... children under school age and both partners with rotating shift schedules.

It is also undisputed that CBSA has and does accommodate employees for medical and religious reasons by giving them static shifts with full-time hours, from time to time, for varying lengths of time, and for some on a permanent basis. These requests are assessed on an individual needs basis, and in the case of medical accommodation CBSA requires medical substantiation of the request. There are also instances of employees having been accommodated because they have children with medical needs.

You are willing to work at other locations in the Greater Toronto area doing other work.

#20-A Case Scenarios – Step 4 Information (separate handouts by scenario to be distributed during exercise)

Scenario A – Employer Information

(Employer)

Hand this out at step 4

This information is being provided so that you can act as the Employer in the upcoming meeting(s) with the union Steward and member.

Change No. 1

The first paragraph, at page 2 of the employees' work description, represents the core of their daily work.

Planning and coordination are not part of their duties. The employees plan their own workloads, like everyone else. However, the specialist technologists or project leaders plan and coordinate experiments. Although there is an element of planning and coordination in the employees' work, it does not constitute a key activity.

The list of projects did not establish that the employee planned or coordinated those projects.

Travel planning is relatively simple planning and not a key activity.

Manufacturing a camera case is an example of normal planning, as part of the work. Points under "Intellectual Effort" at page 9.

Work on the projectile support was not an experiment but rather an assembly for an experiment. Generally, the scientists and engineers determine what they need for a scientific experiment. Assembly is one element of the experiment. The impact chamber is an example of a component required to conduct an experiment.

The project about injuries from explosions was a procedure about manufacturing parts for the experiment. Mr. Blue's and Mr. Jawaney's names are both at the bottom of the pages describing the procedure. Mr. Blue is a senior technician in the scientific section, classified EG-6 and is responsible for development. Mr. Blue reports to one of the scientists who defines experiments.

Mr. Stark, whose name appears on the second document, is a contract employee who works with the Prototyping Service and who, on occasion, is a requester. On the first document, the requester is Michel Garfield, a scientific technician in the Weapons Protection and Effects section.

Test managers are usually members of the military with explosives experience and that they have to fully understand the objectives of the test, the steps and the required resources. The test manager looks after safety and coordinates resources.

The employees' work during a test is included in their work description at the fifth paragraph on page 2 of the work description, the first paragraph on page 3, which begins as follows: "As a member of a team ..." and in the second paragraph, under the heading "Human Resources Leadership."

Mr. Roundhouse, an EG-6, holds the delegated authority of a "supervisor and coach." He does not carry out performance evaluations and does not provide training. He coordinates the engineering techniques section - coordinating and assigning the work, and his duties include coordinating Mr. Guevremont and Mr. Primo, even though Mr. Primo is classified at the same group and level as Mr. Roundhouse.

Mr. Lamont performs the same duties as Mr. Roundhouse but in the manufacturing techniques section. In the manufacturing techniques section, the project leader handles quality control.

Mr. Gabour has no design or manufacturing responsibility. As section head, he prepares the business plan for each year and the budget and the acquisitions, and he completes the technologists' performance reports and approves their leave.

Although Mr. Roundhouse and Mr. Primo are classified EG-6, Mr. Roundhouse's role is as coordinator, while Mr. Primo is a project leader but does not fill a coordination role. Mr. Roundhouse and Mr. Primo occasionally replace Mr. Gabour.

The casting and demoulding procedure is normal daily planning. When planning is mentioned in the key activities of a work description, it is in the sense of having responsibility; for example, planning for other people.

Change No. 2

In the fourth paragraph of the key activities, “test” indicates that the employees take part in tests with scientist, technologist or researcher clients.

Analyzing and evaluating are not a responsibility of the employees as a key activity. The analysis the employees do is described elsewhere in their work description, notably at paragraphs 3, 4 and 5 of the “Intellectual Effort” section.

Analyze and evaluate are steps in test as set out in the fourth paragraph of the “Key Activities” section and are covered or understood in the third to fifth paragraphs of “Intellectual Effort”.

Change No. 3

Employees are not called on to manage and they do not manage personnel or budgets.

Mr. Blue, a technician in the scientific section, is responsible for the specialized laboratory. Mr. Dagenais resolved some problems with the drop towers.

Mr. Matthews performs the work of the position assigned to him, which is not management. The room where he works is not a laboratory. He identifies materiel to be ordered.

Employees in the scientific section manage scientific projects. The project leaders, Mr. Roundhouse and Mr. Lamont, manage requests to the Prototyping Service.

The employees are not required to manage “activities of a specialized laboratory or a mechanical manufacturing request or a test facility.” That function is the joint responsibility of the specialist technologist and the project leader.

The examples given by the employees are covered elsewhere in the work description, either in the fifth paragraph of “Key Activities,” in the first paragraph of “Information for the use of others” or under “Human Resources Leadership.”

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#20-B Case Scenarios – Step 4 Information

(separate handouts by scenario to be distributed during exercise)

Scenario B – Employer Information

(Employer)

Hand this out at Step 4.

This information is being provided so that you can act as the Employer in the return to work meeting that will be held with Doug. You are aware that you have a duty to accommodate but you really don't understand what you can do in a situation like Doug's.

Mr. Morgan (**you**) knows Doug and thinks highly of Doug's skills, dedication and high production levels before he began to seek accommodation.

Mr. Morgan does not feel the employer has received specific enough information from the medical practitioners to be able to actually return Doug to work or accommodate him.

The only information Mr. Morgan recognizes is the requirement for an ergonomic assessment once a work location has been chosen, and the need for Doug to accept an alternate position. He ignores all the other recommendations in Dr. Granger's report and in fact believes that Dr. Granger's report says Doug is fit to return to work with NO LIMITATIONS.

The only options that Mr. Morgan is willing to discuss with Doug are a return to his substantive position (full duties) or a demotion to one of two possible positions.

The fact that Doug has been away from the workplace for so long causes concerns about his ability to be a productive member of the team.

There is no give at all about the available options.

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#20-C Case Scenarios – Step 4 Information

(separate handouts by scenario to be distributed during exercise)

Scenario C – Employer Information

(Janice Palmer - Employer)

Hand this out at step 4

This information is being provided so that you can act as the Employer in the fact-finding meeting that will be held.

More Information on Project Owl:

In June 2011, the RCMP made a series of arrests on charges relating to drug trafficking and involvement in a criminal organization. The arrests were the result of a 16-month investigation known as Project Owl, which was a joint effort that targeted criminal organizations operating across the country and internationally. It utilized police agents, undercover police officers and investigators.

Frank Mussolini was one of the people arrested in June 2011. He was charged with a number of offences in 2011 and faced more charges in 2012, including drug trafficking, conspiracy to traffic drugs and with being a director of a criminal organization. He was held in custody and subsequently pleaded guilty to the offences. Mr. Mussolini had been known to police since 2001 because of his connection to known drug traffickers. He was targeted in Project Owl because he was believed to be responsible for operating a drug distribution cell. Before Project Owl, Mr. Mussolini had been arrested but not convicted of any criminal offence.

Keith Romero and Travis Green were also investigated during Project Owl. The police believed that Mr. Green distributed drugs beneath Mr. Mussolini and also that he socialized with him. Mr. Romero was believed to be involved in importing and transporting drugs. He also socialized with Mr. Mussolini. Mr. Green was arrested a few months before the Project Owl arrests. He was convicted in 2011 for drug trafficking. Mr. Romero was arrested in June 2011 and his case is still before the courts.

In the early stages of Project Owl investigators received information that Jason Smith, who socialized with Mr. Mussolini, was facilitating shipments of drugs across the border. Investigators were able to corroborate the relationship between Jason and Mr. Mussolini. Photographs on Jason's

Facebook page showed him with Mr. Mussolini. Furthermore, surveillance photographs of Mr. Mussolini showed him standing outside a local bar with Jason. Jason was not interviewed in connection with any crime and was never charged, nor were any search warrants executed in relation to him.

After investigators identified Jason as a possible suspect, they contacted CBSA as a professional courtesy to advise them of the potential for a security breach. They spoke to both Dave McArthur, the Chief of Intelligence for CBSA and Ms. Palmer (you), from Professional Standards. They advised Mr. McArthur and Ms. Palmer about the police investigation into organized crime and explained that they had identified Jason as a possible target because of his association with Mr. Mussolini and other known drug dealers. CBSA was asked not to alert Jason to the investigation unless it became a security issue because the police did not want the investigation compromised. The Investigators also had several discussions about Jason with Mr. Gremlin, a CBSA intelligence officer.

The data collected during the Project Owl investigation was extensive and police continue to investigate and follow the leads obtained during the investigation. Although Jason was never interviewed by police during Project Owl, he was a person of interest based on information that the police received at the time, which they could not divulge.

Ms. Palmer's (Your) Information:

She first spoke to Sergeant Demers in October 2010. Because he asked CBSA not to act on the information, no formal investigation was launched. It was not unusual for the police to ask CBSA to delay an investigation to protect a criminal investigation. Although a formal investigation was not underway at that time, she began a preliminary investigation. She conducted a review of Jason's electronic mailbox, made database inquiries and audited Jason's usage of CBSA systems. These were things that she could do behind the scenes without alerting Jason.

Jason's friendship with persons of interest to the police had been brought to the employer's attention as early as 2008, when Mr. Gremlin reported concerns to his superior officers. Additionally, in September 2008, the RCMP gave the employer copies of Facebook photographs showing Jason and Mr. Mussolini together, as well as Dialed Number Reports (DNR) relating to Jason's phone calls. At that time, the RCMP also asked the

employer not to conduct an investigation in order to protect its preliminary investigation into organized crime. Because of the police request, CBSA did not launch a formal investigation into Jason's associations either in 2008 or in October 2010.

In early October 2012 Ms. Palmer began a formal investigation into allegations that Jason associated with people suspected of being tied to organized crime, such as Mr. Mussolini, Mr. Green and Mr. Romero. She reviewed the historical data that had been provided to Professional Standards by the police in the past concerning Jason's associations with those individuals. That information included Facebook photographs, CBSA intelligence reports, the DNR and the list of potential target subjects and vehicles provided by the RCMP.

Ms. Palmer also reviewed media coverage of the arrests made as a result of Project Owl. She confirmed that Mr. Mussolini was arrested in June 2011 and held in jail. In April 2012, Mr. Green and Mr. Romero were arrested and charged and Mr. Mussolini faced further charges. She learned that Jason's first cousin, Rebecca Smith, was also arrested, although not charged. She reviewed the Integrated Customs Enforcement System (ICES) and confirmed that Mr. Mussolini had been the subject of a lookout posted in October 2008, that Mr. Romero and Mr. Green were the subjects of lookouts posted in August 2009 and Mr. Mussolini's sister, Rosella Mussolini, was the subject of a lookout posted in March 2010.

Ms. Palmer compared Jason's phone usage to his work schedule using the DNR. During the 11-month period in which the numbers were logged, there were over 90 phone calls between Mr. Mussolini and Jason. All the phone calls were made to and from Jason's home phone and when she compared the calls to his work schedule, it was apparent that he was not on duty.

Ms. Palmer also conducted a review of the travel history of the list of criminal targets and vehicles provided by the RCMP and compared their travel history to Jason's work schedule. It appeared that Jason never processed those people through the border. However Mr. Mussolini's travel was largely by air, through a nearby international airport. She did not check the travel history of his vehicle, which was also the subject of a lookout.

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Scenario C – Employer Information (cont'd) (J. Palmer - Employer)

Hand this out at step 4

These are the questions that the Employer will ask Jason during the Professional Standards Investigation meeting. Follow up questions can be added based on Jason's responses. In the interests of expediency, don't spend much time on Questions 1 & 2.

Meeting #1 – Investigation Meeting – November 15

Questions for Investigation Interview

1. Review Jason's employment history
2. Confirm Jason's understanding of the CBSA *Code of Conduct* and the policies concerning the use of the employer's networks.
3. Is 555-555-1212 your home phone number?
4. Do you know Mr. Green?
5. Explain your association with him.
6. Do you know Mr. Romero?
7. Explain your association with him.
8. Do you know Mr. Mussolini?
9. Explain your association with him.
10. Does Mr. Mussolini travel often?
11. Do you know how he is able to travel so often?
12. Where does Mr. Mussolini get his money from?
13. How often did you telephone Mr. Mussolini?
14. Did you know that Mr. Mussolini had been arrested in 2008?
15. Explain the circumstances of that arrest.

16. Were you actually present when Mr. Mussolini was tasered and arrested?
17. When was the last time you saw Mr. Mussolini?
18. What do you know about the arrests in April 2012 as a result of Project Owl?
19. Where did you get your information from about these arrests?
20. Are you aware of the Project Owl arrests in June 2011?
21. How did you learn about these arrests?
22. Please tell me if you were present in a bar when two men were arrested and if you identified yourself and used your CBSA badge to attempt to prevent the arrests.
23. Please tell me what you know about Maria Mussolini using your name when she was questioned by US Customs Officer.
24. Please tell me about the pictures you have on your Facebook (FB) account, specifically ones with Mr. Mussolini in them.
25. Also the one with you wearing your CBSA cap at a golf tournament.
26. Do you think there is anything inappropriate about being so clearly identified as a CBSA employee on FB?
27. Why did you post the lookout notices for Mr. Green and Mr. Romero?
28. Wasn't that a conflict of interest since you knew both of these individuals?

Scenario C – Member Information (cont'd)

(Steward/Member)

Hand this out at Step 4

The information to answer Ms. Palmer's questions are all contained in the information Jason has already been provided. Jason believes he has nothing to hide so he is open and honest in response to the questions. For the purposes of expediting the interview, the questions Ms. Palmer will ask Jason are provided here.

Meeting #1 – Investigation Meeting – November 15

Questions for Investigation Interview

1. Review Jason's employment history
2. Confirm Jason's understanding of the CBSA *Code of Conduct* and the policies concerning the use of the employer's networks.
3. Is 555-555-1212 your home phone number?
4. Do you know Mr. Green?
5. Explain your association with him.
6. Do you know Mr. Romero?
7. Explain your association with him.
8. Do you know Mr. Mussolini?
9. Explain your association with him.
10. Does Mr. Mussolini travel often?
11. Do you know how he is able to travel so often?
12. Where does Mr. Mussolini get his money from?
13. How often did you telephone Mr. Mussolini?
14. Did you know that Mr. Mussolini had been arrested in 2008?
15. Explain the circumstances of that arrest.

16. Were you actually present when Mr. Mussolini was tasered and arrested?
17. When was the last time you saw Mr. Mussolini?
18. What do you know about the arrests in April 2012 as a result of Project Owl?
19. Where did you get your information from about these arrests?
20. Are you aware of the Project Owl arrests in June 2011?
21. How did you learn about these arrests?
22. Please tell me about the you were present in a bar when two men were arrested and identified yourself and used your CBSA badge to attempt to prevent the arrests.
23. Please tell me what you know about Rozella Mussolini using your name when she was questioned by US Customs Officer.
24. Please tell me about the pictures you have on your FB account, specifically ones with Mr. Mussolini in them.
25. Also the one with you wearing your CBSA cap at a golf tournament.
26. Do you think there is anything inappropriate about being so clearly identified as a CBSA employee on FB?
27. Why did you post the lookout notices for Mr. Green and Mr. Romero?
28. Wasn't that a conflict of interest since you knew both of these individuals?

#20-D Case Scenarios – Step 4 Information (separate handouts by scenario to be distributed during exercise)

Scenario D – Employer Information

(Employer)

Hand this out at step 4

This information is being provided so that you can act as the Employer in the fact-finding meeting that will be held. You are serious about the issue but are not overly antagonistic in your style. You simply want to find out what really happened and what is going on in the workplace.

There is a Code of Conduct that all employees are required to be familiar with. Ian Martinelli attended a Code of Conduct training session which was held on December 18, 2007.

Alison Symmond is Ian Martinelli's supervisor. She reports to Madeleine Knight, Chief of Operations for the SMU.

Because there were no IEOs in the office, Ms. Symmond decided that the visit to the ISSC's residence would wait until the following morning. She monitored the ISSC's ankle bracelet GPS over her laptop for the balance of the night after she and Ian concluded their phone call.

On November 10, Ms. Symmond placed Ian on restricted duties. He was not permitted to work on his own and was only scheduled to work when a supervisor was present in the SMU. He was also not permitted to carry out any escort duties.

On November 10, Ian was asked by Ms. Symmond to prepare a report as to what occurred on November 7, 2010. His report does not reference his early departure from the SMU before the end of his shift.

Ms. Symmond and Ms. Knight undertake an investigation.

On November 26, Ian participated in a fact-finding meeting with Ms. Symmond with respect to the events of November 7. During this meeting, Ian was asked questions about his work hours and attendance on November 7. Ian confirmed that his hours of work that day were from 4:00 p.m. to 12:00 midnight (the evening shift) and that he departed work just before 11:00 p.m. Ian confirmed that he did not seek authorization from his supervisor to leave work early and that he left early because he worked

through his lunch break. Ian was asked if he recalled the September 24 email about the requirement of receiving pre-approval before working through his meal break. Ian responded by stating that there were several policies about lunch, and as such, he wasn't sure which one was being followed. Ian was also asked if he had ever left work early on other occasions, which he answered that he hadn't. At the end of the interview, Ian was asked if the information he provided was true and correct to the best of his knowledge, and he stated that it was.

Ms. Symmond and Ms. Knight discuss the November 26 meeting and decide that further action is required. Following further discussions with upper management, it is decided that a more detailed fact finding meeting needs to take place. They advise Ian that the meeting will take place on January 11 and that he is entitled to have a union steward with him. Ms. Symmond and Ms. Knight will attend the meeting for the employer.

Scenario D – Additional Information

(Employer/Member)

Hand this out at step 2 (Member) and step 4 (Employer)

This email sets out the expectations for employees.

Date: September 24 @ 10:43 a.m.
From: Madeleine Knight
To: SMU Employees
Subject: Procedure Reminders

. . . text redacted

Lunch Allowance and OT:

Several employees are working during their lunch period while on an outing or surveillance activity. The dedication to the performing of your duties is greatly appreciated, however you are entitled to eat and have a break for lunch. It should be on very rare occasions that the Supervisor approves your working through lunch.

Effective immediately please ensure that you take the meal you are entitled to. Pre-approval to work through your lunch must be sought beforehand.

. . . text redacted

Your adherence to these procedures is necessary to ensure the SMU meets its mandate and continues to operate in the efficient and effective manner.

Madeleine Knight
Chief of Operations, SMU

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Scenario D – Additional Information (cont'd) (Employer/Member)

Hand this out at step 2 (Member) and step 4 (Employer)

This is the Incident Report provided by Ian after he is requested to provide it by Ms. Symmond.

**Incident Report – November 7
Submitted by Ian Martinelli
November 10**

On Sunday, November 7, I was working in the SMU on the evening shift (4:00 p.m. to midnight).

At 11:10 p.m., I received a tamper alert from the GPS ankle bracelet worn by JK, an ISSC, on my work cell phone.

At 11:11 p.m., I received a telephone call from Ms. Symmond, my supervisor. She said that she was calling to confirm I had received the alert and she advised that I was required to attend at the ISSC's residence to check the ankle bracelet. I advised her that I had just been about to contact the ISSC to confirm his whereabouts.

I then called the ISSC on his home phone. He confirmed to me that he was at home and advised that he had accidentally knocked the ankle bracelet on the tub.

I then called Ms. Symmond back and confirmed that the ISSC had advised me that he was at his residence and that he had accidentally knocked the ankle bracelet on a bathroom fixture.

Ian Martinelli

Ian Martinelli
IEO, SMU

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Scenario D – Employer Information (cont'd)

(Employer)

Hand this out at step 4

The Employer is using the stated parts of the Code of Conduct as the basis for evaluating Ian's actions.

Canadian Border Services Agency Code of Conduct

...

Accountability

You are responsible for behaving ethically and in keeping with the values and standards set out in the Values and Ethics Code for the Public Service, which forms part of the conditions of employment in the Public Service of Canada. The CBSA Code of Conduct is an extension of the Values and Ethics Code for the Public Service and both codes apply to all public servants working at the CBSA.

Public Service Values

...

- **Professional values:** *Serving with competence, excellence, efficiency, objectivity and impartiality*
- **Ethical values:** *Acting at all times in such a way as to uphold the public trust.*

...

CBSA Values

- **Integrity:** *We exercise our authority in a principled, open and fair manner. We accept responsibility for our actions in order to build and maintain a reputation of trustworthiness and accountability.*

...

Expected Standards of Conduct

...

Hours of Work

...

You must be punctual so you can be relied upon by the people for whom you work or for the people who work for you. Whenever you need to change your regular work schedule, such as to request leave, leave work early or change your break or meal periods, you must do so in accordance with the established procedures in your workplace.

If you are to be absent from work because of illness or emergency, you need to explain the circumstances to your supervisor and inform him or her in advance of when you expect to return to work.

Disclosure of Information Concerning Wrongdoing in the Workplace

When you have reasonable grounds to believe that another person has committed a wrongdoing in the workplace, you should first talk to your manager.

...

It is the policy of the CBSA that all allegations or evidence of employee misconduct or malfeasance must be investigated to ensure that the professional reputation of CBSA employees and the integrity of CBSA operations are protected... .

Scenario D – Employer Information (cont'd)

(Employer)

Hand this out at step 4

These are the questions that the Employer will ask Ian during the fact finding meeting. Follow up questions can be added based on Ian's responses.

Meeting #1 – Fact Finding – January 11

Attendees: Ms. Symmond and Ms. Knight; Ian Martinelli and Steward

Questions Asked by Employer:

1. What time did you arrive at work on November 7?
2. What entrance did you use when you arrived on November 7?
3. What were your initial tasks upon arrival on November 7?
4. Did you stay inside the SMU for the duration of your shift on November 7?
5. What time did you leave on November 7?
6. What exit did you use when you left work on November 7?
7. Why didn't you seek authorization to leave early on November 7?
8. Did you ever leave early on any occasion other than November 7?
9. Are you sure that you left the office at around 11 p.m. on November 7?
10. Have you been completely truthful and forthcoming in this interview?
11. We have uncovered evidence that you that were not at work until at or about 11:00 p.m. on November 7, as you have previously told us. What do you have to say?
12. Are you aware of any other SMU employees leaving early without permission?

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Scenario D – Member Information (cont'd)

(Steward/Member)

Hand this out at Step 4

These are the questions Ian will be asked by the employer. Ian will not be completely truthful in his answers during this meeting. He essentially continues to stay with his original “story” from his first phone call with Ms. Symmond on November 7 and his Incident Report of November 10.

Meeting #1 – Fact Finding – January 11

Questions Asked by Employer with Ian’s Responses:

1. What time did you arrive at work on November 7?
2. What entrance did you use when you arrived on November 7?
3. What were your initial tasks upon arrival on November 7?
4. Did you stay inside the SMU for the duration of your shift on November 7?
5. What time did you leave on November 7?
6. What exit did you use when you left work on November 7?
7. Why didn’t you seek authorization to leave early on November 7?
8. Did you ever leave early on any occasion other than November 7?
9. Are you sure that you left the office at around 11 p.m. on November 7?
10. Have you been completely truthful and forthcoming in this interview?
11. We have uncovered evidence that you that were not at work until at or about 11:00 p.m. on November 7, as you have previously told us. What do you have to say?
12. Are you aware of any other SMU employees leaving early without permission?

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#20-E Case Scenarios – Step 4 Information (separate handouts by scenario to be distributed during exercise)

Scenario E – Employer Information

(Employer)

Hand this out at Step 4.

This information is being provided so that you can act as the Employer in the meeting that will be held with Fiona. You are aware that you have a duty to accommodate but you really don't understand what you can do in a situation like Fiona's.

CBSA has been and is still willing to accommodate Ms. Noble, but to the extent only of a static shift of 3 days per week up to a maximum of 10 hours per day, plus a further 4 hours on a fourth day.

It is undisputed that CBSA has an unwritten policy that anyone seeking accommodation in order to care for children may be accommodated by being given static shifts, but must also go to part-time hours to a maximum of 34 hours per week. This unwritten policy does not allow employees to have static shifts with full-time hours if the reason for the request is childcare responsibilities.

It is also undisputed this unwritten policy is applied unevenly. There are CBSA employees working part-time at 36 hours per week, employees working full-time static shifts, and others who have been allowed - although part-time - to maintain the equivalent of full-time pension and benefit entitlements. CBSA may want to discourage these anomalies but these exceptions do continue to exist.

It is also undisputed that CBSA has and does accommodate employees for medical and religious reasons by giving them static shifts with full-time hours, from time to time, for varying lengths of time, and for some on a permanent basis. These requests are assessed on an individual needs basis, and in the case of medical accommodation CBSA requires medical substantiation of the request. There are also instances of employees having been accommodated because they have children with medical needs.

You doubt that Ms. Noble has actually exhausted her 3rd party childcare options or that she cannot find family members to take care of her children.

You are also concerned about health and safety issues with working such long shifts which could become even longer with overtime.

You are insistent that the maximum hours she can work on a static shift is 34 hours per week.

You are unwilling to consider any other location or operation as well ... you will not consider Commercial Operations or Gateway as an option nor will you suggest transferring to other locations as an option.

#21-A Case Scenarios – Step 5 Information
(separate handouts by scenario to be distributed during exercise)

Scenario A – Context - Additional Information

(All)

Hand this out at debrief before step 5

The Employer has refused to amend the job descriptions as requested.

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#21-B Case Scenarios – Step 5 Information

(separate handouts by scenario to be distributed during exercise)

Scenario B – Additional Information

(All)

Hand this out at Step 5.

This information is provided to all parties. It relates to actions taken by the employer and the union following the meeting on July 17 until August 18.

On July 31 the employer emailed the steward, requesting Doug's response about his return to work on August 8, reiterating the options given in the July 17 meeting.

On August 5, the steward emailed the employer about the grievor's return to work and again provided the modifications required.

On August 8, Doug became fit to return to work, with accommodation, but was not allowed to return to work because the employer would not provide the necessary accommodation.

On August 11, the employer sent a letter to the grievor offering him the same three possible positions, which were his substantive position without accommodation, or two demotions, one of which is for a period of only six months. The employer confirmed it would conduct an ergonomic assessment once Doug's return to work location was determined. The letter also stated that Doug could resign by August 18 or be terminated for a reason other than a breach of discipline or misconduct. The letter gave Doug one week to respond.

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#21-C Case Scenarios – Step 5 Information (separate handouts by scenario to be distributed during exercise)

Scenario C – Context - Additional Information

(All)

Hand this out at debrief before step 5

At the conclusion of the October 23rd meeting Jason's supervisor handed Jason a letter indicating that he was being suspended without pay as a result of two investigations that were being conducted by the Office of Public Sector Integrity Commissioner (wrongdoing for a number of acts including misuse of public funds and attempting to evade the law using his CBSA badge) and Professional Standards Investigation Unit (allegedly associating with individuals suspected of being connected with criminal activity).

His suspension letter states that the suspension is not a disciplinary measure but rather an administrative measure to protect the interests of both Jason and the Agency.

The relevant provisions of the CBSA *Code of Conduct* in place during the Jason's employment up to September 2012, are as follows:

Expected Standards of Conduct

...

m) Off-duty Conduct

Your off-duty conduct is usually a private matter. However, it could become a work-related matter if it:

- *harms the Agency's reputation or program;*
- *renders you unable to perform a requirement of your duties;*
- *leads other employees to refuse, be reluctant or be unable to work with you;*
- *renders you guilty of a serious breach of the Criminal Code of Canada and thus renders your conduct injurious to the general reputation of the Agency and its employees. For example, the nature of the criminal charges may be incompatible with the functions of a peace officer;*

- *makes it difficult for the Agency to manage its operations efficiently and/or direct its workforce....*

You must report to your manager as soon as possible if you are arrested, detained or charged with a violation in Canada or outside Canada of laws, regulations, a federal statute or the Criminal Code of Canada related to your official duties. You must report a traffic violation or highway code ticket received during the use of a government-owned or leased vehicle.

On September 5, 2012, the CBSA President sent an email to all employees that attached a copy of a new CBSA *Code of Conduct*. Ms. Reza sent a copy of the new CBSA *Code of Conduct* by email to all employees in her region, which included Thunder Bay, on September 10, 2012. The relevant provisions of section 4, Private, Off-duty Conduct and Outside Activities (at page 12) of the new *Code of Conduct*, are as follows:

Our CBSA values of Respect, Integrity and Professionalism guide us throughout our work day. They can also extend to our private time. This is especially true in terms of engaging in outside activities on social media fora, outside employment, and political activities.

*We understand that our outside activities and off-duty conduct are usually private matters. They could become work-related matters, however, if they have negative consequences on the Agency. **We avoid such activities, which may include those that:***

- *reflect negatively on the Agency, its employees (including its managers) or its programs;*
- *render us unable to perform a requirement of our duties;*
- *lead other employees to refuse, be reluctant or be unable to work with us;*
- *renders us guilty of a breach of the Criminal Code; and*
- *make it more difficult for the Agency to manage its operations efficiently and/or to direct its workforce.*

We also avoid activities that place us or the Agency at risk by knowingly associating, outside of our official duties, with individuals or groups who are believed or suspected to be connected with criminal activities.

Both CBSA *Codes of Conduct* in place during the period of the grievor's employment contained provisions concerning conflict of interest. The *Values and Ethics Code for the Public Sector* referenced in the letter of termination contained the following behavioural requirement for public service employees under the heading of "Integrity":

3. Integrity

Public servants shall serve the public interest by:

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

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

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

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

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#21-D Case Scenarios – Step 5 Information

(separate handouts by scenario to be distributed during exercise)

Scenario D – Context - Additional Information

(All)

Hand this out at debrief before step 5

Following the January 11 meeting, Ms. Symmond and Ms. Knight decide that their investigation needs to be expanded to determine exactly what happened on November 7 and whether or not Ian has left work early on more than one occasion.

They conduct a disciplinary interview with Ian and his union Steward on January 15. At that interview, they ask Ian if he has anything to add to his report and his statements given in the January 11 meeting. Ian declines. As a result, the employer issues a letter of suspension (attached).

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Scenario D – Suspension Letter

(All)

Hand this out at debrief before step 5

This is the suspension letter sent to Ian Martinelli ... it also contains a summary of the findings of the investigation.

RE: November 7 Incident – Investigation Results and Discipline

Mr. Martinelli:

Following our disciplinary meeting of January 15, this is to advise that the findings of the investigation into your attendance at work are:

- August 19 - your last key card access to the SMU was recorded at 6:29 p.m., and video surveillance shows you exiting the HEC building after exiting the SMU offices at 8:01 p.m. Your completed and signed time sheet claims a full shift (7.5 hours) and the evening shift premium for 7.5 hours.
- August 26 - Your last key card access to the SMU was recorded at 9:01 p.m., and video surveillance shows you exiting the HEC building after exiting the SMU offices at 9:47 p.m. Your completed and signed time sheet claims a full shift (7.5 hours) and the evening shift premium for 7.5 hours.
- November 2 - Your last key card access to the SMU was recorded at 9:36 p.m., and video surveillance shows you exiting the HEC building after exiting the SMU offices at 9:39 p.m. Your completed and signed time sheet claims a full shift (7.5 hours) and the evening shift premium for 7.5 hours.
- November 5 - Your last key card access to the SMU was recorded at 8:46 p.m., and video surveillance shows you exiting the HEC building after exiting the SMU offices at 9:30 p.m. Your completed and signed time sheet claims a full shift (7.5 hours) and the evening shift premium for 7.5 hours.
- November 7 - Your last key card access to the SMU was recorded at 6:23 p.m., and video surveillance shows you exiting the HEC building after exiting the SMU offices at 6:26 p.m. Your completed and signed time sheet claims a full shift (7.5 hours) and the evening

shift premium for 7.5 hours and the weekend shift premium for 7.5 hours.

These are considered to be extremely serious violations of the Code of Conduct.

The decision has been made to impose a 20 day suspension without pay to be served from June 1 to June 28 inclusive.

You are also put on notice that any further violations of the Code of Conduct or inappropriate behaviour may result in discipline up to and including termination.

#21-E Case Scenarios – Step 5 Information **(separate handouts by scenario to be distributed during exercise)**

Scenario E – Context - Additional Information

(All)

Hand this out at debrief before step 5

Ms. Noble and the Union Steward have met with the employer to see if they can obtain accommodation for static, full-time employment for Ms. Noble because of child-care needs. The Employer has refused and cited health and safety amongst other rationale for the refusal.

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#22-A Case Scenarios – Step 7 Information **(separate handouts by scenario to be distributed during exercise)**

Scenario A – Additional Information

(Member)

Hand this out at step 7

The information necessary for the grievance hearing has already been provided in earlier documents.

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#22-B Case Scenarios – Step 7 Information (separate handouts by scenario to be distributed during exercise)

Scenario B – Additional Information

(Steward and Member)

Hand out at Step 7

This information is provided to help the union side prepare for the grievance hearing.

On August 22, Dr. Brannigan requested an update on the plan to return the grievor to work. She supported his "prompt return to work" and expressed concerns as follows:

... the longer he remains off, the more difficult it is likely to be for him to make the transition back to the workplace. Since he has already made at least two rather short-lived attempts to return, it is questionable whether a more favourable outcome can be expected on yet another try. It is therefore essential that the deck be stacked in his favour before such a course is embarked upon.

She opined the grievor was fit for a graduated return to work with modified duties on a rehabilitation basis. She summarized the modifications that she, Dr. Germaine and a Dr. Gilnetter recommended as follows:

physical – [that the grievor] not sit at computer screen for extended periods; alternate activities with computer work, walking, standing, and other types of physical activities.

psychological – [he is] not suited to work involving intense and/or continuous dealings with clients or coworkers. Increasing demands to perform cause him anxiety. [She recommended] the services of the long term disability carrier be utilized to aide [sic] in finding suitable positions to meet the modifications required.

fresh start in a new position – to overcome the skepticism caused by the previous attempts to return to work.

On September 4, the steward wrote to Mr. Morgan and requested a return-to-work plan for Doug.

You have an abundance of medical documentation supporting that Doug is fit to return to work with specific accommodations including Dr. Brannigan's report.

There is a vacant position which would likely be easily modified to suit Doug's restrictions (Service Delivery Representative– PM-01) but the rumour is that this position will go to the Manager's niece who is just entering the workforce.

#22-C Case Scenarios – Step 7 Information

(separate handouts by scenario to be distributed during exercise)

Scenario C – Additional Information

(Member)

Hand this out at step 7

The information necessary for the grievance hearing has already been provided in earlier documents.

You sincerely believe that you have not done anything wrong ... you never put your personal friendships ahead of your employer's business. You never used your position as a BSO to benefit your friends. Nor did they ever ask you to. You had heard rumours that some of your friends, Mr. Mussolini in particular, were possibly involved in the drug trade but that was a subject you never discussed with him. You had been friends since high school.

You never hid your friendship with Mr. Mussolini from your employer.

You doubt that the investigation reports will uncover any wrongdoing on your part.

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#22-D Case Scenarios – Step 7 Information

(separate handouts by scenario to be distributed during exercise)

Scenario D – Additional Information

(Member)

Hand this out at step 7

This information provides the outcome of the investigation and the actions the Employer is taking as a result. It also provides some suggested mitigating factors and some guidance on how and why you acted as you did. You can use this information when working with the Steward to prepare for the grievance hearing.

The Employer has sent a letter imposing a 20 day disciplinary suspension following the completion of their investigation. The letter includes a summary of the findings of their investigation.

Mitigating and additional information from Ian:

- You regret your errors in judgement and are ready to apologize for your bad decisions.
- You have been a good employee for five-and-a-half years and have received excellent performance appraisals.
- You have volunteered for extra tasks and you worked over the Christmas holiday.
- In November, you and your wife had just bought a new house and had just had your first baby.
- The transition to the SMU was difficult for you as your previous work unit had been very active doing investigations on the road, and the SMU has a much slower pace.
- You were taken aback at the first meeting on November 26. You thought the issue had been dealt with as time had passed and nothing had come of it.
- You acknowledge that your participation in the investigation process was guarded and defensive. You admit that you could have been more straightforward if you had realized the severity of the situation

you were in. If you could go back in time, you would answer the questions very differently.

- You made an error in judgement when you falsified your time sheets. Your rationale was that you responded to the incident, and as such, your action was acceptable. In hindsight, you realize it was not, as you were not in the office nor doing your duties.
- You realize that in the first round of questions with Ms. Symmond you were fearful and answered without thinking.
- There was a culture of leaving early in the unit on the afternoon shift. But you now understand that that culture does not excuse your behaviour.
- You will not “rat out” other employees who leave early.

#22-E Case Scenarios – Step 7 Information **(separate handouts by scenario to be distributed during exercise)**

Scenario E – Additional Information

(Member)

Hand this out at step 7

The information necessary for the grievance hearing has already been provided in earlier documents.

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#23-A Case Scenarios – Step 8 Information

(separate handouts by scenario to be distributed during exercise)

Scenario A – Additional Information

(Employer)

Hand this out at step 8

The information necessary for the grievance hearing has already been provided in earlier documents.

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#23-B Case Scenarios – Step 8 Information (separate handouts by scenario to be distributed during exercise)

Scenario B – Additional Information

(Employer)

Hand out at Step 8

This information is provided to help the Employer prepare for the grievance hearing.

The employer remains steadfast in their position that the only available options are:

- remain in his substantive position (now classified as PM-01) with an ergonomic assessment being done after his return but doing the full duties
- accept a demotion to a position at a lower classification
- medical retirement
- resignation
- termination for a non-disciplinary reason

If Doug asks for personal leave without pay for a year, you will deny his request.

If Doug does not return to his substantive position, he will not be reclassified as a PM-01.

If Doug does not return to work by _____, the employer will terminate his employment for a non-disciplinary reason.

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#23-C Case Scenarios – Step 8 Information

(separate handouts by scenario to be distributed during exercise)

Scenario C – Additional Information

(Employer)

Hand this out at step 8

This information is being provided so that you can act as the Employer in the grievance hearing that will be held. The majority of the information has already been provided in previous handouts.

Jason does not have a clean record ... there are several letters of reprimand for his actions between 2010 and 2012. The incidents are minor and normally would not attract discipline.

The suspension is not disciplinary even though it is without pay. It is a measure taken to protect the ongoing investigations.

The two investigation reports are expected to be received shortly. It is anticipated that the allegations will all be founded. If founded, then Jason's employment will be terminated. The two investigations are: Office of Public Sector Integrity Commissioner (wrongdoing for a number of acts including misuse of public funds and attempting to evade the law using his CBSA badge) and Professional Standards Investigation Unit (allegedly associating with individuals suspected of being connected with criminal activity).

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#23-D Case Scenarios – Step 8 Information

(separate handouts by scenario to be distributed during exercise)

Scenario D – Additional Information

(Employer)

Hand this out at step 8

This information is being provided so that you can act as the Employer in the grievance hearing that will be held. There has been a finding of serious misconduct and you feel you would be justified in terminating the employee but you decide that he has rehabilitative potential and that he will never do this again so instead you institute a 20 day suspension without pay. This information can be used to refute Ian's comments or support your decisions, as you see fit.

Following the January 11 meeting, Ms. Symmond and Ms. Knight decide that their investigation needs to be expanded to determine exactly what happened on November 7 and given Ian's response that he may have left 10-15 minutes early on occasion, they need to find out exactly how often and when he has left early.

They expand their investigation to include the period from July 1 to November 7.

Their investigation uncovers that on five separate occasions, Ian left the SMU workplace early before the end of his evening shift, without authorization. Their investigation report sets out the particulars of video surveillance that captures Ian leaving the HEC building after exiting the SMU offices and the particulars of the grievor's key card access to the SMU offices on those same dates.

Attached to their report are:

- DVDs containing video camera surveillance of Ian departing the HEC building after departing the SMU offices. The video surveillance is date and time stamped.
- Copies of all access records to the HEC and SMU areas controlled by key card access on August 19, 26, November 2, 5 and 7 from 3:00 p.m. until midnight.

- Copies of only the Ian's key card access for the evening shifts from August 18 to 22, 26 to 27, November 1, 2, 4, 5 and 7.
- Copies of the GPS monitoring system login records for August 19, 26, November 2, 5 and 7. There is no record of Ian logging in to view the GPS ankle bracelet activity on any of these dates.
- Copies of Ian's notebook entries and G drive entries for August 19, 26, November 2, 5 and 7. There are no entries in either Ian's notebook or on the G drive at any time after the time the video shows him leaving SMU on any of the five days in question.
- Copies of Ian's signed and submitted timesheets indicating that for August 19, 26, November 2, 5 and 7 he filled in that he worked the full 7.5 hours and he claimed the applicable shift premium for the full 7.5 hours on each of these days. He also claimed the weekend shift premium for November 7.

Further, the investigation shows that:

- August 19 - Ian's last key card access to the SMU was recorded at 6:29 p.m., and video surveillance shows him exiting the HEC building after exiting the SMU offices at 8:01 p.m.
- August 26 - Ian's last key card access to the SMU was recorded at 9:01 p.m., and video surveillance shows him exiting the HEC building after exiting the SMU offices at 9:47 p.m.
- November 2 - Ian's last key card access to the SMU was recorded at 9:36 p.m., and video surveillance shows him exiting the HEC building after exiting the SMU offices at 9:39 p.m.
- November 5 - Ian's last key card access to the SMU was recorded at 8:46 p.m., and video surveillance shows him exiting the HEC building after exiting the SMU offices at 9:30 p.m.
- November 7 - Ian's last key card access to the SMU was recorded at 6:23 p.m., and video surveillance shows him exiting the HEC building after exiting the SMU offices at 6:26 p.m.

Based on the findings of the investigation, the decision was made to impose a 20 day disciplinary suspension. Ian Martinelli and his union

steward were advised of this by way of a letter which also included a summary of the findings of the investigation. The suspension is to be served for all scheduled shifts between June 1 and 28.

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#23-E Case Scenarios – Step 8 Information **(separate handouts by scenario to be distributed during exercise)**

Scenario E – Additional Information

(Employer)

Hand this out at step 8

The information necessary for the grievance hearing has already been provided in earlier documents.

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#24 CASE SCENARIOS – FURTHER INFORMATION

SUMMARY OF OUTCOMES:

Scenario A:

The grievors requested amendments to 11 of the duties in their work description. Adjudicator Steven Katkin partially upheld the grievors' requested changes by ordering

- “*Analyze and*” added to paragraph #4 under Key Activities (part of amendment #2)
- “*or to resolve technical problems*” added to paragraph #7 of Information for Others in the Intellectual Effort section (amendment #6)

Adjudicator Katkin dismissed the rest of their requested amendments.

Observations/Learnings:

For the purposes of this training, we chose the first 3 requested amendments.

This case demonstrates the need to have clear evidence to support the requested changes and for the Steward to help grievors to have realistic expectations of the outcome of work description grievances. Following this decision, the amended work description would be sent to the Employer's classification section for review. If that review does not result in an upwards reclassification, the PSAC will likely decide not to challenge the result.

Scenario B:

The grievor ultimately opted to take medical retirement.

Adjudicator Deborah Howes found that the grievor's disabilities fell within the definition of disability under the *Canadian Human Rights Act*. She determined that the real issues between the parties (other than remedy) were

1. whether the employer made a reasonable offer of accommodation, and

2. whether the grievor failed to meet his duty to cooperate in the accommodation efforts.

She found in favour of the grievor on both issues. She found that none of the three options offered to the grievor were reasonable accommodations. She found that the grievor was medically fit and willing to return to work at the end of June 2008. She found that the grievor met his obligations under the duty to accommodate. She therefore found that the employer had discriminated against the grievor, going so far as to find the employer engaged in discriminatory practices wilfully and recklessly. She found that the employer differentiated the employer from other similar employees when it refused to implement the reclassification and it did so on the grounds arising from his disabilities.

By way of remedy, she ordered:

- compensation to the grievor for all lost pay, vacation entitlements, benefits and pension contributions from June 1, 2008 to the effective date of his medical retirement (less any pay and benefits he received while on leave with pay);
- \$20,000 for pain and suffering (maximum amount allowable); and
- \$18,000 in special damages (\$20K is maximum allowable).

She found that she had no authority to award interest, make orders about the employer's ongoing practices, and felt there was little value in ordering the employer to apologize in these circumstances.

Finally she found that the potential harm to the grievor overrides the open court principle and thus ordered some of the exhibits sealed (those containing very detailed medical information).

Observations/Learnings:

It is important to note that the discrimination against this grievor was substantial and continued over a long period of time, despite every effort of the grievor and the union to seek a reasonable accommodation. This is a very unusual case in terms of the severity of the discrimination, the length of time it continued, the amount of evidence to support the allegation of discrimination and the remedies ordered.

Scenario C:

Adjudicator Kate Rogers found that grievor maintained off-duty, social relationships with two people who could be described as known criminals. She also found that the employer had not alleged any criminal activity by the grievor or work performance issues as a result of these relationships.

As a general rule, employers have no jurisdiction over the off-duty behaviour of employees. In deciding whether termination was appropriate under the circumstances, Adjudicator Rogers applied the five criteria set out in the *Millhaven Fibres Ltd.* decision for justifying an employer's incursion into an employee's private life. These are:

1. The conduct of the grievor harms the Company's reputation or product;
2. The grievor's behaviour renders the employee unable to perform his duties satisfactorily;
3. The grievor's behaviour leads to refusal, reluctance or inability of the other employees to work with him;
4. The grievor has been guilty of a serious breach of the *Criminal Code* and thus rendering his conduct injurious to the general reputation of the Company and its employees;
5. Places difficulty in the way of the Company properly carrying out its function of efficiently managing its works and efficiently directing its working forces.

She found that the employer had established that the grievor's conduct over a number of years impaired his ability to carry out his duties effectively and contravened the CBSA's *Code of Conduct*. She also found that the penalty of discharge (termination of employment) was reasonable in all of the circumstances of this case.

Observations/Learnings:

Employees need to be cautioned that not all off-duty conduct is protected from discipline by the employer. The *Code of Conduct* sets out the expectations around an employee's behaviour. Although not specifically about social media, the grievor's facebook postings were used as evidence to prove his relationships. Would the outcome of the case have been different if he had completed the "confidential report", received a ruling on the conflict of interest and then complied with the ruling?

Scenario D:

Adjudicator John Jaworski applied the 3 question test set out in the *Wm. Scott* case (1977 1 CLRBR 1):

- 1) Was there misconduct by the grievor?
- 2) If yes, was the discipline imposed by the employer an appropriate penalty in the circumstances?
- 3) If not, what alternate penalty is just and equitable in the circumstances?

He found that there was misconduct by the grievor and that the discipline imposed (termination of employment) was appropriate under the circumstances. In part he based his decision on his finding that, rather than come clean when he first got caught and admit what he had done, the grievor chose to lie on numerous occasions when questioned by the employer.

Observations/Learnings:

While it is not clear whether the outcome of the case would have been different had the grievor immediately admitted his actions, adjudicators and arbitrators rarely overturn an employer's decision regarding the quantum of the discipline when an employee has lied when his/her misdeeds are discovered. In advising members on how to deal with situations of alleged misconduct, Stewards should keep in mind that honesty and contrition are often viewed as mitigating factors by adjudicators/arbitrators. That doesn't mean the employee won't be disciplined (and possibly even terminated) for the misconduct or even that an adjudicator/arbitrator won't uphold the imposed discipline.

Scenario E:

The Canadian Human Rights Tribunal found that Fiona Johnstone's (Noble) complaint was substantiated:

1. Ms. Johnstone has made out a *prima facie* case of adverse differentiation against CBSA within the meaning of Section 7 of the *Act*, on the basis of family status;
2. Ms. Johnstone has demonstrated, on a *prima facie* basis, that the CBSA established and pursued policies and practices that deprived or tended to deprive the Complainant and any similar class of

individual of employment opportunities, on the ground of family status, within the meaning of Section 10 of the *Act*;

3. CBSA has failed to establish a *bona fide* occupational requirement, present a reasonable explanation for, or otherwise justify the case of *prima facie* discrimination against it.

The Tribunal ordered two systemic remedies against CBSA (develop a plan to prevent further incidents of discrimination and develop written policies to address family status accommodation requests including a process for individualized assessments) and ordered compensation to Ms. Johnstone for lost wages and benefits including overtime and pension contributions that she would have made had she been able to work fulltime from January 4, 2004 to the date of the decision. They also ordered \$15,000 plus interest in general damages for pain and suffering and \$20,000 plus interest as special compensation.

Learnings/Observations:

This decision was appealed through several levels of the judicial system without any substantial changes to the decision being made. The original decision by the Tribunal ordered Ms. Johnstone and the Canadian Human Rights Commission (CHRC) to be part of the approval process for a systemic remedy and that was changed to be only the CHRC. The period of time she was entitled to be compensated for lost wages and benefits was reduced. All appeals have now been exhausted. This decision stands. Further information about this case can be found on the PSAC website.

**#25 SPEED PROBLEM-SOLVING SCENARIOS
PARTICIPANT INFORMATION HANDOUT
(Separate Handout)**

*Distribute this complete package of 8 scenarios as a
separate handout*



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Speed Problem-solving Scenario #1

Dan Monk is a Parole Officer working for the Correctional Service of Canada. He was originally injured while working at an institution in Ontario in 2010. His WSIB claim for a back injury was accepted and the sick leave he had used was credited back to his bank. Following his return to work, he had an ergonomic assessment and it was determined that he required a specific ergonomic chair which was provided by the employer.

In 2013, he transferred to an institution in Nova Scotia without his specific ergonomic chair. A few months after his transfer, he re-injured his back. He filed a claim with the Workers' Compensation Board of Nova Scotia stating that he had injured his back while bending over to pick up a pen and as a result of not having the proper ergonomic set up at his workstation. He was off work as a result of this injury for a period of 2 months.

WCB denied his claim and his leave remains as sick leave. Because he did not have sufficient paid sick leave in his bank, 190 hours of his leave is sick leave without pay.

He contacted the union for assistance with his WCB claim and now that it has been denied, he wants the union to file a grievance and a human rights complaint claiming that the employer failed its duty to accommodate him by not providing him with an ergonomic chair at the institution in Nova Scotia. He is seeking the following remedies from the employer:

- An ergonomic assessment and whatever equipment is specified by the assessor.
- His sick leave bank to be credited with the paid sick leave he took as a result of the injury.
- His unpaid sick leave to be re-coded to "Other Paid Leave" and a cheque issued paying him for those hours.

You and Dan Monk are meeting today with the employer to try to resolve the situation at the complaint stage. No grievance or complaint has been filed yet.

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Speed Problem-solving Scenario #2

Felix Carrier is an industrial mechanic (GL-MAM-09) employed at a Canadian Forces Base in Ontario. For the period between September 19 and November 10, 2012, he accepted a temporary acting position as a service contract inspector (C-01).

On February 23, 2013 he submitted a request to carry over 120 hours of annual leave credits. On March 7, 2013, he received an email from his Sargeant confirming the denial of 80 hours of carry over and the approval of 40 hours of vacation leave. He also received a leave form signed by his Master Warrant Officer directing him to take 80 hours of annual leave from March 14 to 24, 2013.

In addition to the 80 hours he was directed to take by the employer, he also took 8 hours of annual leave on March 31, 2013.

He filed a grievance on March 29, 2013.

The applicable collective agreement language is:

ARTICLE 35

VACATION LEAVE WITH PAY

35.01 *The vacation year shall be from April 1st to March 31st, inclusive, of the following calendar year.*

- (a) Employees are expected to take all their vacation leave during the vacation year in which it is earned.*
- (b) The Employer reserves the right to schedule an employee's vacation leave. In granting vacation leave with pay to an employee, the Employer shall make every reasonable effort to:*
 - (i) grant an employee's vacation leave in an amount and at such time as the employee may request;*
 - (ii) not recall an employee to duty after the employee has proceeded on vacation leave;*
 - (iii) not cancel nor alter a period of vacation leave which has been previously approved in writing;*

- (iv) *ensure that, at the request of employee, vacation leave in periods of two (2) weeks or more are started following a scheduled period of rest days.*
- (c) *Representative of the Alliance shall be given the opportunity to consult with representatives of the Employer on vacation schedules.*

...

35.07 *Where, in respect of any period of vacation leave, an employee:*

(a) is granted bereavement leave,

or

(b) is granted leave with pay because of illness in the immediate family,

or

(c) is granted sick leave on production of a medical certificate,

the period of vacation leave so displaced shall either be added to the vacation period, if requested by the employee and approved by the Employer, or reinstated for use at a later date.

...

35.11 ***Carry-Over and/or Liquidation of Vacation Leave***

(a) Where in any vacation year, an employee has not been granted all of the vacation leave credited to him or her, the unused portion of his or her vacation leave up to a maximum of two hundred and eighty (280) hours credits shall be carried over into the following vacation year. All vacation leave credits in excess of two hundred and eighty (280) hours shall be automatically paid in cash at his or her daily rate of pay as calculated from the classification prescribed in his or her certificate of appointment of his or her substantive position on the last day of the vacation year.

The individual grievance filed reads:

Grievance Wording:

I grieve the employer's denial of my request to carry over 80 hours of vacation leave with pay. I further grieve the employer's unilateral scheduling of the 80 hours of vacation leave with pay in the period between March 14 and 24, 2013. This violates Article 35 of my collective agreement.

Corrective Action:

That the Employer be ordered to respect the collective agreement and allow me to carry over unused vacation leave to the following year up to the maximum of 280 hours as set out in the collective agreement.

That the Employer be ordered to respect the collective agreement and grant my request for vacation leave in the amount and on the dates I request.

In preparing for filing the grievance, you discover that the department has a zero annual leave carry over policy.

You are having a first level grievance hearing today. You have brought Felix Carrier with you.

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Speed Problem-solving Scenario #3

Ana Meston Martin is a CR-03 support clerk working in the mailroom at the Victoria, British Columbia office of Service Canada – Western Region Processing and Payment Services CPP/Foundational Services for the Department of Employment and Social Development, Treasury Board.

She has contacted the union on behalf of several of her co-workers because they feel that their job description does not accurately reflect the duties that they perform.

You have already met with the group and through discussions have determined that the key activities that they believe are missing are:

1. Handling live cheques and preparing cash blotter for finance.
2. Training and coaching and mentoring of fellow staff members
3. Take on the duties of an officer in charge when no team leader is available.
4. Manage and maintain stock of envelopes and supplies required for the mail room.
5. Performing trouble shooting and making minor repairs to equipment used in the mail room.

The key activities listed currently in their job description are:

- Receives, screens, classifies, sorts and/or registers initial mail/client information for various departmental programs and services within prescribed procedures and requirements.
- Verifies and authenticates client information and supporting documentation for legibility, accuracy and completeness with prescribed procedures and requirements; requests missing or supporting information from clients or departmental officers, or redirects to the appropriate authority.

- Screens observations from computer-based data/match programs to determine if case can be put in order or directed to appropriate level for further review.
- Maintains and updates databases and tracking systems: working files, statistical records, reports and correspondence.
- Obtains, inputs, maintains and extracts data and documentation related to applications and claims.
- Operates various types of office equipment e.g. postage meters, high-speed printers.

A group grievance has been filed by the affected members alleging a violation of the collective agreement.

The applicable collective agreement language is:

ARTICLE 54

STATEMENT OF DUTIES

54.01 *Upon written request, an employee shall be provided with a complete and current statement of the duties and responsibilities of his or her position, including the classification level and, where applicable, the point rating allotted by factor to his or her position, and an organization chart depicting the position's place in the organization.'*

The group grievance filed reads:

Grievance Wording:

I grieve the employer's failure to provide me with a complete and current statement of duties and responsibilities. This violates my collective agreement.

Corrective Action:

That I be provided with a current and complete statement of duties of my position.

You are having a first level grievance hearing today. You have brought Ana Meston with you.

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Speed Problem-solving Scenario #4

Ray Hillier and Tim Denton are civilian employees of the Department of National Defence at a Canadian Forces base in Saskatchewan. They each hold a position as an indeterminate machine operator/driver (GLT-MD0-6). They are certified to operate a number of vehicles and equipment including graders, excavators, tractor-trailer units and snowplows. They are not certified to operate military vehicles such as armoured personnel carriers, but they do have a “training certificate” for many of the military vehicles which permits them to load the military vehicles onto trucks.

There is an extensive training area at the base and their duties are to maintain and monitor an extensive fireguard. They also help provide fire suppression because the military training exercises resulted in a number of fires each year. They also were involved in road maintenance and snow clearance in both the training area and the detachment area. On occasion they also operated a tractor-trailer unit delivering ammunition to other Canadian Forces bases as well as driving the bus that took personnel who lived in Saskatoon to and from the base.

In 1989 there were two civilian employees and a Master Corporal (who acted as their supervisor) in the Special Purpose Vehicle Section. Now there are two civilians and six military members (including the Master Corporal).

The civilian employees generally worked a Monday to Friday work week. On the weekends, there was a regular callout rotation where each was on call one weekend out of three. In the mid-90’s, with the increase in military personnel in the section, the rotation changed to one in five.

While on the callout rotation, employees were compensated in accordance with the standby provisions in the collective agreement. If they were actually called into work, they were paid overtime in accordance with the collective agreement.

Sometime in 2006 or 2007, there was a change in how work was assigned on the weekends. More and more of the work was assigned to the military personnel, such that there were almost no overtime opportunities for the civilian employees and they were no longer assigned to a callout rotation (standby).

Ray Hillier and Tim Denton have come to the union to discuss the situation. Even though a number of years have passed since the change in procedure, they are insistent that the employer is continually violating the collective agreement provisions around the equitable distribution of overtime.

The applicable collective agreement language is:

29.04 Assignment of Overtime Work

Subject to the operational requirements of the service, the Employer shall make every reasonable effort:

(a) To allocate overtime work on an equitable basis among readily available qualified employees,

And

(b) To give employees who are required to work overtime adequate advance notice of this requirement.

31.01 Standby

Where the Employer requires an employee to be available on standby during off-duty hours, such employee shall be compensated at the rate of one-half (1/2) hour for each four (4) hour period or part thereof for which the employee has been designated as being on standby duty.

You are meeting with the employer to discuss this situation at the complaint stage. You have brought Ray Hillier with you.

Speed Problem-solving Scenario #5

Cybel Carpentier has held the position of Training Officer of Mail Operations (TI-2) with Canada Post Corporation for over 18 years.

Canada Post pays a corporate team incentive bonus to employees who achieve an “acceptable” or higher performance rating.

She received her first “unacceptable” rating on her most recent performance appraisal.

On her performance appraisal under the heading “Performance Issues”, her manager wrote:

1) Products and Services:

Cybel was set to re-issue an update to the Products and Services module. I received several telephone calls as well as ms mail messages from the field and Head Office asking me not to re-issue an update, given that the “owners” of Products and Services would be issuing a complete update within three weeks. I then spoke with Cybel to follow up on this and get her input. After hearing Cybel’s feedback as well as the feedback of others, I decided, as the Manager accountable, not to issue an update and wait for the complete update which was forthcoming within weeks. This was not well received and Cybel did not agree with my decision. My decision remained an issue for Cybel for several months. Cybel asked for a meeting between myself, our Director and Cybel. It was obvious that Cybel had a problem with the way in which I handled the situation. When the Director asked her for other specific examples, none were forthcoming. This appeared to be the breakdown in our working relationship.

2) “Working Together”:

This was an initiative that Cybel took on as a result of feedback from a previous conference. This training package was an awareness program re: hearing impaired employees. While the initiative was to be commended, the process was less than ideal. There was a

problem with the implementation and communication strategies. They were missing. As well the Employment Equity corporate authority, Sharon Bennet (or her corporate representative) was bypassed for final approval. I did have a meeting with Sharon Bennet to get her feedback on the situation, and then followed up with a meeting including Cybel, Sharon and myself. I needed to assure Sharon that we would rectify the situation (ensure she was completely on board and the final authority). We mended that fence and Sharon was to get back to us later that month (she was meeting her equity coordinators at the end of September and wanted to get the field input/feedback on the Work Together work book).

3) Air Brakes:

Rod Rochon (a team member) asked Cybel to develop a participant's handbook that corresponded to the existing instructor's manual. The instructor's manual had been validated by the appropriate authority (as well as the field authorities) and all that was required was a participant's handbook. When Rod asked what the status was on the project, I then followed up with Cybel and scheduled a meeting between the three of us. Given Cybel's reaction during the meeting, I was forced to end the meeting. Cybel was also validating the instructor's manual, which in Rod's mind was not necessary and not at all what he requested. As a result, Cybel returned the file (at my request) and gave me two options of how this was going to play out, and the bottom line was that Cybel was not willing to prepare a participant's handbook without validating the instructor's handbook (which is completely contrary to the client's request). As well, the scene and Cybel's behavior at that meeting were unacceptable.

4) OHS&S/Attendance Management:

This situation occurred while I was away on annual leave. However, from feedback received from the field as well as Head Office, the implementation and communication strategy were missed. The product itself received positive feedback, but the process to get there appeared to be less than ideal. Cybel did show me a preliminary draft

of what she was sending out to the field and I did provide her with feedback (ie. to better position the communication strategy), but I did not see the final product until much later (I was excluded from the communication that went out to the field and Head Office). I did receive negative feedback from the field, specifically: the information cc'd to inappropriate addresses and not sent to the appropriate employees. As well, there were several fences to mend with the field because Cybel did not specify who should attend the training session which resulted in hard feelings between Operations trainers. This required damage control on my part as well as the Managers in the field.

In all other aspects of her performance, Cybel was rated as “acceptable”.

Her performance appraisals in previous years have all been rated “acceptable”, although some concerns were raised about how she interacted with the clients and some co-workers.

She has approached the Union asking for help in having her performance rating changed to “acceptable” so she can receive the corporate team incentive bonus.

You have arranged a meeting with Ms. Canton to discuss Cybel’s performance appraisal in the hopes that you will be able to resolve the matter. You have brought Cybel with you.

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Speed Problem-solving Scenario #6

Sophie Arsenault is a Client Service Officer (CR-04) employed in the Canadian Firearms Centre's Central Processing Site located in New Brunswick. The Canadian Firearms Centre has previously been under the aegis of the Department of Justice, then the Department of the Solicitor General and currently the RCMP have responsibility for the firearms program.

In addition to Client Service Officers, there are Firearms Transfer Clerks (CR-04) who are employed in the Central Processing Site.

In 2009, the employees were informed that the duties of these two positions would be combined. The employees requested and were provided with a revised job description "Client Services Agent" (CR-04). This position included the duties of the former Firearms Transfer Clerk position.

The employees were not satisfied with the classification of the Client Services Agent position and requested a classification review. The result of the classification review confirmed the classification at CR-04. Being still dissatisfied with the classification, Sister Arsenault and 37 other employees filed a classification grievance. Those grievances were ultimately unsuccessful and the classification remained at CR-04.

In 2012, the employer combined the Client Services Agent and Enhanced Screening Agent into one single work description titled Customer Services Agent and a request by the employer for the classification of this new position resulted in a classification of CR-04 with an effective date of April 1, 2012. The Central Processing Site's management requested a review of this classification and the result of this review was that the position was reclassified as a PM-01 effective April 1, 2012.

Sister Arsenault and the 37 other employees have filed 38 individual grievances alleging that the employer did not pay them acting pay for the period from 2009 to April 1, 2012. They claim they were substantially performing the duties of the PM-01 position from the time the Client Service Officer and Firearms Transfer Clerk were combined until the Client Services Agent position was reclassified to PM-01.

The applicable collective agreement provisions are:

ARTICLE 64

Pay Administration

...

64.02 *An employee is entitled to be paid for services rendered at:*

(a) *the pay specified in Appendix A-1 for the classification of the position to which the employee is appointed, if the classification coincides with that prescribed in the employee's certificate of appointment;*

Or

(b) *the pay specified in Appendix A-1 for the classification prescribed in the employee's certificate of appointment, if that classification and the classification of the position to which the employee is appointed do not coincide.*

...

64.07

(a) *When an employee is required by the Employer to substantially perform the duties of a higher classification level in an acting capacity and performs those duties for at least three (3) consecutive working days or shifts, the employee shall be paid acting pay calculated from the date on which he or she commenced to act as if he or she had been appointed to that higher classification level for the period in which he or she acts.*

...

The individual grievances filed read:

Grievance Wording:

I grieve that the employer is not paying me appropriately for the duties I am performing. I am asked to perform duties of a higher position. As a result, the employer is not following the provisions of Article 64 of the Collective Agreement.

Corrective Action:

That I be paid in accordance with the collective agreement for the performance of the duties mentioned retroactive to the date on which the performance of these duties began.

You are having a first level grievance hearing today. You have brought Sophie Arsenault with you.

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Speed Problem-solving Scenario #7

Annie Pudlat has been employed as a customer service representative by a Territorial Energy Corporation since March 25, 2010.

Sister Pudlat has been Ms. Kerr's supervisor since August 2012.

Sister Pudlat's brother suffers from a severe form of arthritis and she has been providing care to him. Following treatment at a southern location in December 2012, he moved in with Sister Pudlat and she has become his primary caregiver.

In September 2012 and May 2013 he was evacuated to a southern city for treatment.

For the September 2012 treatment, Sister Pudlat requested and received permission for a leave of absence to go with her brother for treatment.

During the fall of 2012 and early 2013, Sister Pudlat had been absent from work on 25 occasions for periods of time ranging from 2 hours to 2 days. For most of these occasions, she provided very short notice of her pending absence, ranging from 3 hours to as little as 10 minutes. She has taken various types of personal, sick and vacation leave to cover these absences.

Sister Pudlat has contacted the union because she has been advised there will be a meeting held to discuss her absences from work. In preparing for the meeting, you interview Sister Pudlat about her absences. She advises you that some of the absences are due to her responsibilities as her brother's primary caregiver. She explains that even though she has other siblings in the area, she is the only one willing to care for her brother.

She also advises you that sometimes she cannot attend at work because she is hung over. Lastly she tells you that she regularly does not feel well. She is feeling anxious and sad and that she cannot cope. She has used all of her personal leave, sick leave and vacation leave and now has to take leave without pay when she is absent from work. The lessening of her income is adding to her stress and anxiety.

You are attending the meeting today with Annie Pudlat. The employer has advised you that today's meeting is not disciplinary in nature. The employer wants to discuss her attendance, the impact her absences have on the

workplace and more specifically the impact that the notice or lack of notice has on the employer's ability to meet the needs of customers.

Speed Problem-solving Scenario #8

Darlene Mallet is employed in an Ontario office of the Department of Citizenship and Immigration as a Citizenship Officer (PM-03). Her daily hours of work were 7:15 a.m. to 3:15 p.m.

The employer has advised Sister Mallet that they are holding a disciplinary meeting with her today to discuss two issues:

- 1) Her unauthorized use of the work telephone to make two long distance calls on October 25 and 29; and
- 2) Her unauthorized absence from work on November 1 and 4.

Sister Mallet has asked the union for representation during this meeting.

In preparing for the meeting, you find out the following information from Sister Mallet:

She has previously received a 20 day suspension for providing preferential treatment to a neighbor.

She has also previously been warned about not requesting leave using the proper process and she vaguely remembers getting a memo from her supervisor telling her the process she should follow in the future. She no longer has the memo.

She indicated that she absolutely had to make the calls during work time and that her cell phone had died on October 25 and that she had forgotten it at home on October 29. When her supervisor asked her about the calls, she offered to reimburse the costs. She indicated that she was on the phone for only 2 minutes for the first call and 5 minutes for the second call. The costs for the calls were minimal.

You are attending the disciplinary meeting with Darlene Mallet.

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