OPAC AWARD

OTTAWA MARCOTTE | RIGHTS M. VanderMeulen | #17-008 Dec 20/17

**IN THE MATTER OF AN ARBITRATION under the *Police Services Act***

**BETWEEN:**

**MR. MICHAEL VANDERMEULEN**
**(The "Complainant")**

- and -

**OTTAWA POLICE ASSOCIATION**
**(The "Association" or "OPA")**

**AND in the matter of a complaint concerning the Association's duty of fair representation**

**ARBITRATOR:** William A. Marcotte

**APPEARANCES:**

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| **FOR THE APPLICANT:** | R. MacCrimmon, counsel<br>M. VanderMeulen |
| **FOR THE RESPONDENT:** | P. Machado, counsel<br>P. Laflamme, OPA lab. rel.<br>M. Skof, OPA pres. |

Hearings held in Ottawa on November 28, 2016; February 6, June 19 and 20, October 3 and 4, November 29, 2017.

**AWARD**

On October 31, 2016, I was appointed by the Ontario Police Arbitration Commission ("OPAC") to hear the complaint of police officer Michael VanderMeulen (the "Complainant") who claims his bargaining unit, the Ottawa Police Association (the "OPA" or "Association") did not meet its duty of fair representation concerning certain complaints he has against his employer, the Ottawa Police Services Board (the "OPSB"). In a Preliminary award dated February 22, 2017, I ruled against Mr. VanderMeulen's motion for my recusal. This award deals with the merits of his complaint.

The Complainant, along with 9 other officers of the some 20-member Airport Police Unit ("APU" or "APS") filed formal complaints against S/Sgt. Spirito, who was in charge of the APU, under the Employer's Respectful Workplace Policy ("RWP") on February 6, 2015. His complaint is extensive and detailed concerning S/Sgt. Spirito (attached hereto is Appendix "A"). In his evidence, he spoke to the matters raised in it. In regard to his interactions with the Association, he acknowledged he and the other complainants acted as a group. He expected the Association would contact him to clarify his complaints and investigate them "to protect my rights under the collective agreement", but that it never did so. He acknowledged he had little understanding of the grievance and arbitration processes under the collective agreement. His frustrations with the manner in which his complaints were being dealt with stemmed from his view that he continued to work in a toxic environment but nothing was being done about his concerns and were not being taken seriously by the Association. His evidence is that between filing his complaint in February and September, 2015 there was little or no communication with the Association regarding the processing of his complaint. He also noted the same lack of communication between late December 2015, until April 1, 2016. The complainant was "crushed [and] surprised' when he read a June 24, 2016 email from Mr. Cole of the OPA informing nothing further would be done with his complaint. "I was

still wanting to proceed with the investigation." He agreed a grievance has to be grounded in the provisions of the collective agreement.

A chronology of the relevant events that occurred involving the Complainant and the Association follows.

On February 10, 2015, Mr. Gary Babstock, an Association labour relations staff member, informed the Complainant he was reviewing all the statements and would discuss the matter with the Association president, Mr. Matt Skof, in order to decide at which point the OPA would, if required, become involved. He apparently also indicated there may be a larger issue than just RWP matters. In response, the Complainant requested that Mr. Babstock send all further correspondence to all the officers who filed RWP complaints "because this is a group complaint." (Reference to the Complainant hereinafter includes the other complainants for the most part.)

On February 12, 2015, Mr. Babstock informed the Complainant he had reviewed all the statements, had spoken with officers who had previously been APU members and informed that, in his opinion, there was a "very toxic environment" in that unit. He indicated that in his discussions with Mr. Skof, the Association president, about how the complaints would be dealt with, they considered following the chain of command, and whether or not it would be useful to approach RWP personnel to request that time lines and expectations be set to deal with the complaints, and, at which point it may be appropriate for the Association to file a grievance, if necessary.

On February 17, 2015, Mr. Babstock informed the Complainant he had spoken with Superintendent Nystedt and Inspector Ford about the complaints he had received. He had also spoken with the RWP manager, Ms. Aarenau, and had indicated to her the OPA expected a thorough investigation resulting in a report and recommendations and that timelines be set for the RWP process to occur.

On February 24, 2015, Mr. Babstock met with the complainants prior to a meeting scheduled with Inspr. Ford and Ms. Aarenau, a member of labour relations and the entire APU. The Complainant was concerned that the entire Unit would be in attendance, as he and the other complainants considered their complaints to be confidential under the RWP. The Complainant questioned why Ms. Aarenau would be present in that he viewed her as not being impartial. The complainant indicated that for these reasons, he would not participate in Ms. Aarenau's process. Mr. Babstock pointed out that the OPSB could transfer the entire Unit and that the removal of S/Sgt. Spirito was for the OPSB to decide. He stated that, in any event, the RWP process should be followed and if the RWP report was not satisfactory, the Association would consider filing for conciliation with OPAC alleging unfair treatment, neglect of duty and tyrannical and discreditable conduct on the part of S/Sgt. Spirito.

In a March 17, 2015 email, Mr. Babstock informed the Complainant Inspr. Ford had told him that, given the content of the complaints and additional information he had received, human resources personnel would be meeting to consider what steps would be taken in dealing with the APU. Also, Mr. Babstock indicated Supt. Nystedt and Inspr. Ford would be meeting with OPSB labour relations staff.

On March 24, 2015, Mr. Babstock emailed the Complainant and informed him the OPSB viewed the matter of the RWP complaints as a "section problem" and not just "he said/she said" problems. On that same day, he urged the Complainant to let the RWP process go forward. He also indicated he was satisfied that the complaints were being addressed, acknowledging although not how or as fast the Complainant would like.

On April 1, 2015, a meeting was held with the entire APU conducted by Inspr. Ford. Ms. Aarenau and a member of labour were also in attendance. Inspr.

Ford indicated he had read the complaints and asked if there was any additional information the complainants wanted to present. The Complainant requested to meet with Inspr. Ford privately, which request was denied and the meeting ended.

In an April 7, 2015 email, Mr. Babstock informed the Complainant that the OPA had notified the OPSB that, "as a result of longstanding complaints and the continued difficulty in trying to move this matter forward and expeditiously, the Association is now left with having to explore options concerning the Ministry of Labour and OPAC."

On April 16, 2015, Messrs. Babstock and Skof met with all the complainants. They urged that the RWP process be followed and, once completed, consideration by the Association would be given to what next steps might be taken. They also indicated that OPA involvement in workplace matters was restricted to specific collective agreement breaches, and, that Bill 168 did not apply to police services. When it was expressed that perhaps a civil suit could be filed against the OPSB, Mr. Skof advised that the Association could not be involved in a civil suit, but would pay the costs if the Complainant sought a legal opinion on the matter. They were also advised that harassment is not a collective agreement matter, but an employment matter under the *Police Services Act* and that it would be difficult to prove harassment. Mr. Skof indicated the OPA cannot grieve RWP matters since the RWP was in place to deal with harassment complaints, but advised he would bring the complainants' issues to Supt. Nystedt.

On April 21, 2015, Superintendent Nystedt, Inspector Ford and Ms. Aarenau met with the entire APU. Supt. Nystedt indicated that in addition to the complainants, the Ottawa Airport Authority ("OAA") had reported problems with the APU at the airport and that he had assigned Inspr. Ford to make changes to the APU. Inspr. Ford noted that since December, 2014 he had 17 meetings

about APU matters. He indicated that some APU members were content with the situation but emphasized that the OAA was not content with how the APU operated. Inspr. Ford identified APU organizational problems, emphasizing ineffective leadership and inappropriate and disrespectful communications. He characterized the APU as functioning in a poisoned work environment and outlined how the OPSB would be dealing with these matters, including staffing changes. The S/Sgt. was to be transferred out of the APU and RWP personnel would be conducting a "guided change process", but was uncertain as to when that would occur. Following the meeting, the OPSB representatives met individually with the Unit members at which time three of the complainants, Messrs. Clarke and Ryan and Sgt. Bender, were informed they were being transferred. The Complainant was not transferred.

In or around April 22, 2015, the OPA received a legal opinion from Mr. Steve Welchner concerning the transfers of Messrs. Bender, Clarke and Ryan. They were told that since there was no loss of salary or benefits, it was not likely that a grievance filed under the collective agreement would be successful. Mr. Babstock informed the complainants of the above legal opinion, and that the Association would not file grievances concerning the transfers of Messrs. Clarke, Ryan and Bender, in that clear and convincing evidence would be required to show that their transfers were punitive in nature and not for operational purposes.

The Complainant and four other complainants received a legal opinion from Mr. Laurence Greenspon, dated June 19, 2015, concerning the possibility "of a civil action against your S/Sgt., superiors and the OPSB as a result of workplace harassment and intimidation." That opinion states:

> The ability to sue outside of the union environment has been severely restricted by the courts and through legislation. While there are some specific and discreet [sic] areas where a cause of action might be brought,

> after a thorough and careful review of your complaints, we do not believe these would apply to the vast majority of the issues you are concerned about. As such, considering the considerable expense of a law suit and the risks involved we do not believe it would be in your best interests to pursue a civil action of your complaints…
>
> We have been informed that the Staff Sargeant in question has thankfully been transferred. As such, it appears that the main objective of your complaints has been achieved.

The opinion also suggested that "should you have a complaint about your union representation, we can refer you to another lawyer who specializes in labour law."

On September 23, 2015, the Complainant and four other of the complainants received a legal opinion from Mr. David Jewitt of a legal firm that specialized in labour law, which opinion they had sought and paid for from their owns funds, specifically: "You have requested our opinion with respect to the merits of your complaint(s) against your employer … as well as your legal options and remedies" but did not address "the merits of any complaint that you have against your association", noting that the firm does not act against unions. On review of the complaints, the opinion was that there were two potential courses of action the complainants could take. Firstly, and viewed as the more appropriate option, a "reprisal" complaint under section 50(a) of the *Occupational Health and Safety Act*, "subject to jurisdictional issues". The second option was for a policy grievance to be filed by the Association contending the RWP is "inadequate, does not provide for an effective remedy and may infringe the Employer's obligations under the OHSA." It was also recommended that a third party examine the nature of the complaints concerning, among other things, reprisal, which investigation "may be helpful" in resolving matters.

On October 20, 2015, Mr. Jewitt filed an unlawful reprisal complaint under section 50 of the OHSA on behalf of the remaining five complainants against the OPSB.

On November 19, 2015, Mr. Skof informed the Complainant he had spoken with his lawyer and indicated the Association was prepared to participate in a mediation, apparently in regard to the OHSA s. 50 reprisal complaint, without taking a position on the merits of the claim. He also informed that the Police Services Board has taken the position that the OLRB, which deals with s. 50 OHSA claims, has no jurisdiction "given the structure of the PSA" and that a number of OLRB decisions supported the OPSB position. His email then states:

> As you are aware, you have been provided with a legal opinion from a counsel that you chose. Also, the OPA has been involved in this file from the beginning and has, indeed, provided representation.
>
> The OPA possesses the exclusive authority to invest its resources, as it deems suitable, when it takes the position that there is a viable claim. At this point, you have engaged counsel and the employer disputes the claim; the OPA is simply participating for the purposes of monitoring. The Labour Board is offering its mediation service, but there is nothing in the Act that compels anyone to participate.

On November 30, 2015, Mr. Bill Cole, the CAO of the OPA, sent an email to Mr. Jewitt as follows, in part relevant to our purposes:

> The Association has recently been advised of a number of workplace issues that involved at least one of your clients … there are some repeat issues that arise from the employer's transfer practices which the OPA will be challenging – again. I'm told that this will involve at least one of your clients.
>
> The OPA is concerned with the Employer's lack of response to more recent workplace issues, most particularly its respectful workplace group, has reached concerning levels [sic]. The OPA will be recommending that because the respectful workplace office hasn't been properly engaged in

> these issues, that an independent investigator be appointed to look into certain employer actions, while we take no position on the airport at this point, we will press the employer to engage the independent investigator to look into the airport issues as well.

In a December 2, 2015 email, Mr. Jewitt informed Mr. Cole that, "I'm certain the complainants would agree and support the action that the association has committed to take in this instance …. In these circumstances I may recommend to the complainants that their particular complaint [under OHSA] be adjourned until such time as we know for certain the employer is prepared to agree to an independent investigation."

On December 6, 2015, Mr. Cole informed the Complainant the Association would be asking the OPSB to contract with an independent investigator to review the transfers of Clarke, Ryan and Bender. Also, that it would take the position this investigator delve into the "consistently unsatisfactory" performance of the RWP group. If the OPSB did not agree to this process, the OPA will seek "the appointment of a conciliation officer from the Ontario Police Arbitration Commission."

In a December 9, 2015 email, Mr. Patrick LaFlamme (who took over the file when Mr. Babstock retired sometime in November of 2015) informed the Complainant that the Association, on December 8, 2015, had filed a request for conciliation with OPAC "for the [OPSB] failure in conducting an investigation in relation to providing a work place free of harassment and further requesting a neutral 3rd party investigator to conduct the investigation." Mr. Laflamme testified that on December 9, 2015, the OPSB agreed to contract with a neutral third-party investigator to conduct this investigation. The Association withdrew its application.

In a December 17, 2015 email, the Complainant inquired as to the status of the OPAC conciliation filing and if the OPS had hired a neutral investigator, and, when the investigation would take place. He received no reply.

On December 23, 2015, the OPA informed OPAC that it was suspending its conciliation request.

On December 30, 2015, the Complainant requested further details regarding the investigation process, which process the complainants wanted to include the "Court Security Section" complaints, apparently, of Messrs. Clarke and Ryan. There was no response from the OPA.

In an April 1, 2016 email, Mr. Cole iterated the OPA position that a neutral investigator ought to be assigned to look into the RWP complaints in light of the inaction of the RWP concerning these complaints.

At the request of the complainants, a meeting was held with them, attended by Messrs. Cole and LaFlamme, on May 4, 2016. The discussion included somewhat of a review of what had occurred since the RWP complaints had been filed, including OPA involvement. Since the terms of reference for the independent investigator were not agreeable to the complainants, the OPA representatives inquired as to whether or not they would cooperate with another investigator. The OPA was of the view that the appointment of an arbitrator through OPAC would be premature without the investigation having occurred.

On June 16 and 17, 2016, the complainants asked the OPA if it would be proceeding to file with OPAC on their behalf.

In an email of June 24, 2016, Mr. Cole provides a summary of the Association's interactions with the complainants and the steps taken in regard to their original and subsequent complaints:

> This is the Association's response to the numerous emails exchanged on this matter.
>
> Issues that arise from assignments to the Ottawa airport were brought to the Association's attention in winter of 2014. Gary Babstock, a Labour Officer with the OPA was assigned the matter and investigated the issues. He also attended at meetings with the members of the bargaining unit as well as members of the management group. At several points along the way Gary sought out legal advice which helped him determine appropriate actions in handling the file. Having dealt with individual members and as a group, and having investigated the matter fully, Gary then obtained an opinion from the OPA's labour lawyer.
>
> That opinion concluded that nothing in the handling of issues arising at the airport breached the terms of the collective agreement or the rights that reside with management. It was the lawyer's opinion that the relocations from the airport fell within management's rights and options to resolve workplace issues. In the collective agreement management retains the right to transfer for operational purposes.
>
> A short period later a group of members from the airport approached the OPA requesting a legal opinion from a second lawyer, this time with a particular focus on issues from a civil perspective. While it is not for the OPA, or any union for that matter, to support a second effort at determining liability (outside of its own discretion) the OPA did provide your group with support to obtain an opinion from a separate Ottawa lawyer. That opinion was provided to you in June of 2015 and confirmed that "the main objective of your complaint has been achieved."
>
> The Association made efforts to support your participation in a workplace investigation with a neutral. The Employer was originally reluctant in this regard and, as we have reported in detail, the Association compelled their actions with a threat to apply for conciliation. As has been explained in detail the Association often relies on the threat of conciliation for the purpose of compelling actions by labour relations, this is not the only file in which this was necessary.

While the Association urged the Employer to select one of two very experienced investigators, the Employer exercised its management's right to retain someone else. As that process began to unfold you were invited individually to participate in meetings with this investigator. In the end there was a lack of confidence in the selected investigator… and discontinued with the investigation.

We met with you as a group and we proposed that we make one more efforts to have the Employer appoint a more seasoned investigator. This was done shortly after our meeting and it was not something the employer had any interest in continuing.

Having investigated the situation at the Airport, having talked with all of the many persons who raised concerns and complaints about those issues, and having received independent legal opinions that all reach the same conclusion; the Association has concluded that no further actions will be taken on behalf of the group in this matter. NOTE despite our having collected information from each of you as members of the group, should you have any new information not before disclosed to the OPA individually, then you are welcome to raise that as individual members.

In reaching this conclusion the Association has reviewed all of the notes of Gary Babstock, all of the emails that have been exchanged either individually or collectively as an airport group, and the various legal opinions. We have carefully considered all of the facts that you have presented. Having done so the conclusion is that there are no further actions to taken at this time.

You have raised the question of the payment of legal fees for a separate lawyer you retained as a group following the receipt of the second opinion, of Greenspon. The Association will not reimburse you for these costs. This is consistent with the approach taken by the Association in every situation where a member, on his or her own, seeks out an opinion or representation without prior approval. This is not an uncommon position for any labour organization to take. As the bargaining agent the Association is responsible for the management of union dues. A key part of that is ensuring that expenses only occur when and where necessary. There were numerous ways for the group, or as individuals, to have had the Association act on your including a reconsideration of earlier conclusions.

In closing, we re-emphasize our comment – should you have additional information which has not before been disclosed you are invited to deliver that information to the Association for its consideration of the merits of any new individual grievance. Should you wish to exercise this option we invite you to contact the Association.

Mr. Laflamme took over the complainants' file when Mr. Babstock retired in November, 2015. He reviewed it in its entirety and discussed the information in it with him. He is familiar with the grievances procedure under the collective agreement having been the Chair of the Association's grievance committee, and in that capacity had been aware of the complaints. When the Association received Mr. Welchner's opinion, that a grievance contending punitive transfers in April, 2015 of some of the complainants would not succeed, the Association again urged the complainants to follow the RWP process. His evidence is that the Association, however, was unable to deal further with the RWP process because the complainants, including the Complainant, refused to deal with Ms. Aarenau, the manager involved in the RWP process. The Association decided to approach the OPSB and request that a third-party investigator be contracted with to deal with the complaints. The Association has no authority to investigate complaints of the nature at hand. When the OPSB initially did not agree to do so, Mr. LaFlamme filed a request for conciliation with OPAC. The OPSB then agreed to contract with a third-party investigator and the OPAC filing was withdrawn. He did not file with OPAC sooner than December 8, 2015 in that he was in communication with OPSB about this matter and in his experience, the delay until December was not unreasonable. He informed the Complainant that a Mr. Coleman had been contracted by the OPSB, which decision-making as to who the investigator would be was not within the purview of the Association.

The Complainant, however, was concerned with Mr. Coleman's appointment because he was contracted by the OPSB, his terms of reference were of concern and he would not get copies of the results of his investigation. The Association was able to get the OPSB to agree to provide an executive summary of the report and advised the Complainant to participate in the investigation. However, he made it clear to Mr. Laflamme he would not deal with Mr.

Coleman. The Association requested of the OPSB to hire a different investigator but it refused to do so.

Mr. Laflamme participated in drafting the June 24, 2016 to the Complainant. The decision that the Association could do nothing further for them was for reason of their refusal to deal with Ms. Aarenau in the RWP process, their refusal to participate in Mr. Coleman's investigation, and, the legal opinions from Mr. Welchner and Mr. Jewitt as to the possibilities of successfully grieving the complaints.

In cross-examination, Mr. LaFlamme indicated that under the provisions of the Police Services Act and art. 2.01 of the collective agreement, the OPSB and the chief of police have broad discretion to control the police force, which discretion is limited by art. 2.02 that requires they exercise their management rights "fairly and without discrimination and in a manner consistent with this Agreement, the *Police Services Act* and Regulations …" A reprisal against a police officer could be dealt with by arbitration, but "clear evidence" would be required as indicated by Mr. Welchner in his legal opinion. A complaint of a violation of *Ontario Health and Safety Act* would have to go through the Joint Health and Safety Committee, however, police services are to a large degree exempt from OHSA due to the nature of police work, namely matters of safety are not as those in other types of work. Moreover, a complaint of harassment is dealt with under the RWP, in which policy the Association has no formal role but attempts to ensure that it is being enforced. That process, however, was not conducted. He disagreed the OPA encouraged the complainants not to participate in the Coleman investigation, "We said to meet with him if they felt comfortable…. It was clear from them they did not want to meet with him." He agreed he did not say "you must meet" with Mr. Coleman.

Mr. Matt Skof has been the Association president for some six years. The complainants' view that the transfers resulting from the operational review of

the APU were reprisals is not a "unique" response. "We review every [such] complaint. [Here] we looked at the collective agreement and PSA and explained [the OPSB] can make the transfers and the manner in which it was done was within the provisions of the collective agreement." Police services are exempt from the provisions of the OHSA and Bill 168, save for certain matters for example, building safety and ergonomics; rather health and safety issues are governed by the PSA in that they are "entrenched in the police chief's authority." Further, the OPSB's RWP is in place to deal with complaints of harassment. In recognizing the Complainant and his colleagues were frustrated with the manner OPSB was dealing with their complaint, Mr. Skof obtained permission to pay for a consultation with, eventually Mr. Greenspon, albeit the OPA has no mandate to deal with civil matters.

In regard to Mr. Jewitt's opinion, Mr. Skof completely disagreed that it was useful to file a policy grievance concerning the RWP in that the nature of the complaint did "not meet the threshold for a grievance", in particular given the purpose of the RWP. As to filing a complaint under the OHSA which would be dealt with by the OLRB, Mr. Skof said, "The OLRB is not a mechanism within our jurisdiction … and is not an appropriate venue …. because of the PSA, the OLRB has no jurisdiction."

As to the passage of time between the filing of RWP complaints in February, 2015 and May, 2016, Mr. Skof's evidence is that firstly, the 30-day time limit under the RWP is never adhered to and it is not unusual for interactions between the OPA and OPSB to take time in order to "navigate" issues such as that of the Complainant. As well, since there were initially ten complainants to deal with, "there are inherent delays." The OPA did not file for conciliation with OPAC sooner than December, 2015 because, "We take into account the merits of the complaints, processing those through the labour relations officer and [OPSB] labour relations." In this case, however, given the number of complaints and the issues raised by them, "It was time to light a fire under [the

OPSB] to get an independent investigator" for which demand, the OPA had no basis on which to make. The OPA does not itself investigate the allegations of harassment; "it is not our mandate, it is the OPSB mandate", nor did the OPA have the authority to select the investigator. When the Complainant raised concerns about Mr. Coleman, the Association did not advise him to not participate in his investigation. As experienced police officers, Mr. Skof knew they were aware that if they did not participate in Mr. Coleman's investigation, there would be no investigation conducted and, thus, no report; "it's Investigation 101."

In cross-examination, Mr. Skof agreed the RWP is a policy developed for purposes of dealing with matters such as harassment, which policy, he said, is embedded in the PSA. The OPA considered whether or not the transfers from the APU were reprisals, however, the operational review was initiated in response to complaints from the OAA as well as from the Complainant and his colleagues. It is not unusual that, as a result of an operations review, transfers occur. The OPA had no reason to grieve the RWP itself, but would review how it is applied on a case-by-case basis. Depending upon its assessment of the resultant report, the OPA would decide whether or not to file a grievance. He authorized payment for a legal opinion on the civil matter raised by the Complainant and four of his colleagues, given those members "desire to have as much information as possible." He would not have followed-up Mr. Greenspon's opinion; "It's not my practice and [there was] no purpose in discussing the civil angle." It would have been premature for OPA to file with OPAC for conciliation prior to December, 2015. Moreover, a filing with OPAC is "not something we discuss with members." The Association did not re-file with OPAC after December, 2015; "we had a resolution, so there was no need to keep the file open."

The Complainant submitted that the Association, after receiving the Complainant's complaint, did not invite him to meet in order to gather evidence and determine if a grievance was warranted. Notably, the Association representative who dealt with the matter from February to November, 2015, did not testify and it is thus unknown what steps he took to deal with the merits of the complaint the Complainant had provided to him. Moreover, no notes from him and from anyone in the Association were produced despite a request for them. While the Complainant expected the RWP process to begin within 30 days of having filed his complaint, Mr. Babstock informed that the procedural timeline was not followed by the Police Service and that the Complainant had no option but to engage in the RWP process. However, months went by with nothing happening and Mr. Babstock failed to attend the meeting with him scheduled for April 1, 2015. In that time period, the Complainant notified Mr. Babstock that S/Sgt. Spirito had called him at home when the S/Sgt was under instruction not to do so and, essentially threatened the Complainant. Yet, Mr. Babstock never responded to the Complainant and there is no evidence of the Association turning its mind to consideration of S/Sgt. Spirito's action as constituting a basis for a grievance. That is, the Association did not advance the Complainant's case by filing an application with OPAC.

In the meeting of April 2015 with the complainants, Messrs. Babstock and Skof represented the Association. It was stated to the Complainant that police services are exempt from the Ontario Health and Safety Act ("OHSA") which, the Complainant asserted, is not the law, albeit there are exceptions, for example, a complaint of reprisal is dealt with under the provisions of the PSA. However, under the OHSA, employees are entitled to a harassment free workplace and the Association could have filed a policy grievance for statutory breach given the nature of the complaints identified by the Complainant. That the Association did not consider doing so is demonstrative of a closed mind regarding the Complainant's cause.

In regard to the opinion provided by Mr. Welchner concerning the transfers of Officers Clarke and Ryan and Sgt. Bender from the APU, that opinion did not deal with the matter of a policy grievance or consideration of a violation of art. 2.01 of the collective agreement. And while the Association supported the Complainant's pursuit of a legal opinion regarding a civil action against the Board concerning workplace harassment and intimidation, that the Complainant could not have the matter dealt with in the civil courts ought to have been known by the Association, as was concluded in the opinion. Rather, in following this course of action, the Association was ignoring its own responsibility to look closely at the Complainant's situation.

When Mr. Babstock informed that the Association would not be filing grievances on behalf of the police officers who were transferred from the APU, the Complainant took this as indicating no further steps would be taken on his behalf. However, at no point until December, 2015 was the Complainant informed that the Association had not stopped representing him in its dealings with the Board. In the interim, the Complainant had obtained a legal opinion from Mr. Jewitt that the Association could file a complaint of reprisal dealt with under OHSA and, also, was of the opinion it was open to the Association to file a policy grievance contending that the Board's RWP was, effectively, inadequate. Yet the Association did not pursue either course of action. Moreover, it was not until some months later, in December 2015, when the Complainant was informed his cause was not a closed book. The silence, it was submitted, in that extensive period of time is deafening and demonstrates a failure, indeed gross negligence, on the part of the Association of its duty to fairly represent the Complainant.

The Association did eventually file application for conciliation with OPAC on December 8, 2015, but did not inform the Complainant it had done so; rather he was so informed in an email of April 1, 2016, i.e., some 4 months later. The Complainant was then informed the OPAC application had been withdrawn

when the Board agreed for a third-party investigator to investigate the issues identified in the Complainant's complaint. When so informed, the Complainant and other complainants requested, on December 30, 2015, details of the investigative process, but received no response whatsoever. Rather, it was not until April 1, 2016, when Mr. Cole informed of the investigator chosen by the Board, but there is no indication of the Association's involvement with the investigator.

In a meeting with the Complainant and others on May 4, 2016, they were informed by the Association of the circumstances of Mr. Coleman's investigation and that prior to filing with OPAC in December, 2015, Mr. Laflamme informed the Association understood the RWP process had been underway and acknowledged there had been no RWP investigation. This is a critical meeting. Mr. Cole explained to the Complainant that Mr. Coleman did not have the Association's confidence to conduct a proper investigation and indicated it was reasonable for the Complainant not to participate in Mr. Coleman's investigation and he did not have to meet with him. Mr. Cole indicated that it was not the time to file an application with OPAC rather, the investigative process would have to first conclude prior to such consideration. Mr. Cole raised the notion of urging the Board to replace Mr. Coleman which the Complainant understood would occur. The Complainant offered to provide the Association with additional information and assistance but none was asked of him. The Complainant was not informed that if he did not participate in Mr. Coleman's investigation, that ended the matter of his complaint.

While Mr. Laflamme's evidence is that he did contact the Board, after May 4, 2016, there is no evidence of him having done so and there was no communication of his efforts to the Complainant. Rather, the next the Complainant is contacted by the Association is by way of its June 24, 2016 email when the Association informs him the Board will not agree to another investigator, and, it will take no further action on his behalf.

The Complainant submitted that there are three key areas where the Association failed in its duty to fairly represent him. Firstly, there was no proper investigation of the complaint filed by the Complainant, in particular, the Association did not meet with him individually. Secondly, the Assocation failed to pursue a policy grievance or an individual grievance on behalf of the Complainant to reasonably advance the OPAC process of conciliation and arbitration. In that regard, while the Association did file for that process in December, 2015, it then withdrew its application and did not re-file at a later time. Thirdly, the Association failed to communicate properly with the Complainant throughout the process between the filing of the RWP complaint and the Association's decision of June 24, 2016, to take no further steps on behalf of the Complainant. During that period of time there were significant gaps of time during which the Complainant was not given any information concerning the Association's dealings with his complaint. Moreover, at times the Association's communications were inadequate and confusing. It was submitted that each of these failings indicate arbitrary conduct on the part of the Association, i.e., failure to direct its mind to the merits of the complaint and failure to conduct a proper investigation of it in a meaningful manner.

By way of remedy, the Complainant submitted there be a declaration the Association breached its duty to fairly represent him, that he was owed this duty, and that the declaration be posted. Secondly, the Association be ordered to pursue a policy grievance and an individual grievance by the Complainant in regard, broadly, to the issues raised in his complaint. Thirdly, that the Complainant be awarded 20,000 dollars in general damages for mental distress, and, 10,00 dollars for loss of at least 20 shifts as a result of the manner in which the Association dealt with his complaint. Fourthly, the Complainant be reimbursed his share of the costs of Mr. Jewitt's opinion, 1800 dollars.

In support of its position on the merits of the complaint, the Complainant submitted *Re Clare Lenahan v. Canadian Auto Workers, Local 222 et al.*, 2004 CanLII 23662 (ON LRB); *Re Paul Roth v. National Automobile, Aerospace, Transportation & General Workers Unjon of Canada (CAW-Canada), Local 1256*, 2002 CanLII 22724 (ON LRB); *Re Dwayne Lucyshyn v. Amalgamated Transit Union, Local 615*, 2010 CAnLII 15756 (SK LRB); *Re Candace Hartmier v. Saskatchewan Joint Board Retail Wholesale and Department Store Union, Local 955,* 2017 CanLII 20060 (SK LRB); *Re Ishaq Syed Abutalib and Toronto Police Association* (May 31, 2011) unreported version (Snow); *Re Canadian Pacific Railway Company and Teamsters Canada Rail Conference (AB Claiming Breach of Privacy, Harassment and Discrimination)*, 2016 CanLII 25247 (ON LA) (Stout), and, *Re Ottawa Police Services Board and Ottawa Police Association* (March 31, 2007) unreported version (Snow).

As concerns the Complainant's submissions, the Association noted it has no authority to investigate complaints filed under the RWP nor ability to investigate allegations of harassment in that the Board has in place its RWP for that purpose. While invited to do so, the Complainant did not provide individual facts for purposes of an individual grievance, which an Association member brings to the Association, and which the Association has the discretion to file or not. In any event, the Complainant was not transferred. While the Complainant suggests the Association could have filed a policy grievance concerning the RWP, while that policy is not perfect, the Association determined there were no grounds for doing so.

The Association submitted it is to be borne in mind that the Complainant filed his RWP complaint as part of a group complaint and not as an individual complaint. A police service is exempt from the OHSA provisions as they relate to harassment and the Board put in place its RWP to deal with matters of

harassment. The Association was successful in advancing the matter with OPAC in that the Board agreed to a third-party investigator.

The Association submitted it is the Complainant's responsibility to advance his position by way of an individual grievance but he did not request the OPA to do so. As to the RWP process, the Association acknowledged that the 30-day timeline to investigate an RWP complaint is not followed by the Board, and, in any event, the Complainant chose not to participate in it notwithstanding the Association having informed him that it could only act, if required, once the process had been completed. It was the Complainant, and not the Association, who demonstrated a closed mind; he did not like the RWP process and did not want to participate in the third-party investigation. There was no reprisal against the Complainant. The April 28, 2015 email from Mr. Babstock only indicated the Association would not pursue grievances dealing with the transfers of Messrs. Clarke, Ryan and Bender and not that it was closing the file regarding the RWP complaints.

The Association did properly communicate with the Complainant, noting the extensive emails from it to the Complainant, the meetings held and information provided to him where there was cause to do so. The Association was engaged with the Complainant's complaints, even to the point where the president, Mr. Skof, became involved in communications and interactions with the Complainant. The Complainant knew as early as December, 2015 that the Board had contracted with Mr. Coleman to act as the third-party investigator. How and when Mr. Coleman conducted the investigation were not matters within the control of the Association. Moreover, the Association decides how it will handle a complaint file and not the Complainant. The Complainant, as a police officer aware of how investigations proceed, did not have to be told that if he did not participate in Mr. Coleman's investigation, there would be no resultant report. The Association did not advise the Complainant not to participate in the Coleman investigation; rather it advised participation if he felt

comfortable in doing so. Mr. Skof's evidence is that it would have been an abuse of the OPAC process to re-file an application given that the original filing was successful in gaining the Board's agreement to involve a third-party investigator. There is certainly no gross negligence on the part of the Association in the manner in which it dealt with the Complainant.

As concerns the remedies sought by the Complainant, there is no evidence to substantiate general damages for mental distress and no evidence in support of a claim for reimbursement of lost shifts. It was the Complainant's decision to seek out a legal opinion, in this case from Mr. Jewitt, and the Association has no obligation in that regard.

The Association submitted that Messrs. Laflamme and Skof are well-experienced in labour relations matters, in particular, Mr. Laflamme is very familiar with the grievance and arbitration procedures under the collective agreement. The Association went to lengths to inform the Complainant of its role and the role of the Board in regard to dealing with harassment complaints. The OPA decisions in regard to filing or not grievances concerning transfers, harassment and reprisal are in accord with relevant legislation and collective agreement provisions. The Association dealt with the complex and demanding file in a proper fashion and addressed all the concerns of the Complainant in a manner that properly reflected the Association's role or lack thereof in the RWP process and in regard to harassment matters. In specific regard to the Board's RWP, Mr. Skof acknowledged that it might not be a perfect process but, in his view, it did not necessarily meet the threshold whereby the Association would be successful if it filed a policy grievance complaining about that policy, notwithstanding Mr. Jewitt's opinion. While the processing of the Complainant's complaint may not have proceeded as quickly as he would have wanted it to, the Association did navigate matters in a fashion no different from how the Association and Board deal with labour relations matters, including

the timing of filing with OPAC in December, 2015 shortly after Mr. Laflamme took over the file from Mr. Babstock.

The Association never deterred the Complainant, was diligent in its duty of fair representation and kept him updated with relevant information as events and circumstances unfolded. While the Complainant was clearly unhappy with his Employer but with no breach of the collective agreement, the Association could go no further.

In support of it's position on the merits of the complaint, the Association submitted *Re Canadian Merchant Service Guild and Guy Gagnon [et. al.]* [1984] 1 R.C.S. 509; *Re Christopher Shaw and Windsor Police Association* (June 2, 2014) unreported version (MacKenzie); *Re Cumming v. Peterborough Police Association* (January 9, 2009) unreported version (Starkman); *Re McLeod v. Camco Inc.*, [1987] OLRB Rep. April 547; *Re Gary Renaud and the Town of LaSalle Police Assn. [et.al.]*, 2006 CanLII 23904 (ON CA); *Re David Spicer and Ottawa Police Association*, OPAC #15-007 (Starkman); and, *Re William Cordon Switzer v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 1459* [1999] OLRB Rep. July/August 757 (Surdykowski).

In reply, the Complainant submitted there was willingness on his part to participate in the processes of dealing with his complaint, but, wanted procedural changes. The Association was grossly negligent when it provided no response to the Complainant's June 28, 2016 email inquiries as to why the Association was not proceeding on his behalf. There is no evidence that the Association was working on the Complainant's file during the significant gaps in time. It is unfair to suggest the Complainant is responsible for stopping the

processes of dealing with his file; he acted on the advice and representations from the Association.

The issue to be determined in this award is whether or not the Association failed in its duty to fairly represent the Complainant. The Complainant does not contend the Association acted in bad faith or in a discriminatory manner. Rather, the contention is the Association acted in an arbitrary manner in dealing with his complaints. Of relevance, a definition of "arbitrary" is provided for in the *Re Windsor Police* award. In that award, arbitrator MacKenzie cited, with approval at p. 11, a decision of the Ontario Labour Relations Board, *Re Switzer v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)*, [1977] O.L.R.B. No. 2605 the following definition: "(a) 'arbitrary' means conduct which is capricious, implausible or unreasonable, often demonstrated by consideration of irrelevant factors or a failure to consider all relevant factors." In counterpoint, the *Canadian Merchant* case indicates what constitutes conduct that is not arbitrary.

In *Re Canadian Merchant Service, supra*, the complainant was transferred to the position of maintenance worker from pilot boat captain. The union filed a grievance on his behalf, but did not take it to arbitration. Guild counsel advised that arbitration was not an appropriate remedy since under the collective agreement only dismissal could be subject-matter for grievance arbitration. The complainant sued his employer for damages for unjust dismissal and, relevant to our purposes, his union for "failing in its duty of representation" in connection with the dismissal grievance (p. 511). On review of *Re Rajonier Canada (B.C.) Ltd. and International Woodworkers of America, Local 1-217*, [1975] 2 Can LRBR 196 (B.C.L.R.B.), the Supreme Court cites, with approval, at pp. 520-1:

> The Board goes on to find that an employee's right to have his grievance taken to arbitration is not absolute. It points out that arbitration is a costly procedure which requires the parties to invest a great deal of time and energy. The Board recognizes that the union has considerable scope in making its decision, even when the member insists on his grievance being taken to arbitration.
>
> Finally, it identifies various factors which should be taken into account in assessing the position taken by the union: the importance of the grievance for the employee in question, the apparent validity of the grievance based on the collective agreement and the available evidence, the care taken by the union in investigating, the union's practice in such cases, the interests of the other employees and of the bargaining unit as a whole.

Further, in citing the Superior Court's decision in the matter before it, the Supreme Court states, at p. 527:

> [The union has] "'…an obligation to ensure that the collective agreement is applied fairly and equitable, without taking any arbitrary or discriminatory decisions and taking all necessary steps to fully protect the employee's interests'."

On consideration of the lower courts' decision in the matter before it and the jurisprudence concerning the duty of fair representation, the Supreme Court states, at p. 507, that the union's responsibilities and obligations in its decision-making to take or not take a member's grievance to arbitration included, in addition to that which is above-cited:

4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.

5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious major negligence, and without hostility towards the employee.

In the instant case, the Complainant contends the Association acted in an arbitrary manner when it failed to properly investigate his complaint, failed to pursue an individual grievance or a policy grievance in order to reasonably advance the OPAC conciliation/arbitration process, and, failed to communicate properly with the complainant throughout the process of dealing with his complaint. The matter of a failure to properly investigate a member's complaint is dealt with in the *McLeod* award.

In *Re McLeod, supra*, which deals with a complaint of fair representation by the union, it states at paras. 30 and 32:

> 30. A decision will be arbitrary if it is not the result of a process of reasoning applied to relevant considerations. The duty not to act arbitrarily requires a trade union to turn its mind to the matter at hand.
>
> .....
>
> 32. Thus, a union is required to enter into a process of collecting and evaluating information as a primary step to making a decision which in consistent with the duty of fair representation.

Further, it is noted that not every complaint requires formal investigation, at para. 33:

> This is not to suggest that every grievance must give rise to a formal or protracted investigation. The Board is sensitive both to the fluidity and informality which characterize many aspects of labour relations and the fact that individuals with varying degrees of experience and expertise may be involved in such a process…

In that case, it was found the union failed its duty for want of a proper investigation, at para. 39 and para. 41:

> 39 In this case, I find it troubling that the union relied solely upon information volunteered by employees in circumstances where feelings were running so high in the plant.... While information provided by three employees might well be sufficient or more than sufficient in other circumstances, here [the union representative] knew or ought to have known that he was hearing a one-sided version of events.
>
> 41. Moreover, it does not appear that the union ever put the information gathered about Mr. McLeod to him to enable him to respond to it.

As can be seen from the above, where the union fails to properly investigate a grievance or complaint, it is remiss in its duty to make an informed decision. The *Paul Roth* award also deals with a failure to conduct a proper investigation, including a failure to gather information from the complainant.

In *Re Paul Roth, supra*, the complainant contended his union had not fairly represented him when he had been dismissed for failure to notify the company of a 3-day absence. The complainant alleged he had called the prescribed number on the third day of absence but that the answering service had connected him to another number that differed from the company's last digit, i.e., 0 rather than 7. Two days prior to making that call, the complainant had been arrested and was held in police custody for some 11 days. Upon his release and prior to entering a substance abuse program, he filed his grievance. Upon completion of that program, he attended a meeting of the union grievance committee with his union representative who had filed the grievances on his behalf. He explained the problem with his phone call. The union did not investigate the matter other than to call the other answering service number, i.e., ending in 0. However, his union representative did call the answering service. His notes indicated the supervisor agreed the mistake could have been made. However, she denied having spoken to the union representative when she was contacted by the union committee members.

The union and the company, without the complainant's knowledge, settled the grievance on terms whereby the complainant would receive 5000 dollars, the grievance would be withdrawn and the settlement document to be signed by the complainant. In settling the grievance, the union was of the opinion (para. 16) that no arbitrator would uphold the grievance because the complainant had a below average attendance and discipline record, and, likely had been absent from work due to his own criminal activity of having slashed an elderly woman with a knife while robbing her. While the complainant had not pleaded guilty, the union committee was lead to believe he had committed the offence. While the complainant was incarcerated when the union settled his grievance, the union took no steps to contact him and he only learned of the settlement upon his release from prison. He did not accept the settlement and attempted to have his grievance revived. At the union meeting, only about one-third of the members raised their hands in an open vote on whether to revive the grievance. Nonetheless, the union approached the company but was informed it would refuse to re-open the matter. The complainant did not contend the union acted by way of hostility or discrimination, rather, the union gave no credence to his version of the telephone call or did not adequately investigate the matter (para. 21). The Board found the union had acted arbitrarily, at para. 24:

> In the Board's view, all of the Union's actions were thereafter tainted by its failure to properly investigate the incident of October 27, 1999 [i.e., the complainant's phone call to the answering service]. The Union's explanation of its decision not to refer the applicant's grievance to arbitration was premised on its assessment of whether an arbitrator would likely relieve against [the collective agreement provision concerning missing 3 consecutive days without notification] in the circumstances of the case. While that assessment may not have been unreasonable, the fact is that were the applicant's version of events substantiated the Union would never had had to resort to an appeal to an arbitrator's discretion. Establishing the applicant's account of events before the arbitrator would support a conclusion that he had not failed to notify [the company] of his absence.

In finding arbitrary decision-making, the Board states, among others, at para. 22:

> The duty to investigate requires the union to listen to the grievor's account of events and further to attempt to unearth other relevant information, which may include interviewing other witnesses whose accounts of events might substantiate the grievor's position (*Ivan Cvicek*, [1995] OLRB Rep. February 105 at para 27.)

(See also *Re Candace Hartmier, supra*, where a failure to investigate the grievor's complaint demonstrated a failure to fairly represent her, at para. 215: "The evidence did not show that any of the Union's representatives or members of the Local's grievance committee gave any, let alone thoughtful, consideration of the merits of the grievances.")

The above three cases make clear that a fundamental duty on the part of a union is to properly investigate a member's complaint in order to determine its merits. A proper investigation "must be done in an objective and fair manner, and at a minimum would include an interview with the complainant and other employees involved" *Re Dwayne Lucyshyn, supra*, at para. 36.

In the instant case, the Association did not conduct an individual interview with the Complainant. However, on February 6, 2015, Mr. Babstock received the Complainant's complaint filed under the RWP process. As indicated above, that complaint is a detailed and extensive accounting of events involving S/Sgt. Spirito for a some 2-year period. Moreover, in reciting these incidents, the Complainant wrote extensively on how these events affected him personally. On February 10, 2015, Mr. Babstock informed the Complainant he was reviewing all the RWP complaints filed and on February 12, 2015, stated that he had concluded the complaints reflected a "very toxic environment", i.e., what the Complainant had described. That is, Mr. Babstock concluded there was

merit concerning the Complainant's claims. Further, it was on the basis of the Complainant's claims and those of 9 other officers in the APU that the Association became involved in having them addressed through the RWP process, notwithstanding it had no formal role to play in that OPSB policy. Further, following receipt of the complainant, Association representatives met with the Complainant in February, April 2015 and May, 2016 to deal specifically with the processes of dealing with the complaint. Mr. Babstock also attended meetings conducted with the Complainant and his colleagues in February and April, 2015. From February, 2015 to June 24, 2016, there were emails, communications and exchanges between Association representatives and the group of complaints including the Complainant, notably, February 10, 12, 17, 23; March 15, 17, 20, 23, 24; April 7, 10, 28; September 18, 24, 30; October 27; November 19; December 4, 6, 17,18; December 30, 2015; March 31; April 1, 4, 17, 29; May 1; June 9, 14, 17, 24, 2016 in regard to Association involvement with processing of the complaints. When the Complainant indicated he would not participate in the RWP process, the Association suggested he do so, in order for a report to result and which report the Association would then review in order to assess what steps it could take on behalf of the Complainant. Since no RWP process occurred, no report was produced for the Association to evaluate. When that investigative avenue closed, the Association undertook pursuit of another course of action.

On December 8, 2015 it filed for conciliation with OPAC alleging the OPSB "failed to provide a work place free of harassment in not conducting investigations to complaints, including but not limited to, issues arising at the airport section and the court section", the latter section where two of the complainants had been transferred. In so filing, the OPA did so with the intent of the OPSB agreeing to appoint a third-party investigator in regard to the complaints filed by the Complainant, which the OPSB did. With its objective achieved, the Association withdrew its application. However, that investigation did not occur. The Complainant expressed concerns with the investigator

having been hired by the OPSB, with his terms of reference and because he would not be provided with the investigator's report. The Association then gained the OPSB's agreement to provide an executive summary. As to whether or not the Association advised the Complainant not to participate in this investigation, on review of the evidence, I find that because the Complainant had expressed his concerns, the Association advised he did not have to participate if he did not feel comfortable with the investigation parameters, of which the Association representatives were critical. I do not find that the Association unambiguously told the Complainant not to participate. Again, because this second attempt to have the Complainant's complaints investigated did not proceed, there was no report which the Association could assess concerning future steps it might take. In that respect, the Complainant, who is trained in investigative procedures, ought to have known that with no report, the Association would not be able to consider what next steps to take.

Based on the foregoing, I find the Association did properly take steps to investigate the Complainant's complaints of which it was well aware. That it was unable to proceed any farther with its investigation is due to the Complainant's unwillingness to participate in the RWP process or to participate in the third-party's investigation.

As to whether or not the Association improperly failed to pursue an individual grievance on behalf of the Complainant, or a policy grievance, the grievor was not transferred from the APU as were three of the other complainants. In regard to a claim of harassment and intimidation, in his opinion of June 19, 2015, Mr. Greenspon stated that a cause of action in the civil courts was not available to the Complainant. In his opinion of September 23, 2015 regarding the merits of the Complainant's complaint, Jewitt noted, as Mr. Skof similarly informed the Complainant, the OPSB's RWP is a policy that an employer is required to put in place to deal with harassment and reprisal complaints for purposes of the OHSA. And while Mr. Jewitt suggested the Complainant could

file a complaint under section 50 (1) of the Act, he candidly pointed out there are "some serious jurisdictional objections" to the jurisdiction of the OLRB to deal with such a matter, given the structure and scope of the Police Services Act. In that regard, Mr. Skof noted there are decision which would favour the OPSB taking the position that the OLRB lacked jurisdiction. In any event, when informed by the Association that the OPSB had agreed to have a third-party investigate the Complainant's concerns, Mr. Jewitt was willing to hold in obeyance the complaint he had filed on behalf of the Complainant under the OHSA. That investigation, however, did not take place; the Complainant would not participate in it.

In regard to the matter of a policy grievance contending the RWP was, in effect, inadequate, since the Complainant expressed an unwillingness to participate in it and did not do so, the Association would have to decide to grieve the policy without the benefit of it having been applied. Mr. Skof's evidence is that in these circumstances, the Association would not have filed a policy grievance. In my view, and I so find, the Association's decision was not unreasonable.

As concerns communication with the Complainant, in *Re Lenehan, supra*, the complainant was terminated from his employment on March 7, 2000. On June 22, 2000, the union informed the employer it would proceed to arbitration with the grievance. On July 5, 2000, the union representative responsible for carriage of the grievance, informed the complainant, "considering your disciplinary record and history I would not present your case to an arbitrator." (para. 5). On April 25, 2001, the union confirmed (at para. 6) with the employer its March 22, 2001 decision that "(t)his grievance was withdrawn by the Union without prejudice or precedent to the position of either party based on the understanding that the car plant will interview the grievant and then determine whether to reinstate him." Further, "this fact and the letter confirming this fact was not brought to the attention of [the complainant], his counsel or the Board until the hearing of this matter on May 3, 2004."

On October 16, 2001, the union representative had informed the complainant, "I will try over the next several weeks to resolve your case. If I am not successful, I will be left with no other option but to withdraw your grievance" (para. 7). Then, on January 20, 2002, the union notified the employer of a Notice of Appeal to Arbitrator of the grievance (para. 8). On October 3, 2002, the union informed the complainant "that his grievance had been withdrawn" (para. 9). The Board found that the April 25, 2001 correspondence in which the union withdrew the grievance, was based on its view it would not be successful at arbitration and the best way to represent him was to negotiate a reinstatement (para. 10).

Aside from concerns with the union's consideration of the grievance (para. 13, 14 and 15), relevant for our purposes, the Board states, at para. 16:

> A further matter that concerns the Board is the lack of sufficient communication with Lenahan as to the status of his grievance. This may have been exacerbated by the decision to withdraw the grievance and try to pursue reinstatement.... However, it is simply the case that either [the union] did not fully communicate with Lenahan as to the actual status of his grievance or worse, that it misrepresented to him the status of his grievance. It appears from the evidence that Lenahan was told that his grievance would be withdrawn at a future date when it was already withdrawn.

(See also *Re Dwayne Lucyshyn, supra*, at para. 38 where the Board found that, "a failure to communicate with the Applicant concerning his grievances" demonstrated arbitrariness on the part of the union.)

The *Lenahan* and *Lucyshyn* cases indicate the importance of communications between the union and the member in regard to the actions taken by it in dealing with his or her complaint. In the instant case, there was considerable communication between the Association and the Complainant from February to December, 2015, concerning the Association's involvement with his

complainant. From an email dated December 23, 2015, the Complainant was aware the Association had gained the OPSB's agreement to have his complaints dealt with by a third-party investigator. How that came about is not relevant; what is relevant is that it did occur. There is then a 3-month period of time where there is no apparent communication between the Association and the Complainant. In an email dated April 7, 2016, Mr. Cole informed the Complainant that the Association acknowledged his concerns with the third-party investigator's terms of reference and that a meeting with the Association and complainants take place. The meeting occurred on May 4, 2016 and at which time the concerns with the third-party investigator were addressed.

There is no evidence before me as to what activities the Association took on behalf of the Complainant for the first 3 months of 2016. What is known, however, is that the OPSB did engage a third-party investigator and in which process the Association had no role to play, once having gained the OPSB's agreement. Thus, whatever procedures the third-party investigator was following or when they were to occur, were not matters over which the Association had responsibility. In these circumstances, I do not view the lack of communication between the Association and the Complainant to be an arbitrary exercise of its duty of fair representation.

Based on all the foregoing, I do not find the Association acted in an arbitrary manner in dealing with the Complainant's complaints. I find the Association properly investigated his complaints and in finding there was merit to them, advised him to follow the RWP process in order that it would be able to assess the resultant report for purposes of deciding what future course of action to take. When the Complainant advised he would not participate in the RWP process, the Association undertook to gain the OPSB's agreement for a third-party investigator to deal with the complaints. When the Complainant indicated he would not participate in the third-party process, the Association advised it could do nothing further on his behalf, unless, as indicated in Mr.

Coles's June 24, 2016 email, he came forward with information upon which it would consider the feasibility of further action. The Complainant did not so provide the Association.

In addition to the above involvement, the Association paid for the costs associated with Mr. Greenspon's opinion as to the possibility of a civil law suit against the OPSB on the same grounds brought forward by the Complainant under his RWP complaint. That opinion indicated it would not be useful to file a civil action in which, in any event, the Association would have no role to play. While the Association received the legal opinion of Mr. Jewitt as to filing a complaint under the OHSA, it determined that the jurisdictional issues, which Mr. Jewitt acknowledged as possible impediments to such a claim, were such that there would be difficulties arising from the fact that the OPSB's RWP was in place to deal with harassment, intimidation and reprisal complaints. While the Association expressed concerns with how the OPSB implemented, or not, that policy, without the Complainant's participation in the RWP process, the Association determined it would not be a reasonable course to file a policy grievance. I find the Association gave fair and objective consideration to the Complainant's complaints, was fully engaged in dealing with his complaints, and then took appropriate action in dealing with those complaints. I find it did not act in an arbitrary manner.

The complaint is dismissed.

Dated at Toronto, this 20th day of December, 2017.

William A. Marcotte
Arbitrator

# APPENDIX “A”

Feb 6, 2015
To OPS / OPA



A respectful workplace acknowledges that the physical, psychological, and social well being of the participant is paramount. OPS recognizes that having healthy members translates into having a healthy organization overall. OPS adopts the policy that in order to get respect and dignity, we must give respect and dignity in all of our interactions with each other. The following are incidents where SSgt Spirito has been disrespectful to the members of the APS. The continual harassment and disrespectful conduct directed towards the group was repetitive, extreme and calculated. SSgt Spirito knew or ought to have known that the conduct would harm, offend, demean, belittle, humiliate, embarrass, intimidate, and threaten the APS. SSgt Spirito arrived at the APS in the fall of 2012. Under his leadership the unit has deteriorated drastically. His unrelenting harassment has caused the entire unit to suffer.

September 7 2012, SSgt Spirito sent an email to the entire unit to advise that he would be adjusting the teams based on numerous factors. With AL leave draw coming up there was no time to discuss the matter. SSgt Spirito had just arrived, had no idea how the unit functioned, and was making decisions that affected everyone in the unit. There was no consultation or input from the APS unit. The unit suffered for weeks worrying about whether they were going to be moved or not. A few weeks later, SSgt Spirito gave a presentation on why people were being moved. The presentation didn't make sense to anyone except SSgt Spirito. As expected, Cst Paris and I were targeted and split up. One fact that was clearly stated as being a deciding factor for switching officers was gender. At that time we had only two female officers, Sgt Scott and Cst Lamorie, both former Gloucester police officers like SSgt Spirito. They were not split up. This was suspicious and appeared to be favouritism. Adding to the suspicion was the fact that all the former Gloucester police officers avoided being split up. Now SSgt Spirito had, what he referred to as, the "Good side" and the "Bad side".

I had a meeting with Sgt Scott and SSgt Spirito regarding workplace concerns that I had but it was to no avail. I had advised them that the most contentious issues within the unit were work ethics and dispersion of overtime. I also explained that I felt Cst Paris and I were targeted because we had become vocal regarding these concerns and were holding officers accountable within the unit (see list of expectations email). We had the courage to do what was right and for that reason, we were targeted. Now we were the problem and we were split up. We have not worked together since. It appears that SSgt Spirito did not take into account officer's personal considerations as his email of September 7 2012 suggested. SSgt Spirito appeared determined to divide Cst Paris and me with a blatant disregard for our physical, psychological and social wellbeing. If SSgt Spirito had considered our unique situation, Cst Paris and I would not have been split up.

November 5 2012, I had another meeting with SSgt Spirito and Sgt Scott regarding my request to transfer to the "Bad side". I was first advised that I should have followed the chain of command to set up the meeting. I should have asked Sgt Scott to ask SSgt Spirito for the meeting. In retrospect, it didn't matter whether we had the meeting or not. SSgt Spirito did not investigate any of my concerns, showed zero compassion and offered no resolution. The issue then became the process I went through to solve the problem and not the problem itself. It was clear to me that SSgt Spirito could not be reasoned with regarding my request to transfer. I felt helpless to change the situation. SSgt Spirito had used his position of authority to switch whoever he wanted without any regard for the welfare of the officers.

APS officers suffer yearly with bouts of anxiety because no one knows until the last minute if they are going to be switched or not. SSgt Spirito provides no rational explanation or consideration for the personal circumstances of each officer.

October 3 2012, SSgt Spirito sent an email to everyone stating he was upset that an email had been sent to the Chief to clarify whether lieu time was back in effect at the APS. SSgt Spirito was upset that it "sparked a Senior Management Inquiry." SSgt Spirito's email itself was quite condescending stating that "Anyone familiar with our Collective Agreement should be aware." SSgt Spirito was clearly the one who didn't know as he had clearly advised the officers that we were going to do lieu time again. SSgt Spirito stated in his email, "I don't recall ever saying it was lieu time". Further in the email SSgt Spirito stated that "we will revert back to practices upheld pre my assignment here at APS." This statement suggests that there was a change once he arrived. SSgt Spirito takes no responsibility for his actions and blames his Sergeants in the last paragraph of the email for not delivering the same message. The Sergeants did deliver the message. The message was that lieu time was back. We wouldn't have had small black books in the Sergeant's office with our names on them to mark down lieu time if it wasn't.

December 12 2012, SSgt Spirito proposed changing all the start times for the different shifts. Most of the unit didn't vote for the proposed start times because the times were only 15 minutes off from the current start times. In the email it stated that "your vote is required." SSgt Spirito was upset that very few officers voted. The APS officers who didn't vote were considered to be difficult. SSgt Spirito did not consult the APS officers regarding the new start times.

SSgt Spirito was charged by PSS for pulling out his gun in the APS office. This incident clearly indicates that SSgt Spirito is capable of unpredictable behaviour and poor judgement. In addition, it displays a total disregard for the health and safety of the officers in the APS office. After SSgt Spirito had been disciplined for his actions, he stated to me that he has to "pull the daggers out of his back." Followed by words to the effect that it was ok he always wins. SSgt Spirito's statement implies that SSgt Spirito's mind set is to get even with those who he perceives as wronging him.

December 9 2012 –July 19 2013 for my own sanity I stopped documenting incidents as there were too many and it began to consume me. It was affecting my health and personal life. At this point, all of my concerns of workplace harassment, although brought forth to the Sgt and SSgt Spirito were never investigated.

Late January 2013, there was an incident referred to as "Arrowgate". A couple of lines were drawn on a piece of paper indicating that SSgt Spirito was the administrative assistant and Jo Anne Tobin was the officer in charge. We were all advised that if the person who drew the lines did not come forward then we would all have to go to a respectful workplace refresher course on our days off. Some senior officers were even pressured to try and find out who did it. This was clearly punitive and vindictive. However, when questioned the punitive aspect of his actions, SSgt Spirito wrote a long letter indicating that it wasn't punitive. However, when I had legitimate complaints of workplace ethics, it was never investigated. A couple of lines on a piece of paper and SSgt Spirito was provided with a swift response from respectful workplace manager Aarenau. The responses to workplace harassment concerns are not

fair or impartial. There appears to be two levels - one for SSgt and another for constables. For the record, I was not present during "Arrowgate" as I was on vacation. Regardless, I still had to attend the refresher training. In his email regarding "Arrowgate", SSgt Spirito again had to clarify some misunderstandings. The excuse is the same as the lieu time incident. SSgt Spirito took no responsibility for his actions and the breakdown was that his message was lost when he delivered it to his Sergeants. In his email, SSgt Spirito's clearly stated, "If the officer involved in altering the lists." This indicates that SSgt Spirito believes that it was an officer who was involved in altering the lists. However, further down the email SSgt Spirito states I have not accused anyone of doing anything. By suggesting that it was an officer, SSgt Spirito is accusing one of the APS officers. SSgt Spirito takes no responsibility in being able to control the manner in which you may or may not have been approached by your direct supervisor. This part of the email is referring to Sgt Scott putting pressure on the officers to find out who altered the list. Sgt Scott later took responsibility for her actions and apologized to those she offended. The wording "may or may not" suggest that SSgt Spirito put little weight in the officer's complaint. Further in the email SSgt Spirito states that he is "disappointed by this and past incidents of workplace disrespect against colleagues who work in such a small section." This is now 7 months after I had first brought forth my own concerns with inaction on his part. Again, SSgt Spirito isn't blaming anyone but states that he wants the "officer" involved to take responsibility. If an officer doesn't come forward then everyone will have to go to the respectful workplace refresher. The officer who SSgt Spirito thought altered the lists didn't come forward so we all had to attend the refresher. According to the OPS respectful workplace policy supervisors must be diligent and genuine in their desire to create a respectful workplace in their area of responsibility. SSgt Spirito only stayed for approximately one hour of our four-hour refresher.

May 31 2013-June 3 2013, SSgt Spirito sent an email regarding direction with respect to clutch purses. It only took him 4 months to provide us direction regarding this matter. The picture of the purses we were encountering were not at all like the purses depicted in the email. According to the email, we were to receive a legal determination within a week. We are still waiting. Cst Ryan questioned the fact that we only have an opinion from the Crown's office. SSgt Spirito replied in a very derogatory tone, "Amazing! A Crown's opinion seems to work whenever any OPS officer is seeking guidance on provincial or federal charges but I guess not in this case or here at APS (I look forward to the feedback from the Crown's articling student's work- maybe that will help those of you who have difficulty with the direction received)." As stated above, we are still waiting for the Crown's articling work. The email continues with demeaning and belittling overtones. "I trust that you will utilize the wealth of your respective policing experience" and "quite frankly nothing surprises me anymore here at APS." Finally, the email ends with a veiled threat that "failure to adhere with the outlined direction will be handled by your respective supervisors in the appropriate manner."

SSgt Spirito arranged to have Cst Obrien (then working in Guns and Gangs) to come down to side with his direction. During a meeting with the other side, Cst Obrien advised that they were not prohibited weapons and apparently SSgt Spirito threw a tirade.

July 10 2013, in an email to Sgt Giroux, SSgt Spirito states that "your fresh eyes and fresh perspective may be just what this whole headache needs." Without the Crown's results SSgt Spirito has now

embarked on a pilot study on purses. This doesn't appear to be an effective use of policing resources, considering we haven't received direction on whether the purses are actually prohibited or not.

June 12 2013, team meeting with Aarenau regarding the Amazing email. SSgt Spirito justified his reason for sending the derogatory email to all of us. SSgt Spirito explained that he did so to ensure that there was no misconception. Aarenau didn't address the demeaning or condescending comments by SSgt Spirito in the email. Her silence condoned the behaviour. It appears that SSgt Spirito doesn't believe that the rules apply to him. Once everyone realized that SSgt Spirito wasn't open to discussion by defending his actions, no one said anything except Cst Martin. SSgt Spirito stated he was sick of talking about the brass knuckle purses. Cst Martin stated, in our defence, that what was put in the email and the direction we were getting now, were not the same. SSgt Spirito again just defended his email and wouldn't admit that he was wrong. SSgt Spirito also said he is too busy for this and that this is our problem and we have to sort it out. It appeared as though SSgt Spirito and Aarenau had conferred prior to the team meeting on which points SSgt Spirito should make. For example, SSgt Spirito stated that if people send emails that you don't like, we have to send him one back saying that we don't appreciate the emails or being involved. Aarenau appears to have sided with SSgt Spirito by stating that the person who sent the questioning email is looking for an audience and it gives them power if you don't respond. We all got the email and we know it was Cst Ryan. Cst Ryan wasn't looking for an audience. He was looking for direction.

Sgt Giroux then stated that he wanted to talk to the APS unit alone. Sgt Giroux stated that he will try to give us time off when he can. Sgt Giroux is going to leave a buffer in case people call in sick so that he will still have the numbers. This is punitive to hurt the members of the unit. Time off is hard enough to get because we are so understaffed that by limiting it would make it impossible. Sgt Giroux went on to explain that there had just been a harassment issue on patrol between a Sergeant and constable. The constable complained that he was being harassed and the Sergeant denied it. The constable had proof and when it was uncovered to be true the Sergeant was just told to stop. That is how the incident ended. The moral of his story is that it is not worth it to complain.

July 2013, Sgt Giroux gave himself overtime without calling constables. He then booked Stat holiday time in the summer when it clearly created overtime. The proposed buffer for time off doesn't appear to apply to Sergeants. This again highlights that the distribution of overtime is still an issue and SSgt Spirito isn't being fiscally responsible.

June 5 2013, SSgt Spirito sent another condescending email to the unit regarding his new direction of stopping people who buy their last minute tickets with cash. "The attached highlights the "why" we stop the passengers." SSgt Spirito was upset that an officer attended and asked the airline customer service worker "why are you calling us to this?" This was followed by "The attached information received from our National Security Partners should be motivation enough to follow what NIKE has said for years: "Just do it." SSgt Spirito expects automatic compliance with his expectations. The RCMP email states that we cannot ask the ticket agent for the passengers name or information.

July 10 2013, Sgt Giroux sent the APS unit an email asking officers to again profile people who purchased last minute fares with cash. In addition, officers were being asked to direct carrier representatives to call us when they encounter last minute cash ticket sales. Officers were also asked to ensure all encounters were to be put into RMS with the passenger's name.

August 12 2013, Cst Zouroudis and Cst Carriere had used unbelievable patience in dealing with a belligerent male. SSgt Spirito questioned me as to why the male wasn't arrested. SSgt Spirito also said he would have put the male in the cells to teach him a lesson. SSgt Spirito's criticisms of this event were unwarranted.

August 30 2013, Jo Anne Tobin made a remark to Cst Jones that she should get a percentage of all the overtime she gives him.

Cst Jones conspires to get as much overtime as he can. Cst Jones asks Cst Lamorie to not extend so that their side can get full OT shifts. Cst Jones said he would pay her back by calling her first for the next time there is overtime available. Cst Jones advised he would be able to do this because Jo Anne Tobin will call him first.

September 4 2013, Sgt Ansari and SSgt Spirito were not getting along. In fact, information was received that they had a heated argument at a supervisor meeting at Broadways. After this incident, Sgt Ansari brought forth concerns regarding SSgt Spirito to Inspector Bernard. September 16 2013, Sgt Ansari leaves the APS unit. The message was received loud and clear. You must conform and do as you are told to stay at the airport. If you make a complaint, you will be targeted and you will be leaving.

September 4 2013, SSgt Spirito enters the lunchroom at the back of the APS unit where Cst Davidson, Cst Zouroudis and I were eating lunch. SSgt Spirito proceeds to tell a gynecologist joke that involved hand gestures depicting clitoral stimulation. When SSgt Spirito left I stated to Cst Zouroudis that it was very disrespectful. She just shrugged it off. This was an obscene joke which qualifies as sexual harassment.

September 30 2013-December 25 2013, I did not document any incidents as there was too much going on. I felt helpless to change the situation. Any complaints would just have you removed from the unit.

Information was received that Deputy Chief Skinner's car keys were stolen from the front of the office. When Cst Ryan asked SSgt Spirito for the case number, SSgt Spirito advised he would get Cst Ryan's Sergeant to give it to him.

Cst Campoli was given Stat holiday time when we were short and SSgt Spirito paid for the OT so she could. Another example of overtime mismanagement.

Again, I am going to just come to work, do my job and go home. I am feeling helpless to change anything. It is weighing on me more and more, as I am struggling with the lack of ethical leadership shown by SSgt Spirito. In addition, concerns have been raised by the Airport Authority regarding SSgt Spirito's attendance at the airport.

April 9 2014, I was scheduled for an overtime shift. Cst Jones contacted SSgt Spirito to advise that I wasn't needed for the overtime and to have me cancelled. I received a call from Sgt Bender that I was no longer required. Cst Jones was empowered by SSgt Spirito to cancel my overtime. Then at 2100, Cst Jones called my house and advised that I would be needed after all. I put in a call back sheet because this was now less than 24 hours' notice. I wanted to make a point again that overtime distribution is an issue. I put in a call back sheet with an explanation stating the reason. SSgt Spirito put a sticky note on it stating "Alex we need to talk about this, airing out APS dirty laundry on an OT slip is unacceptable this is a perfect example of why I am leaning towards eliminating blanket late lunches." This is important because it clearly shows that the action is punitive and not operational.

The 2013 APS officers' salaries were posted on the Sunshine List. The inequality in the distribution of overtime is clear by the discrepancy between APS officers' totals. See attached sheet.

Numerous APS officers were approached by numerous female airport employees that an APS officer was making inappropriate sexual comments to them. The females did not want to file a written complaint against a police officer however, they wanted the behaviour to stop. Sergeants on both sides were advised and I assume would have notified SSgt Spirito. Despite being made aware of the allegations, the officer involved was permitted to continue to work at APS. Police have to ensure that any improper or unlawful conduct of any member is not concealed or permitted to continue. By not acting it sends the message that the OPS endorsed the behaviour. The difference in response to this type of incident under SSgt Spirito compared to SSgt Brabazon was striking. Under SSgt Brabazon there was a similar incident between an officer and a female airport employee. I advised Sgt Scott of the incident. Sgt Scott notified SSgt Brabazon. The incident was investigated by Sgt Scott and the officer was removed immediately by SSgt Brabazon.

June 12 2014, the office is becoming worse again. I was advised today that SSgt Spirito openly bashed the APS section as incompetent at Law Enforcement meeting at the airport. He was complaining about there not being enough charges being laid and the quality of the reports to the other agencies. The participant at the meeting advised me that they were embarrassed for us.

June 25 2014, SSgt Spirito didn't show up for our team meeting. SSgt Spirito handed Sgt Bender an outline of what he wanted covered in the meeting. Sgt Bender was unclear about what the outline meant. Officers had heard rumours about the possible introduction of a term position at the airport. To this date, I have no idea whether this is actually in place. SSgt Spirito left on holidays after giving the sheet to Sgt Bender and was unavailable for clarification. Even upon his return, SSgt Spirito did not address the confusion around the proposed term position. SSgt Spirito would have known or ought to have known that it would cause the APS unit a great deal of stress.

The proposed term position at APS is obviously SSgt Spirito's attempt to kick officers out of the airport. There is no operational requirement to have a term rotation at the airport. Turnover has increased since SSgt Spirito arrived due to his abusive supervision. In addition, there will be plenty of turnover for the next 3 years due to retirements. I feel that the proposed term position status at APS is purely punitive. According to the 2009 Tenure report one of the main inhibitors to success for such a proposal

is a development and implementation process that is rushed and is taken over by senior management to address their own interests. The APS unit is not considered a specialty unit. We are considered patrol. Tenure was developed to revise policy for appointments to specialty units. However, SSgt Spirito is attempting to manipulate the tenure policy to suit his own needs.

August 18 2014, Acting Sgt Hutchins took two OR days when there was not enough officers to cover the day shift. Apparently SSgt Spirito was advised of this well in advance and did not remedy the situation. I was now forced, after working nights, to stay so that the contractual obligations for the airport were met. I tried to be fiscally responsible and contacted East division. Unfortunately, they were too short to send someone over. I was exhausted. I stayed until 0915 when SSgt Spirito came in. I wrote an explanation on my overtime sheet explaining why the overtime was incurred. SSgt Spirito would not put in my overtime sheet with my explanation. SSgt Spirito would only put in the overtime slip once I changed it to read contractual obligations. Fast forward to January 12 2015 when a similar situation arose where Cst Jones was working nights and extended for the entire dayshift. SSgt Spirito rewarded Cst Jones for staying by allowing him to stay all day.

Late August 2014, I had stopped to talk to a CBSA employee and another airport employee at Starbucks on the secure side of the airport. Cst Pierce and SSgt Spirito walked up to Starbucks, ordered and sat down at the opposite side of Starbucks. As I walked by, I stated jokingly that MY break was over. SSgt Spirito snapped back in words to the effect that he is the boss and he could sit there all day if he wanted to. The CBSA employee turned to me and said well he told you. This comment caused me to feel belittled and embarrassed.

September 14 2014, Cst Martin advised me that SSgt Spirito had told Cst Martin that he had meetings with Deputy Chief Skinner to try to have Cst Ryan out of the airport. DC Skinner had apparently told SSgt Spirito that the same problems SSgt Spirito was having with Cst Ryan, are the same things she heard about SSgt Spirito from Superintendant Delaney. SSgt Spirito will just have to get along.

October 22 2014, no staffing response by SSgt Spirito for parliament hill shootings. Another example of lack of leadership.

October 30 2014, SSgt Spirito asked Cst Martin to accompany him to a presentation for call center staff because SSgt Spirito doesn't know how the airport works operationally. SSgt Spirito has been at the airport for 2 years and is still unsure how things operate.

November 7 2014, SSgt Spirito sent a disrespectful lotto email response to most of the unit.

November 12 2014, Cst Davidson removed from Basic Emergency Management course because he is going to retire soon.

At the end of November 2014, there was an exercise held by Airport authority. SSgt Spirito expected officers to volunteer their time to participate in the exercise as no overtime was to be incurred. SSgt Spirito struggled to find officers who were available to attend from the APS. This perceived wrong was

met with an email December 1 2014 restricting the ability of APS officers to take discretionary time off. This appears to be punitive.

December 10 2014, SSgt Spirito and Sgt Bender were arguing in the APS office. The tension was palpable.

December 12 2014, information was received that SSgt Spirito was complaining to Cst Jones about all the charges that have been made against him. SSgt Spirito was on holidays from December 19 2014 to January 5 2015.

December 24 2014, Cst Martin was attacked at the airport. The headline makes the news. SSgt Spirito does not call or email to see how Cst Martin is doing. This is another example of SSgt Spirito's lack of leadership or concern for the well being of the APS officers. Rather, SSgt Spirito appears more interested in forcing Cst Martin to take the Basic Emergency Management course that he removed Cst Davidson off of a month earlier.

January 5 2015, SSgt Spirito returns from his holidays and immediately cancels all blanket late lunches. This new directive will not work. If enforced, OPS will be breaching the airport contract repeatedly each day. SSgt Spirito finally followed through with the threat he made on my call back sheet to take away blanket late lunches. This again appears to be punitive.

Later December – present: Cst Gendron was permitted by SSgt Spirito to leave for traffic investigations unit despite the fact that the APS did not have a replacement. The decision has caused the APS to incur a tremendous amount of overtime. Again, it shows a total disregard for the health and safety of the officers within the unit. According to the Overtime Management policy 3.21: All personnel of OPS must be mindful of and exercise fiscal responsibility in the use of public funds and resources. Supervisors shall take reasonable measures to reduce or limit overtime. Supervisor section 6(b) states that: A member's level of fatigue must be a consideration when approving lengthy overtime work or several overtime shifts in a short period of time.

In conclusion, the APS unit has suffered and continues to suffer considerably under SSgt Spirito's leadership. The working environment is toxic and intolerable. The unit has a diminished self worth due to the constant belittling and bashing to non-OPS partners at the airport. It has diminished our ability to concentrate on the task at hand. There is a heightened level of anxiety within the office. SSgt Spirito doesn't even talk to most of the members of APS. The lack of early and effective intervention in this case caused substantial victimization. It has left the group feeling helpless to change the situation. Anything less than automatic compliance with SSgt Spirito's expectations was met with punitive punishment disguised as an operational requirement. OPS' response to the new leadership and direction at the airport has been "if you don't like it, leave". I would like to see SSgt Spirito held accountable for his actions and not the revictimization of those who complained.