IN THE MATTER OF AN ARBITRATION

BETWEEN:

The City of Toronto
(the "Employer")

-AND-

Toronto Professional Firefighters Association, Local 3888
(the "Association")

Grievance of Lawaun Edwards, F13-142-07

Appearing for the Employer:
Darragh Meagher, Counsel
Matthew Pegg, Deputy Chief, Toronto Fire Services
Mike McCoy, Deputy Chief, Toronto Fire Services
David Sheen, Division Chief, Toronto Fire Services
Janet Ransom, Senior Human Resources Consultant, Labour Relations

Appearing for the Association:
James K. McDonald, Counsel
Lawaun Edwards, Grievor
Ed Kennedy, Association President
Neil McKinnon, Grievance Committee Chair
Dave Holwell, Grievance Committee

Hearings held on April 4, July 2, July 4, August 21, September 3, and September 10, 2014 in Toronto, Ontario

Decision issued: October 14, 2014

1. I have been appointed pursuant to the collective agreement between the parties to hear a discharge grievance filed by the Association on behalf of its member, Mr. Lawaun Edwards ("Edwards" or the "Grievor").

2. On September 16, 2013 Edwards was given a letter explaining that his employment was being terminated following a Toronto Fire Services ("TFS") investigation regarding a National Post article published in that newspaper's Saturday August 10, 2013 issue. In that article it was alleged that Edwards and another firefighter had made inappropriate comments about women on Twitter. The Employer also relied upon other allegedly inappropriate tweets made by Edwards that had subsequently come to the TFS' attention in the course of its investigation.

3. The National Post article relied on by the Employer stated that Edwards, who was identified therein as a Toronto firefighter, apparently engaged in a Twitter conversation in which Edwards suggested giving a woman a "swat in the back of the head" to "reset the brain". Following investigatory meetings held with Edwards on August 19 and 26, 2013, other information given by Edwards was also relied upon as reason to terminate his employment. In particular, the Employer believed that a tweet in which Edwards wrote "go get it sweetie" was inappropriate, as was his use of derogatory ethnic and racial terminology in another tweet that had come to the Employer's attention through an outside source. The Employer stated that it took into account Edwards' responses to the TFS' concerns about his various tweets, and concluded that his comments had been inappropriate; contrary to City of Toronto policies and guidelines; had harmed the TFS' reputation, and that of the City of Toronto; that his tweets had undermined the TFS' efforts to foster a diverse and welcoming workplace; and, had eroded trust and respect within the workplace and the community served by the TFS. As such, it terminated Edwards' employment.

4. The Association grievance before me claims that Edwards' termination from employment was excessive discipline, and by way of remedy seeks, among other things, his reinstatement as a firefighter to the TFS with full compensation for any income loss or expenses incurred by the Grievor.

5. Division Chief David Sheen and Marilyn Labine, Senior Human Resources Consultant, testified for the Employer. The Grievor, Lawaun Edwards; Neil McKinnon, the Association's Grievance Chair; Dave Holwell, Grievance Committee member; and two female Toronto firefighters, Christina Giampa and Dara Douma, testified for the Association. From the standpoint of relevance, there is not that much that is in dispute factually in this case. Where it was necessary to consider what was more probable than not in all the circumstances of the case, I have noted my finding on the particular evidentiary issue.

Facts

6. The Fire Services Division of the City of Toronto is responsible for fire rescue, emergency response, fire prevention, and education services in the city.

7. On June 17, 2013 Fire Chief Jim Sales presented a staff report to the Executive Committee of Toronto City Council titled "Toronto Fire Services – A Path to Diversity" ("Path to Diversity report"). The report outlined the TFS' plan to increase workforce diversity, including increasing the number of women and racially diverse personnel in the TFS, by ten per cent by the end of 2014. The report outlined the steps that the TFS had already taken to promote and increase diversity. These included looking at the barriers within the recruitment and hiring process for women and diverse applicants; creating hiring lists that would encourage the hiring of visible or racial minorities; seeking community input on how the TFS could better reach out to under-represented communities; development of a short training course for recruit firefighters to increase cross-cultural awareness; creating partnerships with other City departments to reach out to participants in their respective programs to try to encourage diverse applicants to the TFS; and, as well, the TFS worked with community colleges and outside agencies to help prepare candidates for firefighter aptitude and other tests.

8. In the Path to Diversity report the TFS stated that in 2012 it had 153 women and 123 visible minorities out of a total TFS workforce of 2950. These two groups represented 5.2 and 4.2 per cent respectively of the entire TFS. The goal was to increase by 10 per cent the number of women and visible minorities in the TFS by the end of 2014. Division Chief David Sheen was listed as the TFS contact for the Path to Diversity report.

9. The Grievor, Lawaun Edwards, is a 34 year old Black Jamaican Canadian male who began working for the TFS in early February 2011. He became a firefighter because he wanted to help people, and in particular to assist them when they were at their most vulnerable. After being hired the Grievor attended an eleven-week basic recruit training and was then assigned to a fire station. He served a one-year probationary period, after which he was appointed as a permanent firefighter. There were three or four women in Edwards' recruit training class.

10. During his recruit training in February 2011 Edwards attended a class regarding various City of Toronto and TFS policies, although by the time of the investigation that led to his termination of employment in 2013, he did not have specific recollection of most of them. The policies were also made available to him and other firefighters in the fire hall to which the Grievor was ultimately assigned following his training. Edwards understood that as part of his job he was expected to be aware of the City and TFS policies, and that failure to comply with those policies may lead to dismissal.

11. Although the Grievor could not recall receiving any further training regarding harassment or human rights after his recruit training, there is no dispute that on February 10, 2012 he had attended a one to one and a half hour session called "Human Relations/Conflict Resolution Training", which had been presented jointly by the Employer and the Association. The goal of the training was to provide firefighters with an understanding of basic human rights, and some conflict resolution principles that could be applied both in the workplace and in the course of their work. Aspects of the Ontario *Human Rights Code* and the City's Human Rights/Anti-Harassment policy were reviewed.

12. The Grievor's employment was terminated on September 16, 2013. Prior to his termination Edwards had never been disciplined and had received good performance reviews from his Captain every six months. As is obvious from the statistics quoted from the Path to Diversity report above, he was one of a very limited number of racialized firefighters in the TFS.

13. Edwards had opened a Twitter account in October 2012 at the urging of a friend, who showed him how to set up the account. The Grievor was particularly interested in communicating via Twitter with strength and fitness coaches, and wanted to use it as a method of communicating with friends. Edwards used the Twitter handle "@Bassfire3680", which he claims was chosen because he used to sing bass when in high school, and because "3680" where the last four digits of his previous phone number. However, he claimed that he did not choose the "fire" aspect of the name because he was a firefighter. Rather, he claimed that his friend chose that part of his moniker for him. The Grievor's friend did not testify in this proceeding. Whether it was the Grievor or his friend who chose to add "fire" to Edwards' Twitter handle, it is more likely than not that "fire" referred to his being in some way involved with firefighting.

14. The Grievor had not read Twitter's policies when he opened his account. He testified that he believed that his tweets were private to the person he was sending to, and that no one else would be able to access them. Notwithstanding that evidence, he understood that he had followers, and that he was himself a follower of certain people on Twitter. He also knew that people could re-tweet what he had sent out to their own followers. The Grievor also knew how to find people on Twitter who were not his friends or family, but were simply people he wished to follow because of his interests.

15. At the time that the matters leading to the Grievor's termination occurred, it appears that Edwards had 49 Twitter followers, he followed 89 people, and he had sent out 1,552 tweets. Among Edwards' followers were two female firefighters, Christina Giampa and Bernice Halsband. By the time of this hearing, and in the aftermath of the Grievor's termination, neither of them had blocked Edwards. He also has other female followers. There was no evidence that any of his followers had objected to the Grievor's tweets that were the subject of this arbitration.

16. The National Post ("NP") article that was the genesis of the investigation that led to Edwards' termination of employment was first posted on line at the newspaper's website on Friday August 9, 2013, and was then printed in the hard copy edition of the paper on Saturday August 10, 2013. The article on line was entitled "As fire department looks to recruit women, sexist tweets suggest some firefighters may not be so welcoming". The reporter noted that the Toronto Fire Service had one month earlier indicated in the Path to Diversity report from the Fire Chief to the City of Toronto's Executive Committee that it wanted to recruit more women and visible minorities.

17. The NP article went on to outline that two young firefighters in the East Command had made postings on Twitter that suggested that the culture among some firefighters might not be very welcoming towards women. The article noted that it had identified the two firefighters through a recruit placement list from the Toronto Professional Fire Fighters' Association. One of the firefighters in question was Edwards. It is worth noting that the article included a number of tweets allegedly made by the second firefighter, Matt Bowman, but only one Twitter exchange that included Edwards.

18. According to the NP article, on June 5, 2013 Edwards was alleged to have engaged in the following Twitter exchange with an individual named Dean Somerset [The text of the tweets have been reproduced exactly, with spelling or grammatical errors as in the original]:

> Dean Somerset @deansomerset
> Just stood behind a girl who used the word "like" roughly 300 times to order her coffee. Stay in skool, kidz.
>
> Lawaun Edwards @Bassfire3680
> @deansomerset would swat her in the back of the head been considered abuse or a way to reset the brain?
>
> Dean Somerset @deansomerset
> @Bassfire3680 Maybe foreplay?
>
> Lawaun Edwards @Bassfire3680
> @deansomerset unlikely, intelligence and a vocabulary is sexy. Saying "like" that amount of times means you have none

19. The NP article went on to state that when Division Chief David Sheen had been told about the tweets by the two firefighters on Friday August 9, 2013, he had said "I am logging it as a complaint. I am going to investigate it. To me that is not an acceptable attitude to be identified with firefighters in the City of Toronto".

20. Sheen was also purported to have said that recruiting women to the TFS was not easy. He was quoted as having said "Toronto Fire absolutely is a welcoming

place for women in operations", but that "there are bona fide challenges of the job that are more difficult for women. It requires a great deal of upper body strength. Unless they are committed from the get-go, they won't be able to do the training to be able to pass the physical aptitude test. There's child care issues, and what happens if I get pregnant?" Sheen had advised the NP that female firefighters who became pregnant were instantly removed from operations.

21. The NP article stated that it had read the firefighters' tweets to District Chief Ron Barrow, who was purportedly in charge of recruitment to the TFS, and his response was quoted as being "Folks like this are getting weeded out real quick". The National Post had drawn reader attention to this remark by excerpting it as a sub-heading in the article.

22. As noted earlier, David Sheen is a Division Chief with the TFS. He has been with the TFS for over 23 years. Among his many responsibilities are recruitment and community outreach. As part of his recruitment and community outreach portfolio Sheen is responsible for overseeing the TFS efforts in the recruitment and hiring process. Under the direction of his Deputy Chief, he also takes a lead on grievance and human rights issues within the TFS. While rank and file firefighters are not permitted to speak to the press, Sheen had been trained on how to deal with the media.

23. Sheen testified that he had been contacted by National Post Acting Toronto Editor Peter Kuitenbrouwer on August 9, 2013; had been told that the paper was aware of tweets by two firefighters, Matt Bowman and Lawaun Edwards, that were demeaning to women; and that Division Commander Dan MacIsaac of the TFS had been contacted by a reporter, Kyla Garvey, about this but had not responded. Sheen said he would follow up with MacIsaac and get back to Kuitenbrouwer, but that if it was true about the tweets, they would be reflective of the individuals' opinions, and were not those of the majority of the TFS. Sheen was not told the content of the tweets at that juncture.

24. Following that conversation Sheen checked the TFS system to see whether Bowman and Edwards were in fact Toronto firefighters. He then contacted MacIsaac to ask him if he had followed up on the National Post query. Sheen was apparently told that MacIsaac had never been told the names of the firefighters nor the context of the tweets, so he had not had anything to following up on.

25. Sheen called Kuitenbrouwer back and told him why MacIsaac had not been able to follow up. At that point Kuitenbrouwer gave Sheen a flavour for the tweets by telling him about one of Bowman's tweets. They had a discussion about the Path to Diversity report and the challenges the TFS faces in recruiting women and visible minorities, but particularly women. Sheen told Kuitenbrouwer that he would treat the information about the tweet as a complaint, and would be investigating the matter as the TFS was committed to diversity and would treat this as a serious matter.

26. Following his second call with Kuitenbrouwer, Sheen advised the Toronto Fire Chief's office about the matter. Sheen had hoped that the National Post would not run the article since the TFS had not yet had the opportunity to look into the issue of the tweets.

27. However, after Sheen became aware on Saturday August 10, 2013 that the National Post had in fact printed the article about the tweets by Toronto firefighters, he called the Chief to apprise him, and on the following Monday August 12, 2013 they met to discuss with senior staff how they should proceed. Sheen was put in charge of the investigation into the tweets.

28. Despite how the NP article reflected what he had said, Sheen testified that he had not made comments about women in the TFS that constituted gender stereotyping. Rather, he believed that his comments as reported in the NP article had been taken out of context. He had tried to explain to Kuitenbrouwer that as part of their diversity work, the TFS works with female firefighters to address the barriers they faced in getting into the Fire Services. In the course of the TFS' research Sheen had learned that a large number of women were unsuccessful with the physical aptitude test. The TFS holds 'women-only' career sessions so that women can freely ask any questions they may have, and questions such as "what happens if I get pregnant?" arise. The TFS has also found that while the need for upper body strength for firefighting is a challenge for both men and women, it is particularly challenging for women. These were the points that Sheen had tried to make to the NP Editor.

29. Following the printing of the article, Sheen tried to find out from the National Post where they had got the screen shots of the tweets they had printed, and asked about their source for the story. He was told that the NP had taken the screen shots themselves, and that the source would not be disclosed. Although Sheen testified that his comments in the National Post had been taken out of context, neither he, nor the TFS generally, complained to the newspaper.

30. On August 10, 2013 Matt Bowman called the Grievor to tell him about the article in the National Post. Once Edwards had reviewed the article on line, on or about August 10 or 11, 2013 he locked his Twitter account to make it inaccessible to anyone who was not one of his followers.

31. On August 12, 2013 Edwards was called to a meeting with TFS Division Commander Andrew Kostiuk. In the presence of the Association's representative, Neil McKinnon, he was given a letter advising him that the TFS was investigating his conduct based on the National Post article, and that he was being suspended with pay effective immediately pending the outcome of the investigation.

32. At that meeting Edwards expressed how upset he was that District Chief Ron Barrow had been quoted in the NP article as saying "folks like this are getting

weeded out real quick". Edwards felt the comment was unfair as Barrow did not know the Grievor, and he felt that he was being pre-judged without having being asked about the comments that had been quoted in the National Post. Given the public nature of the article, Edwards felt that his reputation with his peers, friends, and family, had been diminished.

33. Edwards testified that he could not understand why there was a problem with his tweet in the NP article as it had had nothing to do with the TFS. He had not been speaking to or about anyone in the Fire Services and had not identified himself as being from the TFS. Hence, he felt that he was being pre-judged.

34. On August 13, 2013 Fire Chief Jim Sales sent out an Advisory to all TFS personnel regarding the "Personal Use of Social Media". In it he noted Toronto City Council's adoption of the TFS report "A Path to Diversity" on July 16, 2013, and that many of them may be aware of the recent media reports alleging the posting of inappropriate comments by several TFS personnel on social media sites. He indicated that it was "unfortunate that a positive step towards diversity for TFS has been tarnished due to these inappropriate comments". The Chief reminded staff of the policies and guidelines with respect to the use of social media, and that employees using social media for personal purposes must abide by all City policies that govern employee behaviour. Employees were referred to various hyperlinks regarding harassment policies, human rights and anti-discrimination policies, personal use of social media, and the application of City policies to social media use.

35. According to David Sheen, the Fire Chief's Advisory was the first he was aware of on the subject of the use of social media by TFS personnel. He also did not recall ever having received any similar directive, coming from the City of Toronto to senior staff, prior to an email that was sent to all staff in February 2014 by the City Manager, Mr. Joe Panachetti. Both of these directives issued after the Grievor had been suspended, and later terminated from his employment.

36. Prior to his first meeting with Edwards following the NP article, David Sheen Googled "Bassfire3680" to see if he could see anything about Edwards. However, he was unable to access the Grievor's Twitter account.

37. The TFS conducted its first investigation meeting with Edwards on August 19, 2013. For the TFS and City of Toronto, David Sheen, Marilyn Labine, Dan MacIsaac, Debbie Higgins and Mike McCoy were present. For the Association, Dave Holwell, Neil McKinnon, Damian Walsh and Lawaun Edwards were in attendance.

38. Ms. Labine is a Senior Human Resources Consultant with the City, and was at that time responsible of employee-related issues for the TFS. She has considerable experience in labour relations and human resources matters. Labine, along with her Manager, Ms. Dymphna Walko Channon, had been involved with TFS senior staff in drafting the questions for the Grievor's first interview. Labine took notes for the

Employer side at the meeting, but it was David Sheen who essentially led the meeting.

39. The Grievor was shown and asked about his familiarity with various TFS policies regarding Public Relations; the TFS Harassment policy; TFS Rules and Regulations regarding conduct and discrimination or harassment; the Ontario *Human Rights Code*, and the City's Human Rights and Anti-Harassment/Discrimination policy. Edwards generally agreed that he was aware of or familiar with the documents, but indicated he did not know them 'word for word'. He agreed that they had all been brought to his attention during his orientation and training for the TFS.

40. The entire Twitter stream in question has been outlined at para. 18 above. Edwards was asked about the tweets with Dean Somerset, a strength and conditioning coach from Alberta who Edwards follows. Edwards candidly admitted that he had written the tweets ascribed to him and indicated that his comment about the "swat" had been an off-handed one. He indicated that his tweets had not been "a knock against women", but that this particular girl should not have been using the word "like" so much. He indicated that he was not being abusive towards women by this comment.

41. In response to a question about whether he would have made the same sort of comment about a male, Edwards told the employer that he would have, and that probably a man would deserve more of a slap in the head because he should not be using "like" in that manner. The Grievor said he was sorry that they were all there about this, and conceded that the statement he had made was harmful to the TFS, the City, and firefighters in general. However, he felt his tweet had been taken out of context as anyone who knew him would know that he was not abusive to women.

42. At the hearing the Grievor often stated that he felt that his tweet in the NP article had been taken out of context. He testified that when his mother's friend had heard about the NP article she had been upset with him until he had shown her the complete Twitter exchange, at which point she purportedly understood the context. It seems that the Grievor believed that the National Post had only included the "swat in the back of the head" tweet, not the rest of his exchange with Dean Somerset, and that if one could read the whole Twitter exchange, that his comment would not be seen as objectionable. The Grievor appeared to believe that his last tweet that intelligence and a vocabulary were sexy, and that saying "like" so many times meant that one did not have intelligence provided more context for his "swat" comment. It is worth noting that the NP article had reproduced the entire exchange, so it is unclear why the Grievor believed otherwise.

43. During the interview Edwards indicated remorse that he had not locked his Twitter account earlier, but advised the Employer that he had done so by the time of the interview. He advised that he had about 41 followers, including friends, family, and firefighters, including some female firefighters. Edwards indicated that he had

not tweeted about his work, although he may have tweeted when he had attended at his first fire and about having made jerk chicken for his colleagues at the fire hall on the Caribanna weekend. The Grievor acknowledged that looking at it now as the NP had reported it, his tweet had been harmful to the TFS.

44. Sheen told Edwards that it was the TFS' position that the Grievor's tweets were offensive, inappropriate, disrespectful of women, brought disrepute to his coworkers and Division, and violated many City policies and the Ontario *Human Rights Code*. The Grievor was asked to respond to that position of the TFS. Edwards responded by saying he apologized once again, but would like to be educated as to how the tweets made him abusive towards women. He further said he apologized that this was the stance being taken (although it was somewhat unclear whose stance he was referring to). In that meeting, according to Firefighter Dave Holwell's notes, which I accept as being generally as accurate as those taken by the Employer's note taker, the Grievor later apologized that someone had taken offence at what he had written. In his cross-examination, Sheen agreed that Holwell's notes in this regard were fair.

45. During the Grievor's cross-examination it became clear that he simply did not understand that asking whether a "swat in the back of the head" in relation to a woman may be seen as an undignified comment. Edwards believed that since he was not saying he would abuse a woman, it should not have been seen in a negative light. He repeatedly stated that his comment had been an "off hand" one, but conceded that joking about abusing women was not appropriate in any context.

46. At the first interview with the Employer on August 19, 2013, Edwards gave the Employer a Twitter post he had sent on February 7, 2013 in which he had said that they needed more women in the fire services, and he indicated to the Employer that his girlfriend also wanted to be in the fire services. He testified that because he had been so frustrated that he was being portrayed in the media as someone who was sexist and demeaning towards women, he had thought back to what he may have tweeted, and came up with two examples of tweets where he had shown his support for women. He was trying to indicate to the Employer that he was very supportive of having women in the TFS, and stated that had that been printed in the National Post, he would have been a hero.

47. It is worth noting the content of the Twitter exchange that the Grievor provided to the TFS as the Employer later relied upon it in its decision to terminate Edwards. A person using the moniker "Lady of Shallot" tweeted on February 6, 2013, "So excited and proud to have my beautiful cousin and role model at the fire academy with me tonight". This tweet was apparently sent to C. Giampa, with the hash tag "girlpower inspiration". Edwards responded on February 7, 2013, "Go get it sweetie, always need more women in the fire service".

48. According to the Grievor, Christina Giampa, a female firefighter who was in his recruit class in 2011, is a friend of his. They do not work out of the same station,

but follow each other on Twitter. That is how he would have seen the tweet sent by "Lady of Shallot" to Giampa. "Lady of Shallot" was the moniker used by a young woman named Maryam Marashixo, who is Giampa's cousin. Edwards had met Ms. Marashixo through Ms. Giampa. The Grievor, Giampa, Marashixo and another male had been on an excursion to Canada's Wonderland a few months prior to the date of the tweet in question. He understood that Marashixo was interested in becoming a firefighter.

49. Edwards testified that he had used "sweetie" as a term of endearment in his tweet to Marashixo because he knew her. He was certain that if he had offended either Giampa or Marashixo, they would have told him. His tweet had been meant as encouragement to join the TFS as he believed that it needed more women.

50. The Employer asked Edwards how the National Post would know that the Grievor was a professional firefighter. The Grievor indicated he might have said he was a firefighter in tweets, but he did not post a profile picture of himself as such. He indicated that his profile page could have said he was a firefighter, but he could not recall. He indicated he had tried not to make himself known on Twitter as a firefighter, although he admitted that he had written tweets indicating that he loved fire fighting.

51. Dave Holwell gave evidence for the Association. He has been a Toronto firefighter for over 30 years, and has been taking notes for the Association at meetings for the last sixteen years. Holwell's notes were referred to and relied upon by the Association in the course of the hearing. One of the points made was that only in Holwell's notes of the first investigation meeting was there a reference to a question asked by Sheen which he prefaced by noting that the Grievor's Twitter account was locked. The significance of this is not clear to me, as there is no dispute that on the weekend that the NP article was published, the Grievor had locked his Twitter account (around August 10 or 11, 2013), and it is Sheen's testimony that before holding the August 19, 2013 investigation meeting he had Googled "Bassfire3680" to get a look at Edwards' Twitter account, but had been unable to access it. Hence, there is no dispute that by August 19, 2013, the Grievor had locked his Twitter account and his tweets would no longer have been accessible to outsiders who were not already his followers.

52. As he had in his suspension meeting on August 12, 2013 with Kostiuk, at this investigation meeting Edwards asked the Employer about District Chief Ron Barrow's comment in the National Post article, which the Grievor took to mean that he had already been 'found guilty' without having been proven so at the time. Sheen told the Grievor that it was his understanding that Barrow had made the comment without having the context. Ron Barrow did not testify in this proceeding so I do not have any evidence before me as to what Mr. Barrow was thinking at the time that he made his comment to the National Post. However, Barrow was not a member of management, and had no participation in the investigation or termination of the Grievor.

53. Towards the end of the first investigation meeting Edwards again stated that he was apologetic if someone had taken what he said the wrong way, and indicated he had exercised bad judgment in failing to lock his Twitter account. Edwards also gave the Employer a second Twitter post that he had sent showing that he was a fan of women who are strong. In that exchange dated July 3, 2013, Jen Comas Keck, a female strength and conditioning coach in the United States who Edwards follows, stated "Deadlifting isn't just for men and competitive powerlifters; there are tons of benefits for women, too!" and provided a link to her latest article. Edwards tweeted back "Great articles, good videos showing strong women."

54. The Grievor testified that he was fully supportive of TFS recruitment of more women into the Fire Services. I accept Edwards' evidence in this regard as genuine and heartfelt. Edwards also testified that he had never ever discussed the women in the TFS on line, and that he respected the women at his Fire Hall, who had trained and worked with him. There is no evidence to contradict the Grievor's testimony in this regard.

55. Sheen and Labine testified about the Grievor's demeanor at the August 19, 2013 meeting. According to Sheen, Edwards appeared to him to be aggressive in the way that he approached some questions. In particular, Edwards had indicated that he wanted to be educated on how the tweets made him abusive to women. Sheen also testified that he felt that the Grievor was angry that Sheen was questioning him and suggesting that he was abusive towards women. According to Sheen, the TFS was not trying to establish that the tweets were abusive towards women.

56. Ms. Labine testified that she thought that Edwards had been very stiff and serious, as though he was concentrating intensely, that he had a clenched jaw, and had sat with a clenched fist in the August 19, 2013 investigation meeting. She stated that the Grievor's answers were short, curt, and in general she recalled that he answered questions put to him with questions of his own.

57. According to the Grievor he had attended the first meeting feeling that the TFS had already judged him, and that he was not being supported by the TFS while the Employer conducted its investigation. He was particularly upset by Ron Barrow's comment in the NP article. Ultimately, the Grievor was of the view that the Employer made no effort to find out what he was really like as neither his Captain nor anyone on his crew had been interviewed. He felt that had anyone spoken to them, they would have heard that he was neither sexist nor racist.

58. Edwards testified that during the investigation he had sometimes asked questions because he was trying to understand how he had offended the City or TFS so that he would know how not to do so again.

59. Following the first meeting with Edwards, Deputy Chief Mike McCoy provided the investigating team with information that had been provided to him by

email from Mr. Tony Araujo, who the TFS described as a private citizen with a keen interest in the TFS. Mr. Araujo was not called to testify, so it is unclear what his motivation was, or how he had collected the information he provided to the TFS. Araujo had provided the TFS with screen shots of tweets sent by a number of Toronto firefighters, including two tweets that Edwards had sent. Araujo had also provided the TFS with a screen shot of Edwards' Twitter profile page. In his cover email Araujo indicated that he hoped that the TFS would "take appropriate action to deal with firefighters who are not only sexist, but racist as well and unfit for public service with the City of Toronto". As will become apparent from my review of the evidence regarding the two Edwards' tweets that Araujo sent to the TFS, it is not clear that he thought that they were either sexist or racist.

60. Based on the information Sheen received from McCoy, the TFS decided to hold a second investigatory meeting with Edwards. Sheen testified that he had never met or had any dealings with Araujo himself regarding the matters that the TFS raised with Edwards in the second meeting.

61. On August 26, 2013 the second investigation meeting was held. In attendance were David Sheen, Marilyn Labine, Mike McCoy and Dan MacIsaac for the Employer. Edwards, along with Ed Kennedy, Dave Holwell, Damian Walsh and Neil McKinnon attended for the Association. Ms. Labine had drafted the questions for this meeting, and again took notes for the Employer, while David Sheen asked the questions. According to Labine, the Grievor seemed more tense and clenched at this meeting than he had at the first one.

62. Sheen opened his questioning with a query about the "sweetie" tweet sent by the Grievor to Ms. Marashixo. Specifically Sheen asked what the Grievor's intention was in sending that tweet, and whether he understood why some people would find it offensive. The Grievor indicated that there was no particular reason for having used the term "sweetie"; that he addressed his girlfriend in that manner, and that there was nothing offensive about it. He noted that he addressed his friends as "Hon" and they referred to him as such too, and that he was familiar with Ms. Marashixo. As it was an interaction with a friend, he could not understand why she would find it offensive, and he pointed out that she had not in fact found it offensive.

63. Edwards stated that the tweet was part of a private conversation, that the recipient had never said she was uncomfortable, and that she was someone he had been out with. As a way of differentiating context or circumstances, Edwards indicated he would not have used either "sweetie" or "hon" with Ms. Labine, who was present in the room, because they were in a professional environment.

64. David Sheen's testimony in cross-examination on the "sweetie" tweet is instructive regarding how the Employer viewed the use of this word. In Sheen's view the use of the term "sweetie" was demeaning to women. He testified that even if a firefighter had used "sweetie" in the context of sending a tweet to his wife to say he was going to be home for dinner at 4 o'clock, that too would be demeaning to

women because "someone" may not know of the relationship to his wife. According to Sheen, it did not matter what the Grievor's motive may have been in sending a tweet: What mattered was that the tweet could be seen by someone in the public who would not know who the Grievor was or the context in which he was tweeting. Sheen testified that even a tweet that had been sent before the Grievor became an employee of the TFS might have had consequences, although that was not a problem in this particular instance.

65. Christina Giampa testified for the Association. She is a Toronto firefighter, and confirmed the Grievor's evidence that she had been a part of Edwards' recruit class of early 2011. Giampa has never worked at the same fire hall as Edwards. She confirmed that she, the Grievor and Marashixo had spent a day together at Canada's Wonderland not too long before the tweet that is the subject of this case.

66. Giampa explained the context of the "sweetie" tweet. Recruits train at the Fire Academy, and although Giampa was no longer a recruit, she was doing combat challenge training there on February 6, 2013. Her cousin, Maryam Marashixo, happened to also be at the Academy with a Fire Venturers program. That program introduces young people to the fire service and lets them try out equipment at the Fire Academy. Marashixo had tweeted about seeing Giampa at the Fire Academy that night, and as a follower of Giampa, the Grievor would have seen the tweet. Giampa saw the Grievor's tweet in response as she was an Edwards Twitter follower. She found nothing wrong or offensive in the use of the word "sweetie", and testified that in her experience Edwards is very positive about women in the TFS. He had been friendly towards all the women in their recruit class.

67. At the second investigation meeting the Grievor was cross-examined about comments that he had made in the first investigation meeting. He essentially stated that Twitter is a medium in which people can express their random thoughts, and that no one takes it seriously.

68. Regarding the "swat in the back of the head" tweet, the Employer asked the Grievor why he would have said that a man would deserve more of a swat to the head for saying "like" than would a woman. Edwards responded that he was alluding to the misuse of language, and that a man saying "yo, yo, yo" would also not be using a proper vocabulary.

69. The Employer asked the Grievor again about his Twitter handle, and whether he had identified himself as a Toronto firefighter in his tweets. The Grievor maintained that besides saying in his tweets that he loved fire fighting, he did not believe that he had so identified himself. He stated that if he had had a reference to being a Toronto firefighter, he did not know.

70. When provided with a copy of his Twitter profile showing that in fact the Grievor had identified himself as a "Toronto Firefighter, avid gym rat and ball hockey enthusiast", his first response was to ask when the screen shot of his profile

had been taken. When Sheen told him that he did not know (because the Employer had received the copy from Tony Araujo and did not know when it had been taken), the Grievor indicated he had had that on his profile, but that he had taken it down. He stated that he could not remember when he had taken that aspect of his profile down.

71. Later at this second investigation meeting the Grievor advised the Employer that he believed that he had changed his profile about a month before, and he did not know when the Employer had got the screen shot of the profile that had been shown to him.

72. During his testimony David Sheen explained that in a Twitter feed, next to each new post is a photo next to the name of the writer. If one clicks on the picture, one is taken to the writer's profile page, unless the person has made their profile private. In this case, the Grievor's picture next to his name was a drawing of Batman.

73. Neil McKinnon testified for the Association. McKinnon has been a firefighter with the TFS for 24 years, and is currently the Grievance Chair for the Association. When he heard about the NP article on August 10, 2013, he Googled the three names in the article to see who they were (Matt Bowman, Dean Somerset and Lawaun Edwards). For Edwards, his Twitter account came up, so McKinnon went to his profile page. However, he was unable to go any further. McKinnon testified that to his recollection there was a headshot picture of Batman, and while there was some text, there was no reference to Edwards being a Toronto firefighter.

74. In cross-examination McKinnon conceded that the Batman picture that Edwards had on his Twitter profile was not a headshot, but rather was an action shot that included most of the figure's body in motion. McKinnon indicated he had not looked that carefully at the profile on August 10, 2013, although he was adamant that he had been looking for reference to whether the Grievor had identified himself as a Toronto firefighter or not. He maintained that when he saw Edwards' profile, it had not had the reference to "Toronto firefighter" on it.

75. McKinnon also testified in cross-examination that he had looked at Edwards' Twitter profile page again on September 2, 2014, and once more on the morning of September 3, 2014, the day he testified in this proceeding. He noted that the profile picture had changed, and was now that of Spiderman.

76. On August 26, 2013, Edwards told the Employer he did not understand how his tweets could have violated the *Human Rights Code* and reiterated his request to be educated on how that was the case. He continued to maintain that the tweet in the NP had been taken out of context.

77. At the second investigation meeting the Employer asked the Grievor about a tweet it had received from Araujo. As Araujo had prefaced the tweet with "???" it is

unclear whether he thought that the tweet was objectionable. On April 17, 2013 Edwards tweeted "new North Korean drink "Tears of our Children" what do you people think? #noracist". Edwards admitted that he had sent the tweet, and indicated he did not honestly recall what was going on at the time, but he believed that tensions had been high in North Korea. He pointed out that he had used the hash tag "noracist" because he did not mean anything racist by the question. Sheen told the Grievor that the tweet had been brought to the TFS' attention because someone found it offensive.

78. As already noted, it is not clear to me that Araujo did in fact complain about this tweet to the TFS; he appears to have been unsure of what it's significance may have been as indicated by his question marks before including the tweet in what he sent to the TFS. According to Sheen, having heard the Grievor's explanation regarding the North Korean drink tweet, the Employer was satisfied that no racism was intended. It is noteworthy at this point that the Employer did not ultimately rely on this tweet in reaching its decision to terminate the Grievor's employment, but it had never so advised the Grievor or the Association before the hearing into this grievance.

79. Araujo had provided the TFS with Twitter posts dated April 1, 2013, between Matt Bowman and Lawaun Edwards, which Araujo titled as "Conversation with his friends about not using racist terminology". The entirety of the Twitter exchange was as follows:

> Tyler Stanton@TWStanton8
> @Hero_Matt where did u get it fixed?
>
> Matt Bowman@Hero_Matt
> @TWStanton8
> A paki store in whitby mall. FM communication. No racism intended.
>
> Lawaun Edwards@Bassfire3680
> @Hero_Matt Perhaps u might want to use a better word than "Paki" since it's derogatory, just saying. #ignoranceisapparentlybliss
>
> Matt Bowman@Hero_Matt
> @Bassfire3680
> Nope. This time it's surprisingly accurate
>
> Lawaun Edwards@Bassfire3680
> @Hero_Matt So does that mean if someone ask you where u got those shoes you'll say that nigger store in Pickering? #thinkaboutit
>
> Lawaun Edwards@Bassfire3680
> @Hero_Matt And can we go back to that store and tell ask them if this is a Paki store?

80. The parties explained that "#noracist", "#ignoranceisapparentlybliss" and "#thinkaboutit" are hash tags used on Twitter to give context to a tweet, and do not belong solely to the individual sender. Each is a way of aggregating tweets around a particular subject.

81. When asked whether Edwards had tweeted the remarks attributed to him, the Grievor agreed that he had. He explained that he had been irked by Bowman's use of the word "paki" and had therefore told him to use a better, less derogatory word.

82. Sheen, who testified that he believed that Edwards had used racist terminology, asked the Grievor if he could see that the comment on Twitter may be harmful to the reputation of the TFS, the City and firefighters in general. The Grievor appears to have been incredulous at the suggestion. He explained that he was not condoning what Bowman had said, but rather was correcting him. He indicated that if he had called someone the "n-word" that would not have been appropriate.

83. At the investigation meeting the Grievor was asked if he realized that using the "n-word" in any context could be considered offensive. Edwards responded that since he is Black, and has been around others who use the word, he understands the context of its use. He explained that he was trying to indicate to Bowman how the use of "paki" was not appropriate. He testified that he could have written "n*ggr", but he was talking to Bowman, who knows Edwards is Black, and wanted Bowman to understand the gravity of the use of these words.

84. Edwards has known Matt Bowman since they started in recruit class together in early 2011, and they had become friends. Thus, when he used the "n-word" after it became clear that Bowman could not see the error in his use of "paki", it was because Edwards wanted him to understand the negative weight associated with both of the words. Furthermore, since Bowman knew that Edwards was Black, and Edwards did not want to use any other derogatory racial term, he felt that being Black himself, he could use the word to educate Bowman.

85. Edwards conceded that not everyone who followed him on Twitter would know he was Black, but he believed that his followers understood who he was. He pointed out that if anyone had responded, he would have told them he was Black, of Jamaican background, and a person of colour. No one responded to the Grievor's discourse with Bowman.

86. Sheen testified in cross-examination that in his view whether the Grievor was Black or white, it would have made no difference as in his view the use of the "n-word" was demeaning and inappropriate. In his view once Edwards had brought to Bowman's attention that he should not have used a derogatory term, he should

have left it at that and not engaged any further in trying to make Bowman understand why it was wrong to use "paki" as he had.

87. At this meeting the Grievor was asked if he could understand that his tweet about the swat to the head could be taken as offensive. Edwards conceded that it could, but he continued to maintain that it could only be seen as offensive if someone did not read the entire conversation. He reiterated that he felt that the National Post had taken the comment out of context on purpose.

88. As at previous meetings, Edwards told the Employer that while he did not mean any disrespect to the position the TFS was taking, he felt that he had been found guilty already despite the purported investigation. He felt very uneasy about how he was being portrayed, especially to his sisters and other females, who had not found him to be sexist.

89. When testifying Edwards indicated he was completely in favour of the TFS initiative to increase diversity and to bring more women into the fire services. He also indicated how sorry he was to have brought embarrassment to the City and the TFS.

90. Following the second investigation meeting Sheen and other TFS senior staff including Fire Chief Sales, Deputy Fire Chiefs McCoy and Higgins, met with the City's legal staff and Labour Relations staff, including Ms. Labine, to discuss and analyze what had been learned in the course of the investigation. They determined that Edwards had breached City and TFS rules and policies, and that considering the timing of the Path to Diversity report, his conduct was harmful to their efforts to welcome diverse candidates to the TFS. They felt that Edwards' comments had been disrespectful of the TFS and the City in general, and as a result, determined to terminate his employment. According to Labine, it was not just about one or more of the Grievor's tweets, but also that Edwards had shown a lack of understanding that someone may find what he had said offensive.

91. Even though the Employer had not been supplied with the "sweetie" tweet by Araujo as an example of what he found questionable or offensive, but rather had been given it by the Grievor to try to show that he was supportive of having more women in the TFS, in the Employer's view someone could have found that tweet offensive. With respect to the "swat in the back of the head" tweet, it was Labine's evidence that the Grievor ought to have known that his comment was inappropriate. The Grievor's use of the "n-word" in the "paki" tweets was seen as racist and inappropriate.

92. The City Legal staff, along with the Labour Relations staff, drafted the termination letter dated September 16, 2013, and David Sheen reviewed and signed it. The reasons for the termination have already been outlined generally in para. 3 above. The policies and particular sections that were alleged to have been breached will be reviewed at this juncture.

93. The Human Rights and Anti-Harassment/Discrimination Policy applies to all City employees. It indicates that the City condemns harassment, denigration, discriminatory actions and the promotion of hatred. Furthermore, the Policy states that the City will not tolerate, ignore, or condone discrimination or harassment and is committed to promoting respectful conduct, tolerance and diversity at all times. As well, all employees are responsible for respecting the dignity and rights of their co-workers and the public they serve. The Policy makes reference to the *Human Rights Code*. Under section 3.4 of the Policy employees are responsible for ensuring that their behaviour is respectful when related to all employment activities, and that they do not engage in behaviour that would constitute discrimination or harassment towards members of the public, co-workers, and management.

94. Section 4.8 of the Policy addresses Code Harassment, and defines it as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome based on one or more of the prohibited grounds listed in the *Ontario Human Rights Code*, that a person knows or ought to know would be unwelcome, offensive, embarrassing or hurtful …". Included in the list of examples are slurs or derogatory remarks and condescending or patronizing behaviour.

95. Section 4.10 of the Policy addresses Racial Harassment, and defines it as harassment on the ground of race. Such harassment may include racial slurs or jokes, or name calling because of a person's race, colour, citizenship, etc.

96. According to David Sheen, having identified himself as a Toronto firefighter, the Grievor's use of the "n-word" was racial harassment, and the use of the term "sweetie" was demeaning to women. Edwards' reference to slapping a woman in order to re-set her brain was seen as particularly demeaning and an inappropriate comment directed towards a woman. Sheen believed that these comments also breached section 4:13 of the Policy, in that the Grievor had thereby created a poisoned work environment.

97. Various sections of the Toronto Fire Services Standard Operating Policy, Rules and Regulations, were allegedly breached. In the "General" section of the policy the relevant sub-sections are as follows:

> 0.03 It is every member's responsibility to read and become familiar with all Rules, Regulations, Standard Operating Guidelines and Policies, and Advisories/Memorandums relating to the Toronto Fire Services. Lack of knowledge of the rules and regulations will not be an excuse for non-compliance therewith, and such lack of knowledge shall constitute neglect of duty.
>
> …

> 0.05 Further, all members of the Toronto Fire Services are employees of the City of Toronto and, as such, are obliged to adhere to all applicable and relevant policies, procedures and guidelines.
>
> 0.06 Any member who violates and/or fails to comply with any section of the rules and regulations may be subject to disciplinary action, up to and including dismissal.

98. Section 12 addresses "Conduct" and the relevant sub-section states as follows:

> 12.01 All members shall conduct themselves in a manner which will not bring discredit to the good reputation of the Toronto Fire Services or its members.

99. Section 15 addresses "Discrimination or Harassment", and states as follows:

> 15.01 It is strictly forbidden for members to discriminate against any person either by word, act, writing, diffusion of literature, or any other means.
>
> 15.02 All members shall conduct themselves in a dignified and respectful manner in their relations with fellow members and with the public, always seeking to build and maintain a good reputation for the Toronto Fire Services.
>
> 15.03 Toronto Fire Services staff shall not engage in physical altercations, threatening behaviour, or harassment, or cause same in the workplace.
>
> 15.04 All members shall conduct themselves in conformance with the City of Toronto Human Rights Policy, the Ontario Human Rights Code and the collective agreement.

100. Sheen believed that while the Grievor had not discriminated against anyone, or engaged in a physical altercation or threatening behaviour or harassment in the workplace, he had breached this section as his three tweets had violated sections 15.02 and 15.04.

101. The letter of termination indicated that the Employer was relying on an alleged breach of two Conflict of Interest policies. At the hearing the Employer conceded that it was no longer relying on any breach of the Conflict of Interest policies.

102. The City's Guidelines for Social Media Use by Employees refers to the use of social media for City business purposes and the personal use of social media. There

is no dispute in this case that the Grievor was not using social media for City business purposes. Nonetheless, the Guideline cautions that work and personal use of social media should be kept separate; that people should recognize that communications on social media sites should always be considered public and permanent; that online communities are not private and that a person's posts may be accessed by a wider audience than intended, or copied to others, or published elsewhere without permission or knowledge. The Guideline includes that City employees should not post obscene or racist content, personal attacks, insults, or threatening language.

103. In the Personal Use of Social Media portion of the Guidelines for Social Media Use by Employees, the City tells staff that some City policies apply to use of social media by employees even when they are off-duty, and has a hyperlink to the applicable policies. The guidelines indicate that where employees identify themselves as City employees they should make clear that their positions or views do not officially represent the City's position, but are their personal views. Furthermore, in their personal use, self-identified City employees must abide by certain policies including the Human Rights and Anti-Harassment Policy, and other applicable policies that govern employee behaviour.

104. The Employer relied on the TFS Standard Operating Guideline ("SOG") regarding Public Relations. That SOG indicates that all personnel in the TFS are responsible for public relations, and at section 2.02 it states that "It is imperative that while in the public eye the Firefighters are portrayed in an image that is fitting with the public perception. Actions must never be seen or implied to use the position for personal gain." Section 2.03 indicates that the TFS performs public relations every time its personnel are in the public eye, and that it takes a concerted effort to maintain a positive stature, which along with the high level of trust for the profession, is worth protecting. Section 2.04 states that "All personnel shall conduct themselves in a manner well reflected in the public eye".

105. In the TFS view, Edwards' tweets were not only contrary to the City and TFS policies and guidelines, but they also harmed the reputation of the Employer and undermined the TFS' efforts to foster a workplace that was diverse and welcoming. They also eroded the bonds of trust and respect within the workplace and the community served by firefighters. Sheen testified that the firefighters' reputation is something that is taken very seriously and that the TFS is proud of the esteem in which the general public holds it.

106. In the NP article, reference was made to cultural understanding training for all TFS staff. According to the article, that was training equivalent to health and safety training. Sheen confirmed that the Grievor had never received that training prior to his termination from employment, although he indicated that the training was meant to teach firefighters how to reflect on their own cultural values, how to respect the cultural differences of their co-workers, and of those they may encounter during an emergency situation.

107. Sheen confirmed in his evidence that the TFS had not received a single complaint from any employee regarding the Grievor or his tweets. The City's Human Rights Office had not been involved in this investigation.

108. In Sheen's view the Grievor had shown no remorse, but rather had been questioning the Employer during the investigation and stating that he could not understand how anyone could take offence at his tweets.

109. According to Sheen one of the Employer's considerations when deciding to terminate Edwards' employment was his demeanor and attitude during the interviews. In considering demeanor, the Employer had considered that all through the investigation the Grievor had expressed that he felt that the process was stacked against him and that he had been prejudged. The second aspect of demeanor that the Employer considered was that the Grievor asked repeatedly what was wrong with the tweets, and asked to be educated about what the Employer found wrong with them. In Sheen's view, the Grievor aught to have known what was wrong with the tweets based on the City policies, about which Edwards had been trained. Sheen also felt that the Grievor had not been forthcoming about how he had identified himself on Twitter, nor about his Twitter handle.

110. In the course of cross-examination of the Employer's witnesses it became clear that no one representing the Employer had reviewed the Grievor's personnel file prior to making the decision to terminate Edwards' employment. However, there was no dispute that he had no discipline on his record, and the Grievor's testimony regarding his good performance reviews was not challenged.

111. The meeting at which Lawaun Edwards' employment was terminated was held on September 16, 2013. At that meeting David Sheen, Deputy Chief Higgins and Deputy Chief McCoy were present for the Employer. The Association was represented by Ed Kennedy, Neil McKinnon, Dave Holwell, and Doug Erwin, along with the Grievor.

112. At this meeting, and for the first time, Sheen asked the Grievor whether he was familiar with the Standard Operating Guideline regarding Personal Use of Social Media. Edwards responded that it was the first time he had seen that policy, and that he did not recall having received it or being trained on it. Edwards again asked what he had done wrong with his tweets and how the tweets were breaches of the Employer's rules. Sheen indicated he would explain after they had taken a recess.

113. It is noteworthy that David Sheen himself was not familiar with the SOG regarding Personal Use of Social Media. He had been aware of it, but had not been familiar with the content of the policy until late in the investigation. He agreed that it was not widely known in the TFS if he himself was not aware of the content of the policy. Sheen further stated given his own lack of personal knowledge of the policy, he had no reason to doubt the Grievor's response that he was not familiar with the

policy and did not believe he had been trained on it. However, Sheen testified that the Employer was satisfied that other policies that were known to the Grievor had been breached. The Employer apparently did not ultimately base its termination on the ground that the Grievor had breached this particular policy, but as noted earlier, the termination letter referred to the Employer's social media policies.

114. Following a recess in the meeting the Employer representatives returned, and Sheen indicated to the Grievor that the comments in the NP article had brought forward the tweet issue, and that what they had learned in the course of the investigation led them to the view that his comments were offensive to women and racist, and were therefore inappropriate. The Grievor asked if Sheen meant his calling the person he knew "sweetie" and his use of the "n-word", and was told that was correct. Sheen then went on to advise the Grievor of the termination of his employment, and handed him the termination letter.

115. The TFS does not ask recruits whether they have Facebook or Twitter accounts before or at the time that they are offered positions in the Fire Services. Furthermore, the Employer does not ask its employees to provide the City with access to an employee's Facebook or Twitter account.

116. Dara Douma testified for the Association. Ms. Douma has been with the TFS since 2009. She has never worked with the Grievor in the TFS, but has known him since before 2009 when they were both in pre-service training at Seneca College. At that time they were in the same platoon for the twelve-month Seneca program. Since then Douma has stayed in touch with Edwards, although she is not on Twitter.

117. When Douma read the NP article she felt that she had to respond, so she sent an email to Firefighters Neil McKinnon and Damien Walsh on August 25, 2013. She explained that she had known Edwards since their pre-service training program at Seneca College, and stated with certainty that he was a "class act". Douma noted that Edwards had treated her equally and with respect, and that he is not one of the firefighters that they should be worried about.

118. With respect to Edwards' tweet reported in the NP article, Douma felt that, in an albeit awkward manner, he had been promoting a world where women are respected for their intelligence. She noted that Sheen's comments in the National Post were more problematic, and that a young firefighter should not be held to a higher standard than the leadership.

119. Douma was very articulate in describing why she felt that it was not helpful to women in the TFS to single out young male firefighters for their alleged sexism. She noted that if the TFS wants to address sexism and create a more inclusive and respectful workplace, it would do better to look to its chiefs rather than starting with the lower workers. Douma pointed out that Division Chief David Sheen's comments in the NP article suggested that he had shown a sexist attitude by suggesting that childcare issues were a woman's issue and not also that of a man. In

her view it was more important for the TFS to address the systemic issues that may make the workplace less inclusive than to focus on the isolated comments of someone like Edwards.

Submissions of the parties

120. The Employer argued that it has established that it had just cause to terminate Edwards' employment following its investigation. In particular, it states that the Grievor's tweet as reported in the NP article harmed the reputation of the City and the TFS, especially as the article came out in the immediate aftermath of the TFS having publicized its Path to Diversity report, and its commitment to hire more women and visible minorities to the TFS.

121. The Employer relies on the TFS and City of Toronto policies and guidelines, which had been brought to the Grievor's attention during his recruit training, and which were available to him at his fire hall. It noted that the Grievor had received more human rights-related training in February 2012.

122. The TFS notes that the Grievor acknowledged that he had sent all of the tweets in question. There is no dispute that the tweets were sent while Edwards was off-duty. The Employer argues that the "swat in the back of the head" tweet in particular tarnished its reputation, potentially contributed to a poisoned work environment as it could lead to a breach of the *Human Rights Code*, and did not reflect a firefighter acting in a respectful and dignified manner as required under its rules of conduct. Furthermore, the Grievor had identified himself as a Toronto firefighter, but did not have any disclaimer on his profile, or indeed anywhere on his Twitter account, to make clear that his tweets were his own views, and not those of the TFS or the City of Toronto.

123. According to the Employer, the City's Anti-Harassment and Discrimination policy states that slurs, derogatory remarks, condescending or patronizing behaviour may all contribute to a poisoned work environment, and it is not necessary that comments be directed at a particular employee for there to be a breach of its policies. That policy, which is consistent with the TFS policy, also prohibits discrimination on Code-based grounds, which include race and ethnicity.

124. The Employer relies on its assessment that the Grievor showed no remorse for any of his tweets during the investigation, nor did he take responsibility for posting the comments. Rather, in its estimation, the Grievor challenged the Employer repeatedly asking how he had breached the *Human Rights Code*. It further believed that the Grievor had not been completely candid with the TFS during the investigation when he was asked about his Twitter handle, "Bassfire3680", and the content of his profile page.

125. With respect to the "sweetie" tweet the Employer argues that the Grievor was not addressing his girlfriend but rather a young woman who had an interest in

becoming a firefighter, so that his use of the endearment on social media was inappropriate.

126. Regarding the "paki" Twitter exchange, it is the Employer's position that Edwards' use of the "n-word" was offensive, and was harmful to the reputation of the TFS since not everyone who would have seen the tweets would have known that the Grievor is a Black man.

127. According to the Employer, the evidence shows that the Grievor knew that Twitter was a social media tool, and that it was not a tool for private communication. He was aware of the TFS and City of Toronto policies and of the TFS' efforts to encourage diversity, and that in that context, Edwards should have considered how his comments would reflect on the Fire Services. It asks that the termination be upheld and the grievance dismissed.

128. The Employer relied on a number of cases in support of its position regarding the test that should be applied in considering the Grievor's off-duty conduct and how that test should be applied to the facts of this case. The relevant case law will be reviewed later.

129. The Association argues that the Employer has not established that it had just cause to terminate the Grievor's employment, and that he should be reinstated with full compensation; punitive, aggravated and exemplary damages; and, an apology from the City and the TFS. It notes that within days of the September 16, 2013 termination, on September 24, 2013 the Association had made a 'with prejudice' proposal to the TFS. It had suggested that the TFS reinstate Edwards without prejudice to the parties' respective positions pending the outcome of the grievance process. The Association had indicated that the offer was an attempt to reduce the hardship that the termination would cause the Grievor, and to minimize the expense that the City would incur if an arbitrator reinstated the Grievor to employment.

130. According to the Association this is an unusual case in that the alleged misconduct was not of a public or criminal nature, was not the result of a workplace complaint, nor a complaint from a client, but rather was the result of a newspaper article which deemed one of the Grievor's tweets to be sexist. To the extent that the Employer received further information about Edwards' tweets, it got such information from Tony Araujo and from the Grievor himself. Since neither Araujo nor anyone from the National Post testified in these proceedings, the Association asserts there is no evidentiary basis for me to find that they in fact found the tweets in question to be offensive.

131. It argues that the issue to be decided in this case is whether on an objective standard it can be found that the purportedly objectionable tweets were in fact offensive or discipline-worthy. Thus, the Association asserts that the test to be applied is a two-fold one: the first step is to decide whether the Grievor's tweets amounted to misconduct or breach of the Employer's policies. In conducting the

first step of the analysis, the Association states that I must consider whether the Grievor was in the public eye when he was tweeting. Only if I find that he ought to have known he was in the public eye would he be bound by the Employer's policies, and I would then have to determine whether the tweets amounted to misconduct or breach of the Employer policies. If so, the second step in the analysis would be to determine whether that misconduct warrants discipline or discharge.

132. Relying on the chronology of events that occurred between August 9, 2013 and the date of termination September 16, 2013, it is the Association's position that the Employer mishandled the investigation from the start, and by its comments and conduct before and during the investigation indicated that it had prejudged Edwards as having done something improper and embarrassing to the TFS. In the Association's view, the TFS and the City of Toronto "threw the Grievor under the bus" in their collective effort to distance themselves from the tweets that had been reported in the National Post article. In making its views public, the Association asserts that the TFS tarnished the Grievor's reputation before it had even conducted an investigation into the tweets that were ascribed to Edwards.

133. The Association points to David Sheen's comments in the NP article and states that he is a Division Chief, has been a firefighter for 23.5 years, is responsible for community outreach and recruiting, has received media training, and still spoke to a National Post Editor in a manner that was sexist and demeaning towards women. It asks how the Grievor, who had been a firefighter for a short time and who thought he was tweeting with someone known to him, in a context that he did not believe was public, could be held to a higher standard than the TFS leadership.

134. In its closing arguments the Association accepted that firefighters could be held to a higher standard than some other types of workers. It conceded that Edwards should have known that his comments in a social medium like Twitter were public, and not akin to a private conversation with a friend or family member. There is also no dispute that the Grievor had been made aware of the Employer's policies and that he was bound by them. The only policy that he would not have been aware of was the last Social Media policy that was put to Edwards at the termination meeting. Hence, the Association agrees that the Grievor was responsible for reading the rules and policies, and that he bears any responsibility if he did not do so. However, the Association questions whether the Grievor would have known that it was a breach of the rules or policies to tweet.

135. In response to the Employer's assertion that the Grievor had been tense and aggressive, and had not shown remorse during the investigatory meetings, the Association noted a number of factors that had been at play when Edwards was called to the four meetings he had with the TFS. It noted that the Grievor was aware of the remarks made in the NP article by Ron Barrow, and the TFS' leadership's comments thereafter. These upset the Grievor such that by the time that the investigation meetings were held, he felt that he had been found guilty of wrongdoing without anyone having asked for his side of the story. According to the

Association, the Grievor's behaviour at the two investigatory meetings was a reflection of how he felt he was being treated.

136. Regarding the lack of remorse, the Association asserts that the Grievor did not show any because he did not believe that his tweets had been inappropriate. It notes that he was sorry about how the NP article had affected his co-workers, the TFS and the City, and he was sorry that he had not locked his Twitter account earlier, but he felt that the NP article had misrepresented his tweets as sexist or abusive towards women.

137. In the Association's view the Grievor had been prejudged based on the TFS' public comments, and the tone and language of its questions to Edwards in the two investigation meetings. It asserts that to the extent that anyone did any investigating it was the National Post and Tony Araujo who appear to have provided the Employer with information, and even the latter only apparently found two questionable tweets to send to the TFS out of the Grievor's approximately 1500 tweets sent at that juncture. The Association points out that Araujo apparently did not find the "sweetie" tweet questionable as he had not provided that to the Employer. The Employer never considered the Grievor's personnel record, which would have included his length of service and lack of any discipline, nor did it interview anyone who had supervised Edwards in his two and a half years at the TFS.

138. The Association argues that the Grievor's tweets should not be found to be offensive, sexist or racist just because someone, whether the National Post or Araujo, neither of whom testified, are purported to have found them so. Rather, the tweets have to be considered by objective standards.

139. Since the Grievor's tweets were done while he was off duty and were not about or directed at anyone in the workplace, the Association argues that there is no basis for finding that any of the tweets could amount to workplace harassment or to the creation of a poisoned work environment. The Association questions how the Grievor could have known that tweeting could cause him to run afoul of the Employer's policies since Twitter was never mentioned in any of the policies, or in the training sessions that Edwards had attended.

140. With respect to the three tweets that the Employer relied upon to dismiss Edwards, the Association argued that none of them should be found problematic. It argues that the "swat in the back of the head" tweet could not be seen by any reasonable person as advocating abuse of women. Rather, according to the Association, this tweet should be seen in its context as being a 'tongue in cheek' comment, or as 'funny', but not as directed at women in general. It pointed out that Edwards did not participate with Dean Somerset in raising the exchange to a sexualized one when Somerset suggested that the swat could constitute foreplay.

141. Regarding the "paki" tweet, the Association notes that it was not quoted in the National Post, and even Tony Araujo called it a "conversation with his friends about not using racist terminology". Furthermore, it is argued that any reasonable person reading that Twitter exchange could see that Edwards used the "n-word" in an educational context in trying to make Bowman understand that it was derogatory to use the term "paki".

142. With respect to the "sweetie" tweet, the Association argues that on no objective analysis would a reasonable person find that Edwards' use of that term of endearment to be sexist or inappropriate to the point of attracting discipline. It notes that neither Giampa nor Marashixo, nor anyone else, found the term offensive. The Association further notes that nowhere in Marashixo's tweet did she say she was interested in joining the TFS, and that Edwards was just encouraging her to consider it.

143. It is the Association's position that none of the five tweets that the Employer reviewed during its investigation was directed at the Employer or its employees; they did not advocate any criminal misconduct or breaches of the *Criminal Code*; they were not breaches of any legislative provisions; and of the Grievor's 49 followers, not one had complained about any of the tweets.

144. The Association addressed the difference in the evidence given by the Grievor at the investigation meetings and when he testified at this hearing regarding his Twitter profile. It noted that at the first investigation meeting Edwards had said his Twitter account may have said he was a Toronto firefighter, but he could not recall. The Association did not outline in its closing argument the Grievor's position on his profile at the second investigation meeting, but that evidence is outlined above. At the hearing the Grievor testified that he had changed his profile between the first and second interviews, which the Association concedes is inconsistent with Edwards' position during the investigation. However, according to the Association, the Grievor was confused at the hearing, and that what he had said during the investigation should be preferred.

145. It appears that it was in the context of the Association's view that the Grievor had been confused when he testified that it had called Neil McKinnon as a witness. The Association argues that McKinnon's evidence should be preferred on the subject of the profile as he had testified that when he went to the Grievor's Twitter profile on August 10, 2013, he had seen no reference to Edwards being a Toronto firefighter. It argues that this was consistent with what Sheen testified to, that he had not been able to see any reference to the Grievor being a Toronto firefighter. Thus, the Association argues that there is no reason to doubt the Grievor's credibility in this regard, but to see his responses at the hearing as his confusion. It notes that the City has not argued that Edwards' evidence should be found to be incredible in any other respect.

146. In its review of the applicable jurisprudence the Association did not disagree with the Employer's case law regarding the standard applicable to the Grievor's off-duty conduct. However, it maintained that there was no basis for finding that there was any misconduct that was worthy of discharge. The Association argued that the cases relied upon by the Employer were not pertinent as they dealt with Facebook or blogs, which it states are different than Twitter. Twitter, it asserts, is more like private communication.

147. The Association's alternate position is that if misconduct is found, it did not warrant discipline, nor that Edwards' continued employment in the TFS would be untenable.

148. As had the Employer, the Association relied on a number of cases in support of its arguments, including some of the same cases as the Employer. The relevant cases will be reviewed later.

149. In reply the Employer argued that there was no basis for a punitive or aggravated damages award, and that this is simply a discipline and discharge case. The Employer challenged the Association's position that the Grievor had been prejudged before the completion of the investigation; it noted that Ron Barrow was not a member of management, and that he had never been involved in any of the investigatory meetings.

150. With respect to the use of the "n-word" in the "paki" Twitter exchange, the Employer position is that it can discipline regardless of the context in which the word was used.

151. On the issue of context, the Employer argued that David Sheen had explained the context in which he had made his comments to the National Post, and that evidence should be considered when assessing whether his comments had been damaging to the TFS' reputation. In the Employer's view, Sheen had explained at this hearing the context of his comments, but the Grievor's tweets in the National Post could be seen in their entirety and had not been taken out of context.

152. With respect to the Association's argument that the Grievor had sent his tweets when off-duty and that his conduct had nothing to do with the TFS, the Employer maintains that since Edwards had identified himself in his Twitter profile as a Toronto firefighter, he is culpable. Furthermore, the Employer asserts that contrary to the Association's contention that Edwards was not tweeting to or about his co-workers, in the "paki" tweets he was directly addressing Matt Bowman, who was a Toronto firefighter, and the Grievor had other firefighters who followed him on Twitter, including females like Christina Giampa.

Decision

153. This being a discharge case, the Employer bears the onus of proving, on the balance of probabilities, that it had just cause to terminate the Grievor's employment. The generally accepted arbitral approach is to first consider whether the employee has done something that would give the employer just and reasonable cause for some form of discipline; if so, the second step is to consider whether the decision to dismiss the employee was an excessive response in all of the circumstances of the case; and finally, if an arbitrator considers that dismissal was an excessive disciplinary response, what alternative disciplinary measure should be substituted (*Re Wm. Scott & Company Ltd. and Canadian Food and Allied Workers Union Local P-162*, [1976] BCLRB 46/76 (P.C. Weiler) at p. 5).

154. In this case the Grievor has admitted from the outset that he made each of the three tweets in question. There is also no dispute that they were all made while the Grievor was off-duty from his work as a firefighter. As such, the question is whether what Edwards tweeted in his off-duty hours amounted to misconduct on his part, and if so, whether that misconduct warranted his dismissal from employment, or whether some lesser disciplinary penalty would be more appropriate in all of the circumstances of this case.

155. *Millhaven Fibres Ltd. v. Oil, Chemical & Atomic Workers Int'l Union, Local 9-670*, [1967] O.L.A.A. No. 4, is the seminal case addressing discipline of an employee for off-duty conduct. In that case, the board of arbitration stated as follows in this regard:

> 19. There are a number of arbitration cases which deal with disciplinary matters arising out of the conduct of an employee at a time when he is not in the Plant. Generally speaking, it is clear that the right of management to discharge an employee for conduct away from the Plant depends on the effect of that conduct on Plant operations.
>
> 20. In other words, if the discharge is to be sustained on the basis of a justifiable reason arising out of conduct away from the place of work, there is an onus on the Company to show that:
>
> (1) the conduct of the grievor harms the Company's reputation or product
> (2) the grievor's behaviour renders the employee unable to perform his duties satisfactorily
> (3) the grievor's behaviour leads to refusal, reluctance or inability of the other employees to work with him
> (4) the grievor has been guilty of a serious breach of the Criminal Code and thus rendering his conduct injurious to the general reputation of the Company and its employees

> (5) places difficulty in the way of the Company properly carrying out its function of efficiently managing its works and efficiently directing its working forces.

156. Arbitrator Goodfellow, in *Re Ottawa-Carleton District School Board and OSSTF* (2006), 154 L.A.C. (4th) 387, at pp. 392-393, adopted the principles outlined in the *Millhaven* decision, and quoted with approval from *Re Lethbridge (City) and A.T.U. Loc. 987 (Grant)* (2000), 98 L.A.C. (4th) 264 (Tettensor) to the effect that the general consensus amongst arbitrators is that it is not necessary for an employer to show that all of the *Millhaven* criteria exist, but rather that any one of them may warrant discipline or discharge.

157. In the case before me the City of Toronto and the TFS are relying on the first of the *Millhaven* criteria, namely, that the Grievor's conduct, through his tweets, harmed the Employer's reputation.

158. In the *Ottawa-Carleton District School Board* decision (at p. 393), in the context of a school chief custodian who had robbed a bank during working hours, and had come on the school property with a gun in his vehicle, the arbitrator noted that a school board has and must have a reputation for employing persons of good character, and that in that instance the grievor was in a position of trust both in respect of school property and people, as he interacted with children, parents and members of the public on a daily basis. However, he noted (at p. 394) that despite its reputational interests, the school board was not entitled to be the custodian of the grievor's personal character or conduct and stated:

> Employees of school boards, like other employees, do not surrender their personal autonomy when they commence the employment relationship. In order for an employee's off-duty conduct to provide grounds for discipline or discharge, it must have a real and material connection to the workplace, in the manner described above. And, where the interest asserted by the employer, as it is here, is in its public reputation and in its ability to be able to successfully carry out its works, the concern must be both substantial and warranted. The test, so far as possible, is an objective one: what would a reasonable and fair minded member of the public (in this case, the school community) think if apprised of all of the relevant facts. Would the continued employment of the grievor, in all of the circumstances, so damage the reputation of the employer as to render that employment impossible or untenable?

159. While the cases from which these principles arise have very different sets of facts from those before me in the instant matter, the parties agree that these should be the guiding principles in this case.

160. Edwards was a Toronto firefighter, employed by the City of Toronto in its Fire Services. As such, he was a public servant who, because of the work he did, presented one of the more significant public faces of the City. His duties required him to fight fires and to try to save members of the public in dangerous situations. In light of the public nature of the work, the Grievor was aware from the time of his recruit training that the TFS expects its members to conduct themselves in a manner that would not bring discredit to the Fire Services' good reputation. He also knew, having been trained in this regard on the policies of the TFS, that members of the TFS are expected to conduct themselves in a dignified and respectful manner in their relations with the public, always seeking to build and maintain a good reputation for the TFS. I am satisfied that the City of Toronto and the TFS have a legitimate and significant interest in ensuring that their firefighters meet these standards, even when they are not at work.

161. In *Toronto District School Board v. CUPE Local 4400 (Van Word)*(2009), 181 L.A.C. (4th) 49 (Luborsky) (at para. 65), the arbitrator noted that actual or potential reputational damage as a result of an employee's misconduct need not be proven through direct evidence of negative press scrutiny, public controversy, or any other similar substantiation. Rather, it is enough for an employer to establish that the conduct in question is of such a magnitude as to have the potential for significant detrimental impact on the employer's business reputation or ability to operate its business effectively. It is not a question of whether the conduct is inherently immoral or illegal.

162. In this case there was negative press scrutiny of the TFS. The August 2013 National Post article, posted on line and in print, questioned the TFS' commitment to recruiting more women and racialized persons to its ranks because it had found tweets by two male firefighters, which it characterized as hinting at a culture that was not very welcoming towards women. The article quoted in its entirety Edwards' Twitter exchange in which he asked whether a swat to the back of a girl's head would be considered abuse or a way to re-set her brain. Since the National Post is a well-known newspaper, it is obvious that the article would have been read by countless numbers of people, both in Toronto and elsewhere. It is also obvious that the article does not cast the TFS in a positive light, despite its efforts to improve its hiring practices with the Path to Diversity plan.

163. As did Arbitrator Goodfellow in *Re Ottawa-Carleton District School Board*, cited above, I accept that the City of Toronto and the TFS have a reputation to protect, and must be seen to be places of employment where women and racialized persons are welcomed and treated with respect. The Employer's interest in being seen in this manner was particularly acute in the summer of 2013 when the Chief of the TFS had presented the Path to Diversity report to Toronto City Council's Executive to explain what the TFS planned to do to increase the low number of women and visible minorities in its ranks.

164. The next questions to consider are whether Edwards' off-duty tweets had a real and material connection to the workplace, and whether the Employer's concerns about the impact of his tweets on its reputational interest were substantial and warranted.

165. The "swat in the back of the head" tweet was part of a conversation with a strength and conditioning coach, not someone in the TFS. However, Edwards had both male and female firefighter colleagues among his 49 followers. The "sweetie" tweet was part of an exchange that included Christina Giampa, who is a Toronto firefighter. The "paki" exchange was with Matt Bowman, who is also a Toronto firefighter. As such, all of the tweets had some connection to the workplace, whether marginally through the following that Edwards had on Twitter, or more specifically in the latter two circumstances.

166. The arbitrator in the *Saskatchewan Government and General Employees' Union v. Government of Saskatchewan, Ministry of Corrections, Public Safety and Policing* (2009), 106 C.L.A.S. 157, decision noted that "the reality of Facebook and other internet sites is that privacy and secrecy can never be guaranteed. Participants can never be entirely sure who will view the site" (at para. 127). In my view the same may be said about Twitter.

167. Edwards maintained that he believed that his conversations on Twitter were private, but he had no basis for that belief. While Edwards had not read Twitter's Terms of Service, they had been available for him before he signed on to the service. If he did not read them, he did so at his own risk. In any event, even if he did not read the Terms of Service, he knew that Twitter was a way to have discussions with a wide range of other Twitter users, including his friends, family, colleagues, and total strangers who he was interested in following on Twitter. Edwards had been able to find such strangers, like the strength and fitness coaches he followed elsewhere in Canada, by simply looking up his areas of interest or by name, on Twitter. Those individuals did not need to know him in order for him to become a follower and to have conversations with them. Indeed, the "swat in the back of the head" exchange was with Dean Somerset, a person who Edwards only knows as being a strength and conditioning coach.

168. Edwards was also aware that anyone could re-tweet what they had seen on Twitter. Since he had not locked his Twitter account, he would have had no way of controlling to whom else his followers may re-tweet his comments. The fact that his "swat in the back of the head" tweet came to the attention of the National Post is clear enough proof that it could and did have very wide distribution. As such, I cannot accept the Grievor's claim that when he was tweeting the messages that are the subject of this grievance that he believed what he was tweeting was only going to the person to whom it was addressed. At the very least he knew messages were going to those he followed, and/or to his own followers, and to anyone else to whom a recipient re-tweeted his messages. In each of the three tweets in question, Edwards had not been the direct recipient of any of the messages, but rather he had

insinuated himself into a conversation precisely because the Twitter posts were open and public.

169. For the reasons outlined earlier, I am satisfied that there was some connection between the Grievor's tweets and the workplace, and that there was no basis for the Grievor to believe that his tweets were private.

170. The Employer and Association provided me with some cases which have been decided more recently involving the use of social media by various types of employees, or where there had been criminal misconduct by an employee. While none of the decisions dealt with Twitter, some addressed Facebook postings and blogs. I have found the principles outlined in the social media cases to be generally useful to my consideration of this case. However, as each case of discipline or discharge turns on its own particular set of facts, all of the cases provided were sufficiently distinguishable as to make them of limited value in determining this case. Some of the social media cases are reviewed here simply to illustrate the variety of fact situations, and why in some instances arbitrators have upheld the discipline or termination of employees.

171. In *Bell Technical Solutions v. CEP (Facebook Postings Grievance)* (2012), 224 L.A.C. (4th) 287, Arbitrator Chauvin dealt with Facebook postings by three employees, two of whom had been dismissed and one had received a five-day suspension. While off-duty the grievors had posted pictures and comments that the employer alleged to be insulting and offensive to the company and a supervisor. The arbitrator upheld the discharge of one of the grievors as he found that the employee's Facebook postings had been frequent, derogatory to both the company and the supervisor, and had been done over a prolonged period of more than 16 months. A second grievor, who was also found to have posted derogatory comments, was reinstated with a one-year suspension because the arbitrator found that employee had been the subject of inappropriate conduct by the supervisor, so that his behaviour was found to have been provoked. The suspension was upheld with respect to the third grievor because while his postings were found to be less frequent than those of the other two employees, they had been insolent and he had been insubordinate to his manager when he did not stop making the postings after having been spoken to about them.

172. At para. 112 of the decision the arbitrator noted the following in respect of Facebook postings:

> 112. It is well established that inappropriate Facebook postings can result in discipline or discharge, depending upon the severity of the postings. The nature and frequency of the comments must be carefully considered to determine how insolent, insulting, insubordinate and/or damaging they were to the individual(s) or the company. In come cases, the issue is whether the comments were so damaging or have so poisoned the workplace that it would no longer

> be possible for the employee to work harmoniously and productively with the other employees or for the company.

173. In *Re Government of Alberta and Alberta Union of Provincial Employees ("R")* (2008), 174 L.A.C. (4th) 371 (A. Ponak), a government employee was terminated from employment for posting on her blog comments that ridiculed co-workers, expressed contempt for managers, and denigrated administrative processes. The discharge was upheld based on the content of the blog, the grievor's attitude during the investigation meeting, her failure to understand the impact of the offensive comments both during the investigation meeting and at the hearing, and the arbitrator's view that the contents of the blog had irreparably undermined the employment relationship. The grievor in that case had identified herself by name and that she worked for a provincial government department.

174. Arbitrator Ponak noted (at p. 412) that a blog is a form of public expression, and that unless steps are taken to prevent access, anyone in the world with access to the internet may read the content. The arbitrator rejected the grievor's professed ignorance of the public dimension of her blog, and noted that she had taken no steps to limit access to it. The fact that few people in the workplace may have seen the blog was not considered pertinent, as the issue was the content of the blog, and public access to that content. The decision noted (at p. 413) that once the blogs were posted, they were in the public domain, and the grievor had lost control over who would read them.

175. In *Saskatchewan Government and General Employees' Union v. Government of Saskatchewan, Ministry of Corrections, Public Safety and Policing* (2009), 106 C.L.A.S. 157, a board of arbitration addressed the terminations of three corrections workers who, as part of a Facebook group, had made postings that the employer had found to be offensive, disrespectful to First Nations inmates, discriminatory and harassing. At para. 125 of the decision the arbitration board noted the standard to which these employees should be held:

> 125. First, the Grievors are peace officers and, as such, are held to a higher standard in both their work and private lives. Their conduct is subject to greater scrutiny by the public which necessarily leads to greater scrutiny by their employer. The bottom line is that what corrections workers and other peace officers do off duty is relevant.

176. In the *Saskatchewan Government and General Employees' Union* case, cited above, as in others relied upon by the Employer, the termination of employees for one or more Facebook postings were upheld (see also *CEP Local 64 v. Corner Brook Pulp and Paper Ltd.* (2013), 239 L.A.C. (4th) 87; *Bell Technical Solutions*, cited above; *Wasaya Airways LP v. ALPA (Wyndels)* (2010), 195 L.A.C. (4th)1; *USW Local 9548 v. Tenaris Algoma Tubes Inc. (D Grievance)*, [2014] O.L.A.A. No. 180). However, in each of these cases the employee or employees involved had been making insulting or

demeaning comments on social media sites about their employer, co-workers, managers, or client group.

177. In the *Tenaris Algoma Tubes Inc.* decision, cited above, the arbitrator addressed the union's argument that the employer's policies did not specifically refer to Facebook or other social media, and did not indicate specifically that offensive postings may lead to discipline or discharge. At para. 47 of the decision Arbitrator Trachuk noted that "the point of posting on Facebook is to "share" one's views with other people. It is an act of publicity" and that the grievor knew that he was sharing his extremely violent views about a female co-worker with all of his Facebook friends, which included other co-workers. The arbitrator accepted that notwithstanding that the company's policies did not contain specific reference to Facebook, it did have anti-violence and anti-harassment policies, and that it should be obvious that should threatening or harassing behaviour be found, it could result in the potential employer response of discipline or discharge (at para. 47).

178. I cannot accept the Union's position that Twitter is more like a private conversation than are Facebook postings or blogs. Twitter is a social medium designed to permit those who wish to make comments or statements in 140 characters or less to do so. Those comments, unless a Twitter account is locked, may be viewed by one's followers, or may be re-tweeted to ever-larger circles of others' followers. It in fact permits a very public conversation between participants who may not know each other at all, except by having become followers.

179. It would be counter-intuitive to find that simply because the Employer's various policies do not specifically refer to Twitter, that the Grievor or other employees would not be aware that they would be bound by those policies in their interactions with other on this form of social media. In reaching my decision I am not relying on the Employer's Social Media policy and the section regarding personal use as I am satisfied that if David Sheen, in his managerial and very senior position, was not aware of its contents until well into this investigation, it should not be surprising that the Grievor was not aware of it. However, that does not absolve the Grievor of knowledge of enough of the Employer's other policies that he should have been well aware that how he conducted himself in the public eye, even in his off-duty hours, was important to the TFS.

180. In particular, the Grievor was aware of the TFS Standard Operating Policy, Rules and Regulations, section 12.01 that required members of the TFS to conduct themselves in a manner which would not bring discredit to the good reputation of the TFS or its members. He was also aware of section 15.02, which required firefighters to conduct themselves in a dignified and respectful manner in relations with both fellow workers and the public, always with a view to building and maintaining a good reputation for the TFS. The TFS Standard Operating Guidelines regarding Public Relations stated at section 2.03 that every time TFS personnel are in the public eye they must maintain a positive stature, and at section 2.04 staff were told that they must conduct themselves in a manner that would reflect well in

the public eye. Thus, it could hardly be said that the Grievor was not made aware that at any time that he was engaging with the public he was expected to act in a manner that would not bring discredit to the TFS, and in fact, the rules and regulations put a more positive expectation on firefighters, that they must always be good ambassadors for the Fire Services. It is against this backdrop that the Grievor's tweets must be considered.

181. I will now address whether there was a real and material connection between the Grievor's off-duty conduct in relation to each of the specific tweets and his workplace, and will also address whether each of the tweets constitutes misconduct.

182. One of the considerations in assessing whether Edwards' off-duty conduct could have had any connection to his workplace is whether he had identified himself with his workplace in any way. There were some contradictions in the Grievor's evidence regarding how he had identified himself on his Twitter profile, and when he had changed that profile. However, there is no dispute that Edwards had, at some juncture before the NP article on August 9 and 10, 2013, identified himself by his full name, as "@Bassfire3680", and in his Twitter profile as a "Toronto Firefighter". Despite having identified himself as a Toronto firefighter, Edwards had not stated on his profile that any comments that he may be making were his own personal views, and not those of his Employer.

183. Edwards testified that he had changed his Twitter profile to remove the "Toronto Firefighter" reference approximately one month before August 19, 2013, and that is also what he had told the Employer during the investigation. However, it became obvious in the course of his testimony that Edwards believed that he had not successfully done so by that date, and that he had gone back into his profile after his August 19th interview with the Employer, seen that the profile still indicated that he was a Toronto Firefighter, and it was only then that he finally removed the reference to his being a firefighter. Nonetheless, the Grievor never told the Employer any of this in his second investigation meeting on August 26, 2013, and only testified about this change to his profile at the hearing.

184. Since Edwards told the Employer at the second investigation meeting that he thought he had changed his profile a month before, it seems unlikely that he could have forgotten about changing his profile to remove the reference to "Toronto Firefighter" in the few days between his first and second interviews in the TFS investigation. I cannot accept the Association's argument that the Grievor had become confused when he testified, and that what he had told the Employer at the two investigation meetings should be preferred to his evidence at this hearing. Edwards was given every opportunity during his examination-in-chief and cross-examination to explain fully what had occurred around the profile issue. He maintained consistently that he thought he had changed his profile to remove the reference to being a Toronto firefighter about one month before the first investigation meeting, that after he had been asked about his profile on August 19th

he had gone into his profile again, seen that it still said he was a Toronto firefighter, and that he had then removed it again. He testified that on the second occasion of trying to make the change, he had tried looking at the profile more than once to ensure that the change had successfully been made.

185. While I heard Neil McKinnon's testimony about what he believes he saw on the Grievor's profile on August 10, 2013, and that there was no reference to Edwards being a firefighter on that date, I cannot accept his evidence as conclusive on this subject. McKinnon is not himself a Twitter user, and was not familiar with that social medium. He conceded during his testimony that more than one year earlier he had not looked carefully at the profile. Furthermore, it became clear in cross-examination that McKinnon's recollection regarding the Grievor's profile picture at that time was faulty. For all of these reasons it seems more likely than not that his recollection about whether Edwards' profile identified him as a Toronto firefighter or not was also faulty. In light of the Grievor's adamance about when he had changed his profile, and since he should have been far more familiar with his own profile than McKinnon would have been about someone he did not know at all, I prefer the Grievor's evidence in this regard.

186. In any event, all of the Edwards' tweets that were considered by the Employer in its decision to terminate the Grievor's employment predated when the Grievor, even on his evidence, had tried to change his Twitter profile. Thus, I find that through his Twitter profile, Edwards had advertised that he was a Toronto firefighter, and had thus confirmed a connection between himself as a private citizen and his employer, the TFS.

187. As already noted, the Employer has a legitimate interest in maintaining a good reputation with the public. As with police officers, correctional services workers, school board employees, teachers and others who may be entrusted with the safety and security of members of the public, the Grievor, as a firefighter, may also be held to a higher standard in his personal life than may some other types of workers.

188. The question then is what would a reasonable and fair-minded member of the public think of the Grievor's tweets if apprised of all the relevant facts.

189. Addressing first the "swat in the back of the head" tweet, in my view on the application of the test, that tweet would be viewed as inappropriate. Violence, or the threat of violence, against girls and women is socially unacceptable and may be criminally sanctioned. Jokes or off-hand comments about hitting girls and women are generally viewed with disapprobation. While I have no reason to doubt the Grievor's evidence that he is not abusive towards women, and that he holds strong women in high regard, his tweet that it may be appropriate to swat a girl on the back of her head in order to re-set her brain was an extremely ill-conceived one. It is not a laughing matter to suggest physical assault as a manner of correcting behaviour.

190. The comment was not directed at anyone the Grievor knew or worked with. However, it is noteworthy that the tenor of his tweet elicited an even more unacceptable response from Dean Somerset, when that individual suggested that the slap could be a form of foreplay. While the Grievor, to his credit, did not encourage that line of discourse, it was his initial comment that had moved the twitter exchange from one about a girl's poor language skills to remedies that included swatting and sexual violence.

191. It was this Twitter exchange that the National Post quoted in its entirety when suggesting that the TFS may not be very welcoming towards women. Whatever the Grievor may have meant by his exchange with Somerset, in my view reading the whole exchange does not make it any less problematic. The gist of it remains that a girl in a line up to order coffee used the word "like" more often than Somerset thought was appropriate; he tweeted about it; the Grievor asked whether swatting the girl in the back of her head would be considered abuse, or a way to reset the girl's brain; Somerset responded by asking whether the swat could be considered foreplay; and the Grievor responded by saying that the latter suggestion was unlikely, but that intelligence and vocabulary were sexy, and that saying "like" so many times meant the person had no intelligence.

192. While this Twitter exchange on its own may not rise to the level of supporting the National Post's suggestion that the TFS may not be welcoming towards women, in my view the reporter who wrote the article was not wrong that many people, and women in particular, who would read the exchange may find it offensive. In that respect, I accept the Employer's evidence, as given by David Sheen and Marilyn Labine, that the Grievor ought to have known that making a comment about swatting a girl on the back of the head was inappropriate, and that his comments in the tweets could be seen more generally as demeaning towards women.

193. The "swat in the back of the head" tweet must also be considered in the context of the TFS having just publicized its Path to Diversity report, and its intention to hire more women to the Fire Services. The timing of the National Post's publicity of Edwards' comment could not have been helpful to the TFS' reputation or recruitment efforts.

194. That being said, I do not accept the Employer's contention that the Grievor's tweet about the "swat in the back of the head" caused a poisoned work environment. There was simply no evidence to support such a finding. Edwards was not discussing anyone in his workplace, none of his firefighter followers responded negatively to the Twitter exchange, and to the extent that I have any evidence of what female firefighters may have thought, neither of Giampa or Douma testified that they thought his comments had created a poisoned work environment. Douma did not endorse the comments, but to her view the institutionally sexist views expressed by Sheen in the NP article were far more problematic when considering the effect of the comments on the workplace.

195. Moving now to consideration of the "go get it sweetie" tweet, I have no hesitation in finding that on any objective standard there was nothing offensive or inappropriate in Edwards' use of the word "sweetie" in the impugned Twitter exchange. In reviewing the context of the "sweetie" tweet it is important to remember that the Grievor had also said "always need more women in the fire service" as part of that tweet.

196. I am satisfied based on the Grievor's evidence, and that of Christina Giampa, that the Grievor knew Ms. Marashixo socially, and that he was trying to encourage her apparent interest in the TFS. Edwards had tried to explain his social connection with Marashixo to the Employer during the investigation meetings. Neither Marashixo nor Giampa, nor anyone else including the National Post or Tony Araujo, ever objected to the Grievor's use of "sweetie" in that February 13, 2013 Twitter exchange.

197. I cannot accept the Employer's position that any use of the word "sweetie" could be inappropriate and I do not condone Sheen's view, as expressed in his testimony, that any use of the term, no matter what the context, would be unacceptable. Edwards clearly understood that one does not use the term in respect of women with whom he does not have a familiar relationship: At the investigation meeting he had indicated that he would not use "sweetie" to refer to Ms. Labine, and at the hearing he indicated he would not use the term in relation to the arbitrator. It is difficult to see how an objective and fair-minded person would find anything unacceptable in the use of such a term of endearment between friends, lovers, or spouses, even if the use was on Twitter. I find that the Employer had no basis to discipline Edwards in relation to the "go get it sweetie" tweet.

198. The "paki" Twitter exchange with Matt Bowman, or more particularly, the Grievor's use of the "n-word" in the context of that exchange, is the final matter to consider. Having heard all of the evidence and read the Twitter exchange, I cannot find that the Grievor's use of the "n-word" was inappropriate, racist or derogatory in all of the circumstances.

199. The "paki" tweets came to the Employer's attention through Tony Araujo, who as already noted, did not testify at this proceeding. Even Araujo noted on the screen shot he provided to the employer that it was a "conversation with his [Edwards] friends about not using racist terminology", and in my view, that is exactly what it was. It is noteworthy that although the NP article had quoted various tweets from Bowman, and the one Edwards' tweet already addressed, the newspaper did not rely on this Twitter exchange in its coverage.

200. As with the "sweetie" tweet, this Twitter exchange has to be seen in its context. Bowman casually referred to a store in the Whitby mall as being "a paki store". The Grievor did not find the use of the descriptor acceptable, and rather than leaving Bowman's apparently casual use of a racist term unchecked, he responded

to say that it was derogatory, and that Bowman should use a better word. That was apparently not enough for Bowman, who insisted that "paki" was an accurate description of the store. In order to bring home to Bowman the racist nature of his language, the Grievor then asked rhetorically whether it would be acceptable to refer to a shoe store as a "nigger" store, and used the hash tag "#thinkaboutit" to encourage Bowman to reflect on his language use. He also added a further comment to ask if Bowman would go back to the store in question to ask if it was a "Paki" store. Clearly what Edwards was doing was trying to educate Bowman on how derogatory and inappropriate it was for the latter to use the term "paki", and was challenging him to use the word openly to the individual shop owner in question if he was so certain that it was as "surprisingly accurate" as Bowman claimed.

201. It is perhaps trite but worth noting that the term "paki" is a derogatory term used for persons who come from Pakistan. The pejorative term may also be used for other brown-skinned people who may be perceived of as coming from the Indian sub-continent, whether the person actually comes from Pakistan, India, Sri Lanka, or from anywhere else in the world.

202. In my view a reasonable and fair-minded member of the public who was apprised of the full Twitter exchange, would not find the Grievor's use of either "Paki" or the "n-word" in this exchange to be racist or inappropriate behaviour. There is no doubt that what the Grievor was doing was trying to stop Bowman from using racist slang. When Bowman did not seem to understand, Edwards, knowing that Bowman knew that the Grievor was Black, used the "n-word" to try to shock Bowman into understanding how unacceptable the use of the word was. In my view, compared to the racist use of a derogatory term, it is an entirely different situation when a person from the particular racialized group uses a pejorative term about their own race to try to explain how hurtful a word may be.

203. While I understand that, by disciplining Edwards for the use of the "n-word", the TFS was trying to show that it would not tolerate any use of pejorative and racist language at all, it did not take proper account of the context of this particular Twitter exchange. It is not enough for the Employer to say that not everyone who may have read this Twitter exchange would know that Edwards is Black, and that therefore the use of the word is unacceptable. While that may be the case, any reasonable person reading the entire exchange would see that what Edwards was doing was calling Bowman out for his use of racist language, and when Bowman did not seem to understand the problem, tried to make express how offensive the use of the word was by using a term that he must have believed that even Bowman would understand was extremely pejorative and unacceptable. It takes bravery to confront racism anywhere, but particularly with friends, and sometimes it may take blunt language to do so. In my view that was what Edwards was doing in this exchange.

204. As the evidence in this case has demonstrated, context is important. Sheen in his testimony stated that his comments to the National Post had been taken out of context, and he went to great lengths to explain what he had been trying to say. The Association nonetheless argued that Sheen's comments were sexist and inappropriate. Dara Douma testified that she had found them to be examples of how the TFS leadership may not understand systemic sexism. Having heard Sheen's evidence regarding the discussion he had with the National Post, I am satisfied that the quote attributed to Sheen was taken out of context. It seems clear that Sheen was trying to explain what the TFS has noted through its research with women seeking to join the fire service or who have successfully done so, and was referring to the types of concerns that women themselves raise when they attend female-only recruitment sessions that the TFS holds to try to encourage them to apply. He was trying to explain that the TFS is attempting to make itself a viable career option for women, and to be a welcoming workplace for them.

205. In a similar manner, the context of Edwards' tweets must be considered. He was trying in 140 characters or less to tell Bowman that his use of the term "paki" was wrong, and it is in that context that his use of the "n-word" must be judged. Having regard to all of the circumstances, I do not find Edwards' use of the "n-word" to have been discipline-worthy.

206. To summarize, I have found that the "swat in the back of the head" tweet was inappropriate, but have not found discipline-worthy either of the other two tweets which the Employer relied upon in its decision to terminate the Grievor's employment. It is now therefore necessary to consider whether termination was an appropriate disciplinary response.

207. In making its decision to terminate the Grievor's employment the Employer relied in part on its view of Edwards' demeanor during the investigation meetings. The issue of a grievor's conduct during an employer's investigation was addressed at para. 120 of the *Bell Technical Solutions* decision, cited above, as follows: "Being uncooperative, defiant or dishonest during the course of the employer's investigation is a very important factor that has been taken into consideration in a number of cases …".

208. Having considered all of the evidence in this case in my view there is nothing to be taken from the manner in which Edwards presented at the August 19 or August 26, 2013 interviews. It seems clear that the Grievor was under considerable stress given the content of the National Post article, his role in the Twitter exchange, and the suggestion in the article that a representative of the TFS already believed that people like him had to be "weeded out". Furthermore, the Grievor was a very junior firefighter involved in what he knew was a serious public relations problem for the TFS, and he believed, given the NP article, that his employer wanted to get rid of people like him. It should not come as a surprise to anyone that in such circumstances the Grievor would have been extremely stressed, and that it would have shown in how he comported himself.

209. Having reviewed the notes made by a number of people at the investigation meetings, I do not accept that the Grievor responded with short or curt answers to the many questions posed to him. While he did occasionally challenge the Employer as to why it felt that something he had said was abusive to women, or was contrary to the *Human Rights Code*, in my view he was not being insolent or defiant, but rather simply could not understand why the TFS was taking offence at something he had said in a tweet. It seems clear in retrospect that no one in the investigation meetings was as familiar with Twitter as was Edwards. Even he was not that familiar with the medium as, at least at the first investigation meeting, he appears to have believed that his tweets were private.

210. From my review of the exhibits and the Grievor's evidence, I have concluded that he truly did not understand how his tweets may be perceived of as problematic. It is worth recalling that while the Employer ultimately only relied upon three tweets as the basis for the termination, it had questioned the Grievor about a number of others during the course of the investigation. As I have found that two of the three tweets that the Employer relied upon in the termination were not offensive, or contrary to the Employer's policies or the *Human Rights Code*, it is perhaps not surprising in retrospect that the Grievor could not understand why the TFS was questioning him about some of the tweets it put to him during the investigation. On the basis of all of the evidence before me I do not find that the Grievor's demeanor during the investigation was such that it would undermine a future relationship with this employer.

211. The Employer expressed concern that the Grievor had shown no remorse during the investigation process, or at this proceeding. On the matter of admissions of wrong-doing, the arbitrator in the *Bell Technical Solutions* decision, cited above, noted that "admitting that you have engaged in misconduct, accepting responsibility for it, showing remorse, and offering a genuine, as opposed to insincere, apology are also important factors that were considered in many of the cases …" (at para. 121).

212. In this case, as outlined earlier, the Grievor never believed that anything he had said in the tweets that the Employer has found unacceptable were in fact problematic. As such, he was unable to show remorse or to make an apology for the tweets themselves. I have found that two of the three tweets that the Employer relied upon were not problematic in any way, so I cannot draw any negative inference from the Grievor's failure to show remorse or to apologize for those tweets during the investigation. With respect to the "swat in the back of the head" tweet, I am concerned that the Grievor could not see why his comments were inappropriate, but since he genuinely did not believe that he was in the wrong, any apology that he could have made would have been insincere.

213. I accept that the Grievor did apologize a number of times for the position he had put the TFS and his firefighter colleagues in as a result of the bad publicity in the National Post. He also apologized generally if he had offended anyone by his tweets.

Finally, the Grievor apologized for not having locked his Twitter account earlier so that it would not have been available more generally to anyone but his own followers. These apologies suggest that the Grievor understands that it is not acceptable to tarnish the reputation of the TFS and his fellow firefighters, and that in this instance, as apparent from the NP article, he had done just that.

214. While I have found that the "swat in the back of the head" tweet was inappropriate, I find that termination is too harsh a penalty for that comment. I have noted that while the Employer had policies regarding the use of social media, prior to the Grievor's termination from employment, it had not publicized those policies as well as it might have done given the wide-spread use of such media. I have taken into consideration that the tweet was not directed at anyone in the workplace, and appears to have been an isolated instance of Edwards making an inappropriate and disrespectful comment about how a female may be treated. Unlike the cases in which terminations have been upheld for social media comments, the circumstances before me are at the low end of the spectrum of unacceptable behaviour. I have considered the nature of the comment, that it was a one-time event, and that while it was insulting to women, it was not an attempt to challenge the Employer's efforts at creating a more inclusive and welcoming workplace for women. As has not been disputed, the Grievor was a two and a half year employee with a clean record at the time of the termination. I accept his evidence that he loved his job as a firefighter, and genuinely wanted to help people during distressful and traumatic times in their lives.

215. In reaching the decision to reinstate the Grievor to his employment with the TFS I have taken into account that no one in the employ of the City or TFS had ever complained about Edwards' tweets. During the period in question in this case it appears that Edwards had 49 followers on Twitter. As noted earlier, the Grievor had female followers, including two female firefighters, Christina Giampa and Bernice Halsband. Neither of them, nor anyone else, had complained or responded to Edwards' tweets, nor had the female firefighters subsequently blocked Edwards. There is no evidence before me that any of the 49 or so people who followed the Grievor on Twitter objected to or complained about his comments about women or ethnic or racial minorities. Both Giampa and Douma had very positive things to say about the Grievor, and Douma went so far as to call him a "class act". As such, there is no evidence that Edwards has alienated females in his workplace, or that a return to work would be problematic for the Fire Services. I also have considered that the Grievor himself had a very positive view about the recruitment and retention of women to the TFS.

216. In considering what the appropriate penalty should be, I have considered that at the time he made the "swat in the back of the head" comment, the Grievor had identified himself as a Toronto firefighter. As well, the Grievor was not completely candid with the Employer about when he had removed the reference to being a Toronto firefighter from his Twitter profile. Honesty during an employer's investigation process is important as it may later be a mitigating factor. I have also

considered the Grievor's lack of understanding that his tweet about swatting a girl on the back of her head to reset her brain was in fact inappropriate, insulting to women, and offensive because it appears to encourage the physical abuse of a female. In all the circumstances of this case I substitute the termination with a three day unpaid suspension.

217. Although the Association had requested that remedies in this grievance include punitive, aggravated and exemplary damages as a result of the Employer's conduct, and an apology, I find that there is no basis for such remedies in the circumstances of this case.

218. For all of the reasons outlined above, the termination is rescinded, and a three-day unpaid suspension is substituted on the Grievor's record. I direct the Employer to forthwith reinstate the Grievor to employment with compensation for all lost wages and benefits to which he would have been entitled under the collective agreement during the period of his termination. I will remain seized of any issue that may arise respecting the implementation of this award.

Dated at Toronto this 14th day of October, 2014.

"Gail Misra"
Gail Misra, Arbitrator