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File: 166-2-31033

Citation: 2002 PSSRB 103



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

DEBBIE COTÉ

Grievor

and

TREASURY BOARD  
(Solicitor General Canada - Correctional Service)

Employer



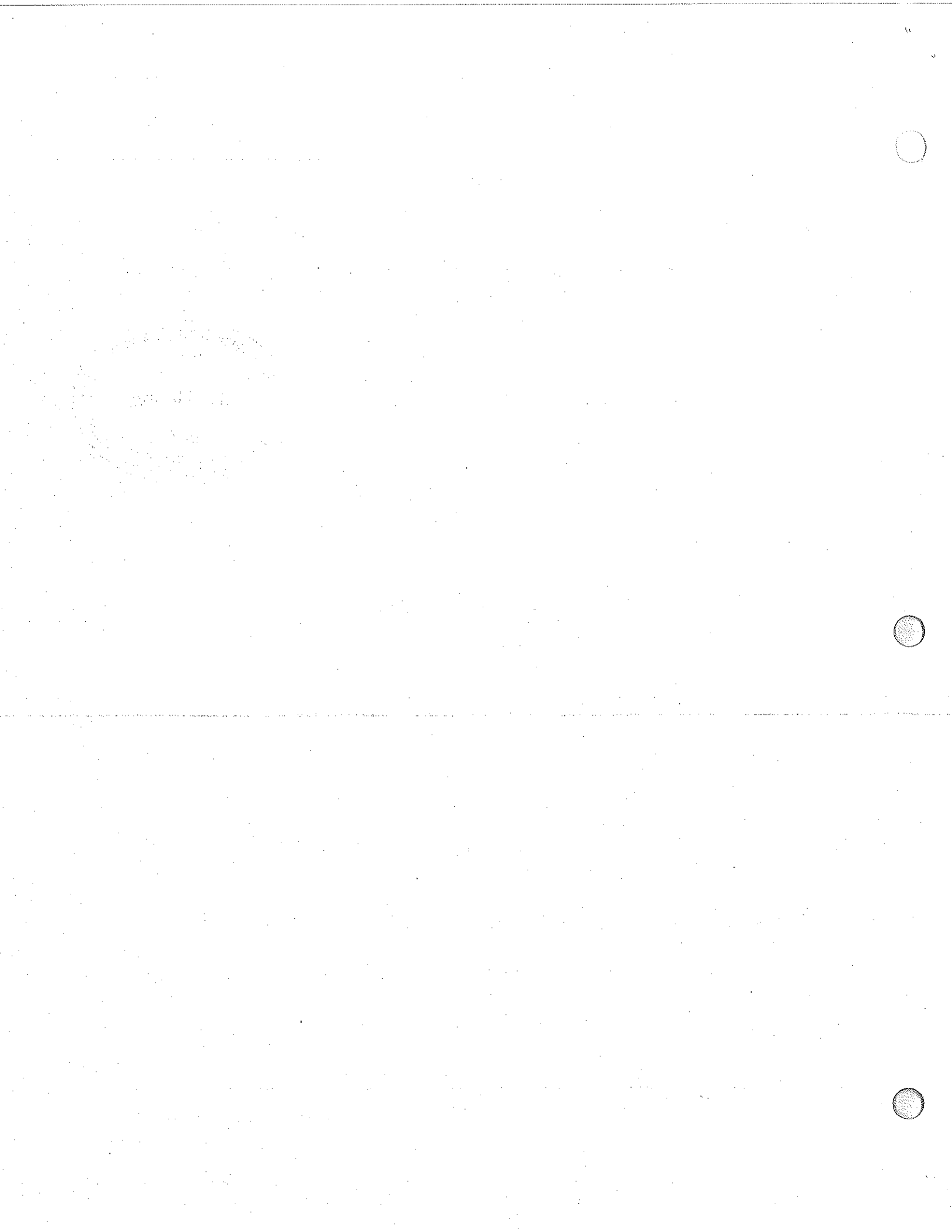
**Before:** Francine Chad Smith, Q.C.

**For the Grievor:** Gail Owen, Grievance and Adjudication Officer, Public Service Alliance of Canada

**For the Employer:** Richard Fader, Counsel, and Beth Tyler, Regional Coordinator

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Heard at Chilliwack, British Columbia,  
August 27 - 29, 2002



## DECISION

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### INTRODUCTION

[1] This case involved a disciplinary termination of the grievor, Ms. Debbie Coté, under paragraph 11(2)(f) of the *Financial Administration Act*.

### FACTS:

[2] On July 24, 2000, the grievor was suspended from duty as a Program Delivery Officer with Correctional Service Canada pending an investigation into an allegation of an inappropriate relationship with Inmate X. The information regarding the grievor's relationship with Inmate X first came to the employer's attention as a result of a disclosure made by Inmate X. Inmate X made the disclosure following his transfer to Matsqui Institution to facilitate an investigation into a heroin party at Ferndale Institution. He attempted to use the information to negotiate a transfer back to Ferndale Institution, which was a minimum security institution.

[3] Further inquiries were made into the allegation of Inmate X, which resulted in a formal investigation being conducted. Following the investigation, the grievor's employment was terminated pursuant to a letter dated September 21, 2000 from Assistant Deputy Commissioner Operations, Heather Bergen. The salient portions of the letter of termination (Exhibit E-23) read as follows:

*...Based on the information available to me, I have concluded that you have in fact violated the CSC Code of Discipline and Standards of Professional Conduct by entering into an inappropriate relationship with an offender incarcerated in the Pacific Region.*

*...  
I am satisfied that on the balance of probability, you have entered into an unauthorized relationship with offender Inmate X. A professional relationship means loyalty to the values, ethics and standards of the Correctional Service of Canada. Staff must be diligent in their responsibility to record and make available for review all offender information, which could contribute to sound decisions affecting the offender or public safety. Your actions not only jeopardized the offender's safety but the safety of the Public as well. I am satisfied that as a result of your behaviour you have rendered yourself incapable of performing your duties with CSC because you have violated the trust that we require to manage offenders in an appropriate manner. In essence, the trust so vitally important between management and*

*correctional staff in a correctional environment has been violated to the point that it cannot be restored.*

*Based on the foregoing and in accordance with Section II of the Financial Administration Act I have no alternative but to terminate your employment in the Correctional Service of Canada as of July 25, 2000.*

[4] A disciplinary investigation report, dated August 11, 2000, relating to interaction between the grievor and Inmate X, was completed by Mr. John Eno and Ms. Mary Danel. It was this report (Exhibit U-19) and the grievor's written response to the report (Exhibit E-13), which provided the basis for Assistant Deputy Commissioner Bergen's decision to terminate the grievor's employment. The conclusion arrived at following the investigation is contained at pages 61 to 63 of the report, and reads as follows:

*Ms. Coté, by her words and actions, as well as by her own verbal admission has failed to behave in accordance with the standards regarding documenting and sharing information as it relates to offenders in order to contribute to sound decisions being made regarding offenders or public safety. While she may have told offenders to work with their Case Management Team and other staff, her own actions did not support this statement. Therefore, the Case Management Team did not have all the relevant information to assist in making or recommending sound decisions. Ms. Coté's relationship did not maintain the delicate balance between personal and professional interest in the offender. Ms. Coté's relationship became inappropriate when she did not inform other staff when Inmate X and she deviated from passes, when she met him outside the designated area on her own time, when he showed up at her hotel. She placed both her personal integrity and professional conduct at risk as well as the safety of herself and the public.*

#### CONCLUSION

*Based on all of the information gathered throughout the investigation, the investigating team has concluded that Debbie Coté has an inappropriate relationship with offender Inmate X. This is based on the following findings:*

- 1) *It is more likely than not, that Inmate X was in Ms. Coté's hotel room the night of October 31<sup>st</sup>, 1999.*
- 2) *That the on-going frequency of contact Ms. Coté had with Inmate X, both face to face and through her use of her CSC cell phone, is seen as inappropriate.*

- 3) *Ms. Coté's use of her cell phone to contact Inmate X is seen as inappropriate.*
- 4) *That Ms. Coté's failure to disclose information is seen as inappropriate.*

*Therefore, the following Standards of Professional Conduct have been violated:*

*Standard One: Responsible Discharge of Duties*

*'Staff shall conduct themselves in a manner which reflects positively on the Public Service of Canada, by working cooperatively to achieve the objectives of the Correctional Service of Canada. Staff shall fulfill their duties in a diligent and competent manner with due regard for the values and principles contained in the Mission Document, as well as in accordance with policies and procedures laid out in legislation, directives, manuals and other official documents. Employees have an obligation to follow the instructions of supervisors or any member in charge of the workplace and are required to serve the public in a professional manner, with courtesy and promptness.'*

*The fact that Ms. Coté ignored policy regarding divergent ETA's, ignored her supervisors orders regarding ETA's, dedicated excessive amounts of attention to an offender for no apparent professional reason and failed to report important information are examples of how Ms. Coté has violated the responsible discharge of her duties.*

*Standard Two: Conduct and Appearance*

*'Behaviour, both on and off duty, shall reflect positively on the Correctional Service of Canada and on the Public Service generally. All staff are expected to present themselves in a manner that promotes a professional image, both in their words and in their actions.'*

*An important component of being a program officer is to project a positive and responsible role model. Having an offender in a hotel room and giving him alcohol is far from projecting a professional image.*

*Standard Four: Relationships with Offenders*

*'Staff must actively encourage and assist offenders to become law-abiding citizens. This includes establishing constructive relationships with offenders to encourage their successful reintegration into the community. Staff must be diligent in their responsibility to record and make available for review all offender information which could contribute to sound decisions affecting the offender or public safety.'*

*Ms. Coté by her words and actions did not act as a role model for offender Inmate X. While Ms. Coté states that she encouraged offenders to work constructively with members of their Case Management Team, she has not set the example herself. She has not communicated either verbally or in writing relevant information that would contribute to sound decision-making affecting both the offender and public safety. By not sharing information regarding her interactions with Inmate X, in either the verbal or written form, by not disclosing the fact that she had shared personal information with him, she both placed herself and the service in a conflict situation. She did not maintain the delicate balance between personal and professional interest with Inmate X thereby violating the standard governing relationships with offenders.'*

[5] The employer presented its case through five witnesses.

[6] The first witness was Inmate X, who gave evidence regarding his relationship with the grievor and specifically, of three occasions where he met the grievor outside Ferndale Institution and, according to him, engaged in sexual intercourse with her on each of those three occasions.

[7] The second witness for the employer was Mr. Mike Boileau, who was the Project Manager of Security at the Regional Headquarters in Abbotsford, British Columbia, at the time in question. Mr. Boileau testified regarding his investigations of the allegations regarding the grievor, which included a review of travel records and cellular telephone records of the grievor during the relevant time, and his specific observations at one of the three locations mentioned by Inmate X.

[8] Mr. John Eno, the Programs Officer in charge of the Substance Abuse Programs of the employer and the grievor's direct supervisor, also testified. His evidence addressed the training delivered to the grievor in relation to her employment and the employer's Code of Discipline and Standards of Professional Conduct. He presented documentation pertinent to the time period in question, and testified with respect to his discussions with the grievor regarding allegations of questionable conduct in the past. In addition he testified about his participation in the investigation of the specific allegations made by Inmate X.

[9] Mr. Mike Nicholson, a Program Delivery Officer stationed at the William Head Halfway House in Victoria, British Columbia, testified with respect to having visited

with the grievor in her hotel room on the night of October 31, 1999, which was the date Inmate X testified his last meeting with the grievor occurred.

[10] Lastly, Assistant Deputy Commissioner Heather Bergen gave evidence with respect to her involvement in the matter and specifically, why she made the decision to terminate the grievor's employment.

[11] Three witnesses were called to present the case on behalf of the grievor.

[12] The first witness was Mr. Steve Gill, a Parole Officer with the employer, who worked with the grievor for a six to eight week period in 1999, delivering programs to offenders. He gave evidence with respect to his observations and interaction with the grievor during that period and evidence regarding the general direction and supervision by Mr. Eno during that time.

[13] The second witness was Ms. Patsy Byers, a Regional Duty Officer in the employer's Pacific Region stationed at the Sumas Centre in Abbotsford. She testified about the disciplinary meeting held in the Regional Headquarters in August, 2000 which the grievor asked her to attend.

[14] Lastly, the grievor, Ms. Debbie Coté, testified on her own behalf regarding her employment in the federal public service, her employment with Correctional Service Canada, her training, duties and responsibilities with the employer and her involvement with Inmate X.

[15] The most significant factual issue in the case appeared to be whether the grievor engaged in sexual relations with Inmate X. There were other inconsistencies in the evidence that were material in assessing matters of credibility and reliability. However, because the framework of the facts pertinent to the issues of the subject matter in issue was not in dispute, it shall be presented in a narrative form with matters pertaining to the significant controversial issue and other disparate evidence being specifically addressed as deemed appropriate.

[16] In July 2000, Inmate X made some statements to the then acting Internal Preventative Security Officer (IPSO) at the Ferndale Institution regarding a relationship he had with an employee. Consequently, that acting IPSO, Mr. Ralph Uhl, and Mr. Mike Boileau interviewed Inmate X regarding the matter. Those two employees had more than one discussion with Inmate X regarding the matter and conducted further

inquiries which eventually led to Assistant Deputy Commissioner Heather Bergen ordering a formal investigation into the allegation of whether the grievor had been engaged in an inappropriate relationship with Inmate X. It was as a result of the formal investigation of the allegations, as ordered by Assistant Deputy Commissioner Bergen, that the grievor's employment was terminated.

*The evidence of Inmate X:*

[17] Inmate X testified that he initially met the grievor through one of his friends, Inmate A. Inmate A had a drug problem and was registered to take a program called "Choices" from the grievor. At one point, the grievor was about to begin a new "Choices" program and wanted inmates to facilitate her obtaining a passing report in relation to the delivery of the program. He testified the grievor suggested he enrol in the program even though he did not have a specific drug or alcohol problem because he would get a positive report if he did so, and accordingly, he and five or six other inmates enrolled for the program. He said his parole officer gave her approval for registration in the "Choices" program because a lot of his friends had drug problems. The program was delivered at Sumas Centre and accordingly, he and the other inmates from Ferndale Institution were all transported from Mission to Abbotsford for the course.

[18] He testified with respect to five significant incidents. The first incident occurred in the summer of 1999 when he asked the grievor to take him out on an escorted pass into Vancouver so he could make some inquiries with respect to day parole. He testified that during the drive to Vancouver the grievor reached over from the driver's seat and rubbed his chest, and made a statement to the effect that "she could have him any time". He responded laughingly, "I don't think so". According to him the rest of the trip proceeded without incident. Inmate X said the grievor apologized to him shortly after the incident. He testified that the incident really didn't matter to him; having been incarcerated for some 14 years at that point, he wouldn't know if he was being hit on unless someone jumped him.

[19] The second incident he related in his evidence occurred in the grievor's office at the Sumas Centre in Abbotsford prior to delivery of one of the "Choices" lectures. The grievor asked him to help retrieve her equipment from her office. He accompanied her to her office. While in the office she shut the door, turned off the lights, stood before



him, and then proceeded to kiss him. The kissing lasted a few moments and then they left.

[20] The next incident involved an escorted pass that a guard named Mo Aly was to have taken Inmate X on. At the last minute Mr. Aly was unavailable. Inmate X requested the grievor to take him and she agreed to do so. The destination designated in the pass was White Rock. Inmate X and the grievor left the Sumas Centre at around 7:30 or 8:00 p.m. The pass expired at 12:00 midnight. Inmate X testified they drove around and ended up in a parking area facing water. They began kissing and then, after he took the back seats out of the van, they proceeded to have sexual intercourse in the van. This incident occurred while the "Choices" program was ongoing.

[21] The next significant incident took place while Inmate X was living in Vancouver at Guy Richmond Halfway House during a 60 day work release program. He called the grievor by cell phone to arrange a meeting. Because of the limitations of his curfews and travel time allowances, he arranged to get off work early and, according to him, the grievor picked him up from work around 3:30 p.m. She did some shopping and then they went to Stanley Park. He said she had a picnic lunch in the back of her vehicle; however, because of his limited time they did not have lunch. They took a blanket into the woods in the park and engaged in sexual intercourse.

[22] The last occasion he met with the grievor outside the institution occurred on October 31, 1999. Inmate X was away from the institution on an unescorted pass. He testified that although his pass restricted him to be in White Rock only, he planned to go into Vancouver to meet the grievor at the Pan Pacific Hotel, where she was staying for a conference her employer was conducting.

[23] On October 31, 1999, Inmate X was at a friend's place in Vancouver. He testified he was getting anxious because it was 7:00 or 8:00 p.m. and he had to get back to the Ferndale Institution in Mission by midnight, so he left voice messages for the grievor. The grievor finally called him and he arranged for a friend to drop him off at the hotel. The grievor met him at her room door wearing a white bathrobe. She brought out a bottle of sambuca and poured them each a drink. He consumed his drink and they started kissing on the bed and had sexual intercourse. Inmate X could not recall the hotel room number but he thought it was either on the 14<sup>th</sup> or 22<sup>nd</sup> floor. He testified the room had a wraparound window and was on the front side of the hotel. From the room he could see the hotel's front entryway, the raised sundeck and pool on the hotel

across the street, the city skyline and a big "S" in red or orange colour, which he thought was on the Scotia Building. He also described the hotel room layout as having the bathroom to the right of the door and the windows were straight ahead. He recalled the windows were high casements taking up pretty much the whole wall. He had drawn a sketch of the room layout on of July 14, 2000, which was entered as Exhibit E-2. He recalled the hotel contained a lot of birds eye maple wood in the elevator and on the walls. Lastly, he testified that he had never been in the Pan Pacific Hotel either before October 31 or after.

[24] He testified he had to be back at the Ferndale Institution by 12:00 midnight, that he thought the drive would take approximately 1½ hours, and that he planned on taking a taxi. The grievor did not want him to spend all his money on a taxi and said she would drive him back if he could arrange to have someone else actually drop him off at the institution. He called his friend, Inmate A, who was now released and living in Maple Ridge, and Inmate A agreed to drive him from Maple Ridge to the institution. The grievor drove him to Inmate A's residence in Maple Ridge in a white GMC Jimmy and he subsequently arrived at Ferndale Institution with 5 or 10 minutes to spare.

[25] Inmate X was also shown a diary page from a book belonging to him dated Tuesday, June 5, 2000 that contained two telephone numbers. He testified the first number was the grievor's personal cell phone number that she shared with her husband; the second number was the grievor's work cell phone number.

***The evidence of the grievor:***

[26] The grievor denied engaging in sexual relations with Inmate X. Her evidence with respect to first meeting Inmate X was consistent with his evidence. With respect to the new "Choices" program for the summer of 1999, she did indicate she was short of registrants for the program and that she reviewed Inmate X's Office Manager System (OMS) Correctional Plan and observed some references to education. She said his parole officer thought it would be a good idea for him to be enrolled in the program.

[27] The "Choices" program involved approximately 10 classes over a period of two weeks and was then followed by a maintenance program which involved a series of one-to-one meetings with the participants over another possible six week period of time. The program in question in which Inmate X participated operated through July and August, 1999.

[28] The grievor testified that she drove Inmate X and three other inmates from the Ferndale Institution in Mission to the Sumas Centre in Abbotsford for the "Choices" classes. She testified it was suggested to her by one of the duty officers that she ask the inmates to help her transport her equipment from her office to the classroom and she acknowledged that Inmate X likely did help her retrieve the equipment a number of times. She denied any inappropriate conduct or incident occurred in her office, noting that she would enter her office with whichever inmate was assisting her and collect her material and then leave the office turning the light out. She stated that at no time after April, 1999 did she meet with an inmate in her office with the door closed. The April 1999 date was significant because at that time her direct supervisor, Mr. John Eno, had cautioned her about being too friendly with inmates and had given her specific instructions with respect to keeping her office door and window blinds open at all times when she was meeting with inmates.

[29] *The escorted Pass Incident:* The grievor acknowledged having taken Inmate X on an escorted pass in August or September 1999. On the date in question, the "Choices" maintenance class ended at 6:00 p.m. instead of 7:00 p.m. as it usually did. Following the class she was doing paperwork in her office when Inmate X asked if she would take him out on his pass. Her testimony was she initially said no but he came back two or three times and eventually she said, if no one else was available, she would take him. According to the grievor, she double-checked with the duty officer to ensure that no one else was available to go and then she took him. She testified they left Mission to drive to White Rock at approximately 7:30 p.m., and that she thought they had to be back at the institution by 12:00. She testified that there were two roads she could have chosen to head toward White Rock from Mission, on the Lougheed Highway or the Dewdney Trunk Road. She decided to travel on the Dewdney Trunk Road because she thought it would be a nice change. However, nothing seemed familiar and eventually the road started climbing and winding and she decided to try to get back to the Lougheed Highway. In any event, it became clear they were lost and, as they tried to find their way back to the Lougheed Highway, they stopped a couple of times for a cigarette because smoking was not allowed in the institutional van. Eventually they found their way back to the Lougheed Highway at approximately 9:00 or 9:30 p.m. She knew there was insufficient time to get to the White Rock destination and back by the curfew, so she went back to Ferndale Institution arriving there just

before 10:00 p.m. She recalled they stopped a third time during the outing at a gas station because Inmate X had to go to the bathroom.

[30] On returning to the institution, the grievor testified she spent about an hour talking with the duty officer; however, she did not mention anything about getting lost because she was embarrassed and furthermore, nothing of consequence occurred. Upon becoming lost, she did not call the institution because she had neither a radio nor a cell phone with her.

[31] *The meeting in Vancouver.* Inmate X was on a work program living in a halfway house in Vancouver and called the grievor a couple of times on the telephone stating he was having problems and wanted to get back to the Ferndale Institution. The grievor was planning to go in to Vancouver to purchase some craft supplies and said she would meet him. She worked through her lunch period and left work early, around 3:30 p.m. She indicated her impression was that Inmate X was seeking attention. He mentioned something about a crisis and that he was thinking of hanging himself, but she knew he really didn't mean it. She met him at a restaurant not far from the craft supply store on an outside patio. She believes she got there around 4:30 in the afternoon and sat with the grievor and talked. He was eating a meal and she did not have anything to eat or drink. He had a 5:00 o'clock curfew and, because he wouldn't be able to make his curfew if he travelled on the bus, she offered him a ride home. En route home, they stopped at the craft store where she picked up some items and she dropped him off at the halfway house. It was her recollection that they may have arrived a few minutes late at the halfway house. She did not report this incident to anyone and said in any event, she did not know whom she would have reported it to.

[32] *The Hotel Incident.* In October 1999, the grievor and her husband travelled to Saskatoon to attend her parents' anniversary celebration. They flew back home into the Abbotsford airport on October 31, which was a Sunday night. Because they had initially gone to the airport in separate vehicles, her husband went home while she went to Sumas Centre to collect her paperwork. She arrived at Sumas Centre at approximately 6:00 p.m. and recalled having picked up something to eat. She then drove into Vancouver, arriving at the hotel at about 7:30 p.m., where she parked her vehicle, registered, and then went up to her room. She had received a few messages that Inmate X had called and she called him back. Upon being shown a record of her

telephone calls she agreed that she phoned him at 18:50 as shown, and that accordingly, she would have been in her vehicle en route to Vancouver at that time. She said Inmate X said he was on a pass to his sister's in White Rock and that he was going to come and see her in Vancouver. She replied by saying he should not bother. Although her telephone records, Exhibit E-5, showed a second call was placed to Inmate X's cell phone, she did not recall placing it.

[33] On arriving in her hotel room, the grievor indicated she had two messages: one from her husband and one from a cousin in Vancouver. She returned those calls and then as she was still hungry, she went out to get a bite to eat just after 9:00 p.m. She took her car out of the parking garage, and not knowing there was a McDonald's restaurant right next to the hotel, she drove to another McDonald's location. On returning to the hotel, as she was on her way from the parking garage to take an elevator from the lobby up to her room, she saw Inmate X standing by the escalators. She testified she told him, "You shouldn't be here. You should go back to Ferndale". She said she did not report running into him; she didn't think that she had to; and she had no idea what kind of pass he was on or why he was even there.

[34] The grievor went on to testify that on her return from McDonald's, which was probably between 10:00 and 10:30 p.m., she called her friend, Mike Nicholson, and he came up to her room around 10:30. She had previously left messages for Mr. Nicholson to call her when he got in. She and Mr. Nicholson looked at the pictures she had taken at the family celebration; she offered him some sambuca, and then they watched a special on MTV, and he left around 1:00 or 2:00 a.m.

***Other Relevant Evidence:***

[35] *Telephone records:* The records for the grievor's work cell phone, Exhibit E-5, demonstrate six calls were made from her cell phone to her office number on October 31, 1999 between 15:28 and 18:44. These calls were followed by two calls from the grievor's cell phone to a phone number in Vancouver at 18:50 and 20:04. Inmate X testified the number called in Vancouver at 18:50 and 20:04 was his cell phone number.

[36] The telephone records also demonstrate regular calls from the grievor's cell phone to the same Vancouver number belonging to Inmate X between September 21,

1999 and October 15, 1999, and then a number of similar calls between November 5 and December 13, 1999.

[37] *Hotel parking records:* Exhibit E-4 contains the parking records for the grievor at Canada Place in relation to her stay at the Pan Pacific Hotel on October 31 and November 1, 1999. The records reflect an arrival at 19:35 hours and a departure at 23:26 hours on October 31, followed by an arrival at 01:03 and a departure at 08:13 on November 1. The departure from the parkade of an hour and a half between 23:26 and 01:03 is consistent with Inmate X's evidence that the grievor drove him to Maple Ridge, and that after doing so, she then returned to the hotel. Mr. Boileau testified that during the time period in question, the drive between downtown Vancouver and Maple Ridge would take forty-five minutes at the most. Those times are also reasonably consistent with the evidence of Mr. Nicholson regarding his visit with the grievor in her hotel room. He testified that upon returning to the Pan Pacific Hotel following the conference reception, he telephoned the grievor who stated that she had just got in and invited him to her room for a visit.

[38] Mr. Nicholson initially thought he went to the grievor's room sometime after 9:30 p.m. that night. However, upon being shown the conference program (Exhibit E-14), which showed the reception was to end at 11:00 p.m., he subsequently concluded it was more likely that he went to the grievor's room sometime after 11:30 pm. He recalled that he stayed in the reception room for a while after the bar closed, and that he then walked back to the Pan Pacific, which would have taken about 20 minutes.

[39] The program for the Much Music television show for October 31 and November 1, 1999, entered as Exhibit E-21, reflected the MuchWest program Mr. Nicholson was interested in watching, and which he testified he watched in the grievor's room; it was scheduled for either 9:00 p.m. or 1:00 p.m. Pacific Time. Mr. Nicholson was certain he was not in the grievor's hotel room for the 9:00 p.m. show.

[40] The grievor herself gave evidence with respect to the parking receipts. She said that following her suspension she spoke with the parkade manager, who said there was a problem with the times recorded on the receipts in question relating to the change from Daylight Saving Time. However, she did not explain what the precise problem was. Mr. Eno testified that according to the parkade manager, the time should have been moved back at 2:00 a.m. following the last Saturday in October, which should then have been 2:00 a.m. on October 31. However, the clocks of the

parkade meters were not adjusted until Monday morning, November 1. That would then mean that the grievor left the parkade at 22:26 and returned at 12:03. If we accept that to be the case, then the hours shown on the receipts continue to demonstrate a nexus to Inmate X's version of the events, and demonstrate a close nexus to Mr. Nicholson's refreshed memory of staying for a while after the reception ended, then taking approximately 20 minutes to walk back to the hotel; and then calling the grievor and being told she had just gotten in.

[41] *Details of the hotel room:* Mr. Boileau testified that during the investigation he and Mr. Uhl visited the Pan Pacific Hotel. They ascertained the grievor had stayed in room 1907 of the hotel and that its room layout was consistent with the details provided by Inmate X during their interviews with him. Mr. Boileau provided the details that he observed at the hearing and they were consistent with the evidence given by Inmate X. While it may have been relatively simple for Inmate X to have received the details from another source, to have had some personal knowledge of the hotel itself, or to have made some educated guesses, three particular details he provided were noteworthy. First, from the grievor's room the hotel's entry canopy was visible. Second, the above ground level deck and the swimming pool of the hotel across the street were also visible. Third, the red S from the Scotia Building was visible from the grievor's room - although it was not visible from either room 1207 or 1707.

[42] *Duty to report and share information:* Mr. Eno, the Project Officer for the Substance Abuse Programs and the grievor's direct supervisor, testified with respect to the grievor's training and her responsibilities as a program delivery officer. He testified that it is the parole officer who manages each offender's case with the objective of preparing the offender for release. The parole officer may refer offenders to specialists or recommend the offender participate in programs such as the one delivered by the grievor. In managing an offender's case, the parole officer depends upon information received from specialists and program delivery officers to assess the offender's situation, and then, makes recommendations relied upon by the National Parole Board in granting parole and passes to offenders. To facilitate the flow of relevant information regarding offenders among parole officers, specialists, program delivery officers and others, the employer relies upon personal contact, e-mail, and the office manager system (referred to as OMS). The OMS is a computer program for filing reports and reviewing the management records of offenders; it is a critical tool relied upon by parole officers and the employer.

[43] The grievor's training records indicate she took a course entitled Operations Bypass, which is OMS training and other training including on eon case management.

[44] The requirement for the program delivery officers to complete case records and utilize the OMS was verified in Exhibit E-12, which is an e-mail dated October 21, 1999 from Mr. Eno to a number of program delivery officers, including the grievor, stating:

*This is a reminder of the importance for program officers to complete casework records on OMS.*

*Some sites may still be documenting offender information through 'common drives' and e-mail. It is critical that you enter any significant information regarding offenders on OMS with casework records.*

*For example, if you are having problems with an offender in your group who is displaying problem behaviour, not only should you contact the PO [parole officer], but you should document it with a casework record.*

*Anything you think is important for POs and other staff to know should be documented with a casework record.*

*Also, be sure to 'lock' the casework record by completing the Record Finalized field.*

*Please contact your site's OMS consultant if you require assistance with completing casework records.*

#### **Reports:**

[45] Three escorted temporary absence/work release permits were filed as Exhibits E-15 to E-17 with respect to Inmate X. Exhibit E-15 was for the escorted pass Mr. Aly was to have been the escort for on August 10, 1999 that the grievor took Inmate X on. Exhibit E-17 related to a series of visits on September 24 and was signed by the grievor as the escort. Exhibit E-18 was an escort report in relation to the September 24 outing, which while signed at the top by the grievor, failed to record the specific details of the outing. The failure to record details was in significant contrast to Exhibit E-24, which was an escort report for a March 20, 1999 outing the grievor took Inmate X on, which recorded details of the outing and was signed by the grievor at the top acknowledging her responsibilities prior to the outing and then again at the bottom after she had recorded the details of the outing.



[46] *Specific discussions between the grievor and her supervisor:* Mr. Eno testified that as a result of concerns brought to his attention regarding the grievor, he met with her for two hours on April 20, 1999 at the Sumas Centre regarding her interaction with offenders. He told her she needed to change her style of interacting with offenders. She was not to be too friendly with them, nor to appear to be too friendly with them. He told her she could be effective in working with the offenders without being their friend and that she was to conduct herself in a manner that was above suspicion at all times. She was to be visible when meeting with offenders - keep blinds and doors open, not meet with offenders at night, not touch them or let them touch her, and be professional.

[47] Mr. Eno also testified that he had given instructions to the grievor on other occasions. On April 13, 1999 the grievor called to ask if she could attend a National Parole Board meeting on behalf of an offender. He told her no and that anything she had to say should have already been communicated to the parole officer. Then on April 16 the grievor called him to ask for permission to see an offender's wife and was told no. During the same conversation she asked if she could take an offender, who wanted to see a half way house in Vancouver, out on a pass. He told her no, and that it was not part of her job to do so. Lastly, she called him on April 30 to ask if she could take an offender out on a pass and was told no, and that she was not to take any offender on a non-program related pass and was limited to driving offenders from one site to another to deliver programs.

[48] Mr. Eno's evidence with respect to prohibiting the grievor from escorting offenders was reinforced in a series of three e-mails in 1999 (November 18, November 19 and undated), marked as Exhibit E-27, circulating among a Mr. Lamm of the Ferndale Institution, the grievor and Mr. Eno, which included an inquiry to the grievor from Bob Lamm noting:

*I don't want to rock the boat, however, Ferndale was told several months ago by Mr. Eno that you are not allowed to escort Inmates. That is why Ferndale is paying overtime to escort Inmates to Sumas for Choices Programs. Has that changed?*

[49] Mr. Eno's response was, "No, nothing has changed. ..."

[50] Mr. Eno testified the last significant discussion occurred on December 13, 1999 when he and his boss met with the grievor to discuss her conduct with respect to

offenders. This meeting was prompted by unfavourable reports he had received, but was unable to substantiate, concerning the grievor. He wanted his boss to be present to emphasize the seriousness of his concern. Following that meeting, he discussed the matter for another hour with the grievor. At that time Mr. Eno had no specific information with respect to her relationship with Inmate X and the grievor did not make any admissions of any inappropriate conduct.

***Findings of Fact:***

[51] Based upon the facts testified to at the hearing itself, and based upon facts evident from institutional travel records for the grievor (Exhibit E-4), institutional cell phone records for the grievor (Exhibit E-5), institutional OMS information and related escort reports regarding Inmate X (Exhibits E-14 to E-18 and Exhibit E-24), I make the following findings of fact:

- a) The grievor failed to make required reports regarding her work-related dealings with the Inmate X;
- b) The grievor's interactions with Inmate X, whether by telephone or in person, were excessive and exceeded professional requirements, and she failed to make reports reflecting these dealings;
- c) Contrary to her supervisor's express instructions, the grievor accompanied Inmate X on an escorted pass and met with Inmate X for reasons unrelated to the duties and responsibilities of her employment;
- d) Inmate X was in the grievor's hotel room on October 31, 1999. While I was not readily willing to accept the testimony of Inmate X over that of the grievor, his version of the events was consistent with objective evidence contained in the telephone records, the parking receipts, and the details of the room occupied by the grievor including the view from the room. His evidence was also consistent with the evidence of Mr. Nicholson. Furthermore, I found the grievor's evidence was not credible in many instances, particularly with respect to the reasons she spent time with Inmate X outside her employment duties and responsibilities, and with respect to what transpired on those occasions. My concerns with respect to her credibility were reinforced by her failure to submit

written reports with respect to those activities and her failure to advise other employees, particularly Inmate X's parole officer and her supervisor, Mr. Eno.

e) The grievor failed to maintain a suitably professional relationship with Inmate X;

f) The grievor conspired to breach the terms and conditions of Inmate X's release, or condoned Inmate X breaching the terms and conditions on at least two occasions. Those occasions were when she met him in Vancouver while he was on the work release program and then when she met him at the Pan Pacific Hotel.

g) The grievor's conduct *vis à vis* Inmate X was a marked departure from the standards outlined in the Professional Standards and demonstrated significant breaches of the Code of Discipline; and

h) The grievor's conduct in relation to Inmate X was highly inappropriate.

#### ARGUMENT:

[52] Counsel for the employer argued the grounds for dismissal had been proven; the penalty was reasonable, and there was no basis for substituting a lesser penalty.

[53] He relied upon the following authority:

*Tipple v. Canada (Treasury Board)*, [1985] F.C.J. No. 818 Appeal No. A-66-85; *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) 355; *Matthews and Treasury Board (Revenue Canada - Customs & Excise)* (1991), Board file 166-2-20753, [1991] C.P.S.S.R.B. No. 4; *Francis and Treasury Board (Solicitor General - Correctional Service Canada)* (1993), Board file 166-2-24111, [1993] C.P.S.S.R.B. No. 169; *Cottenoir and Treasury Board (Solicitor General - Correctional Service of Canada)* (1997), Board file 166-2-27324, [1997] C.P.S.S.R.B. No. 114; and *Parsons and Treasury Board (Solicitor General Canada - Correctional Service)* (1996), Board file 166-2-27007, [1996] C.P.S.S.R.B. No. 49; and *Gannon and Treasury Board (National Defence)* 2002 PSSRB 32 (166-02-30351 and 30352), [2002] C.P.S.S.R.B. No. 24.

[54] The representative of the grievor argued the evidence of Inmate X was totally unreliable. She maintained Inmate X was an expert at manipulating the system and individual's to get his way. The fact he made the allegations with respect to sexual

encounters with the grievor in order to bargain with the authorities to return him to the Ferndale Institution was indicative of his unreliability and manipulative character. Furthermore, the fact he has been incarcerated for many years for second degree murder was another reason for not accepting him as a reliable witness.

[55] The grievor's representative argued that although there may be some basis for disciplining the grievor, the penalty of dismissal was excessive. Alternatively, the grievor's representative argued that even if dismissal was reasonable under the circumstances, a lesser penalty should be substituted in light of the mitigating circumstances.

[56] She relied upon the following authority: *Crack and Graveline and Treasury Board (Solicitor General)* (1991), Board files 166-6-21017 and 21018; *Desrocher and Treasury Board (Solicitor General Canada - Correctional Service)* (1993), Board file 166-2-22972; *Thompson and Ramier and Treasury Board (Solicitor General Canada - Correctional Service)* (1996), Board files 166-2-265560 to 26563; *Cudmore and Treasury Board (Solicitor General - Correctional Service Canada)* (1992), Board file 166-2-22426; *Amos and Treasury Board (Solicitor General - Correctional Service Canada)* (1984), Board file 166-2-14678; and *Gannon and Treasury Board (National Defence)* 2002 PSSRB 32 (166-02-30351 and 30352), [2002] C.P.S.S.R.B. No. 24.

#### ISSUES:

1. Did the grievor engage in a sexual relationship with Inmate X?
2. Did the employer meet the burden of proof in proving knowledge of the Code of Discipline and Professional Standards and breach thereof?
3. Was the penalty of termination excessive?
4. Are there grounds for substituting a lesser penalty?

#### REASONS FOR DECISION:

1. *Did the grievor engage in a sexual relationship with Inmate X?*

[57] In light of the findings of fact outlined above, and in light of the discussion hereinafter, I find it is not necessary to decide this issue.

2. *Did the employer meet the burden of proof in proving knowledge of the Code of Discipline and Professional Standards and breach thereof?*

[58] The evidence did not clearly establish the grievor had received the Code of Discipline and Professional Standards, or that she had specific knowledge of them. However, it was clear from the evidence that incident reports and sharing of information was a significant duty for all employees who had direct contact with the inmates. In light of the grievor's own evidence about her high degree of initiative, and given the general training that she underwent, the fact she had been charged with the responsibility of training volunteers to take prisoners out on passes, the fact that she had general interaction with staff - including Inmate X's parole officer, and the fact she had completed some OMS training and used the OMS to obtain information regarding Inmate X, I can only conclude she had a sufficient understanding of the requirements of reporting and sharing information and the underlying reasons therefor.

[59] Her conduct was sufficiently egregious that I find she knew it was wrong, regardless of whether or not she knew it amounted to specific breaches of the Code of Discipline and Professional Standards. I find her assertions, that she didn't know what to do when presented with specific situations, were not credible. In fact the evidence supports quite a contrary state of mind: that she knew her impugned interactions with the inmate were inappropriate and she specifically took steps to prevent them from coming to the attention of other employees by failing to record or otherwise report them.

3. *Was the penalty of termination excessive?*

[60] In light of the protracted nature of her inappropriate dealings with Inmate X, I do not believe termination of her employment was excessive. The conduct of the grievor was inherently and fundamentally wrong given her employer's mandate and her responsibility as a program delivery officer of the employer. One did not need to be apprised of the Code of Discipline and Professional Standards to appreciate the conduct in question was incompatible with her duties and responsibilities of employment.

[61] Furthermore, the grievor's conduct was repetitive in nature and persisted over a period of some five months, as opposed to an isolated incident that could be explained

as an error in judgment. The grievor embarked upon, and continued, the inappropriate conduct notwithstanding concerns expressed by her supervisor that she maintain an appropriate distance from inmates and not become, or be perceived as becoming, overly friendly with them. Her meetings with Inmate X outside the institutions were outside the scope of her duties and responsibilities, and contrary to the express directions of her supervisor.

[62] Nevertheless, I have been requested by the grievor's representative to consider whether sufficient mitigating factors exist to persuade me that the overall circumstances warrant the substitution of a lesser penalty.

4. *Are there grounds for substituting a lesser penalty?*

[63] While the focus of hearings of this nature is not to review the conduct or operations of the employer, a number of matters raised did cause me some concern. Firstly, while appreciating the efficiency of the transportation arrangements, I questioned having program delivery officers driving four or five inmates, in one vehicle, back and forth between institutions. Secondly, it appears no specific professional standards are required for program delivery officers. Accordingly, it might be appropriate to maintain a closer supervisory protocol for some of these individuals depending on their professional qualifications, education, training, experience and/or ability. Thirdly, because of what might appear as co-existing lines of authority as between wardens and supervisors, it may be useful to ensure all employees understand who they are to accept directions from - especially in instances such as here where an individual moves between a number of institutions to carry out her duties.

[64] I make these observations because these types of circumstances can be relevant to the issue of mitigation. I also note that the employer chose not to deal with these matters during the hearing given the issues and the scope of the evidence. That being so, my concerns may well be without foundation.

[65] While the foregoing matters were apparent during the course of the hearing, I have not accepted they were significant causative factors in this case. It appears that the grievor, albeit with naivety, thought she knew more about corrections and human behaviour than those she reported to, or she chose to disregard protocol and clearly

defined job responsibilities and obligations for personal and non-professional reasons. Regrettably, I am drawn to prefer the latter explanation.

[66] The grievor was hired as a program delivery officer with the employer in the fall of 1997. Prior to that she had been with the employer, primarily as secretary to the chief of Finance since 1996. Her first indeterminate position with the federal public service began in 1990. Apart from the conduct in issue at this hearing, the employer regarded the grievor as a good employee. At the date of the hearing she was married with an 11 month old child and operated a small business.

[67] Assistant Commissioner Bergen testified that she believes the bond of trust with the grievor cannot be repaired. The grievor's supervisor, Mr. Eno, also believes the grievor cannot effectively return to her position as a program delivery officer.

[68] The expectations placed upon our national correctional operations are significant. The employer, Correctional Service Canada, has significant obligations with respect to protecting the public, maintaining order within its institutions, and rehabilitating and reintegrating offenders back into society. When the system fails or breaks down, the employer is held accountable. The tasks pursuant to its mandate are onerous. The employer is sufficiently challenged with respect to guarding and policing the inmates; it should not be called upon to guard and police its employees.

[69] I have not been persuaded that this is a suitable case to substitute a lesser penalty. However, it did come to my attention during argument that the grievor had enrolled in a number of courses prior to her suspension and dismissal. In the event the employer had a policy in place with respect to reimbursement of costs, I invite the parties to consider whether any payments are payable and should be made to the grievor. In this regard, should the parties be unable to resolve this issue between them, I shall retain jurisdiction to address the matter provided notice is delivered to the Board in Ottawa on or before 70 days following the issuance of this decision.

[70] Subject to the foregoing qualification, the grievance is dismissed.

Francine Chad Smith, Q.C.  
Board Member.

REGINA, December 11, 2002.

