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**File:** 166-2-30989

**Citation:** 2002 PSSRB 57



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**MEL E. DE LISA**

Grievor

and

**TREASURY BOARD**  
**(Solicitor General Canada - Correctional Service)**

Employer

***Before:*** D.R. Quigley, Board Member

***For the Grievor:*** Sherrill Robinson-Wilson, Public Service Alliance of Canada

***For the Employer:*** Jennifer Champagne, Counsel

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Heard at Kingston, Ontario,  
March 25 to 28, 2002.

## DECISION

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[1] The grievor, Mel E. De Lisa, a parole officer, is grieving the termination of his employment, which was based on subsection 11(2) of the *Financial Administration Act*, effective 1600 hours Wednesday, April 11, 2001, for allegedly accessing unauthorized offender files from the Keele Community Correctional Centre (Keele CCC) and the harassment of a supervisor. As corrective action, the grievor is seeking to be reinstated and made whole, or any other relief deemed reasonable and appropriate.

[2] The letter of termination dated 10 April 2001 signed by Louis Kelly, Assistant Deputy Commissioner, Ontario Region, Correctional Service Canada, reads as follows:

...

*I have now completed a full review of the evidence pertaining to the allegations of unauthorized access to the Corcan offices, the unauthorized access of offender files from the Keele CCC and the harassment of a Parole Supervisor. I have also taken into consideration your written response to the fact finding investigation report and the representations made by your representatives.*

*Firstly, I accept your claim that you were not given specific direction to not access the Corcan offices after your assignment had been terminated. Consequently, I will take no further action related to that matter.*

*Regarding the access of offender files from Keele CCC, I note that you do not dispute that you did, in fact, access those files. I find that you were not authorized or instructed to access files from OMS [Offender Management System] that were not on your caseload. I also find that you did not have a need to access those files from another office and offered no reasonable explanation for your actions. This violates the principle of "the need to know" as outlined in the Departmental Security Procedures Manual.*

*Regarding the harassment of a Parole Supervisor, I find that you were involved in the activity of having anonymous letters sent which spread false information about that individual. I find this harassment to be particularly malicious in nature.*

*These acts are considered serious breaches of conduct. Both acts call into question your trustworthiness as an employee with CSC [Correctional Service Canada]. Staff are expected to respect offenders' right to privacy as well as not participate in any form of harassment of other employees. Consequently, I have concluded that it is necessary to terminate your employment. Your behaviour has resulted in a situation which I, as well as your other superiors, no longer*

*trust you with confidential information or your ability to maintain professional and respectful relationships with other staff members.*

*Therefore, by virtue of the authority delegated to me pursuant to Article 11(2) of the Financial Administration Act, I must inform you that I hereby terminate your employment with the Correctional Service of Canada effective 1600 hours, Wednesday, April 11, 2001.*

*You have the right, in accordance with your collective agreement, to present a grievance relating to this action directly to the final level of the procedure.*

...

[3] Five witnesses testified on behalf of the employer and counsel introduced 23 exhibits. The grievor testified on his own behalf, as well as two other witnesses, and his representative introduced seven exhibits.

[4] There were two objections raised by the grievor's representative, one of which was dealt with to the satisfaction of both parties. The other objection dealt with the introduction of evidence relating to previous disciplinary infractions. I allowed that evidence and indicated that its weight, if any, on my decision would be assessed in light of the applicable clause of the collective agreement and the relevance of the evidence to the issue at hand.

#### Background

[5] The grievor's career as a correctional officer began in 1980 with the provincial government and in 1983, he joined the federal government and was stationed at Niagara Falls, Ontario. In 1987, he relocated to the central district office in Toronto (downtown office). As a result of a reorganization of the Correctional Service Canada (CSC) in 1990, he worked from his home in Oshawa, Ontario, although he supervised the York/Durham office. In 1997, after yet another departmental reorganization, he relocated to the Keele CCC and worked in the Post-sentencing Unit where he became a parole officer. In 1999, he was the manager at Corcan and on September 25, 2000, he started working as a parole officer in the downtown office. The downtown office can be described as an institution that teaches job readiness skills, résumé writing and job

interview techniques to offenders in an effort to prepare them for employment. These offenders are considered a low/medium risk.

[6] It is at this time that the events leading up to the termination of the grievor's employment began to unfold. Both parties presented separately their evidence with respect to the two allegations for termination. Those allegations are (1) unauthorized access to Offender Management System (OMS) files and (2) harassment of a supervisor. Although the allegations intertwine in time, I will deal with them in a separate, chronological sequence.

#### Allegation (1) - Unauthorized Access of OMS Files

##### For the Employer

[7] The grievor was to report to his supervisor, Joanne Miller, who has worked at the downtown Post-sentencing Unit for six and one-half years and has been employed with the CSC for 26 years. However, Ms. Miller was on an assignment therefore he reported to Anne Marie Gravel, Ms. Miller's supervisor.

[8] At his meeting with Ms. Gravel, the grievor explained that it had been three years since he had a parole caseload, things had changed and training on by-pass, a component of offender management systems, the OMS, was new and he lacked the necessary training.

[9] Louis Kelly is the Assistant Deputy Commissioner for Operations in the Ontario Region. He has held this position since February 2001. Prior to that, he was the Warden of Millhaven Penitentiary for four years. He has worked for the CSC for 29 years. Mr. Kelly testified that the OMS is a relatively new computerized system that contains information on offenders across the country; in fact, information on all federal offenders on parole or in institutions. This system carries the tombstone data of each offender, such as height, weight, hair colour, date of birth, etc., as well as progress reports, community assessment data, psychological profiles, urine analysis and frequency of tests, family violence history, referral programs, travel permits, National Parole Board decisions, offender correction plans and a host of other such private information that also includes suspensions of offenders, the investigation of the suspensions, recommendations for release or being revoked, etc. All to be said and

corroborated by the witnesses for the grievor, Alec Browne and Ken Boone, a tremendous amount of information is contained in the OMS. The information is very limited in scope as to what the public may access (name; federal sentence); however, because of the *Privacy Act*, no personal data can be obtained by the public, especially in light of incidents with respect to the Paul Bernardo/Karla Homolka trial.

[10] On November 22, 2000, an article appeared in the *Toronto Sun* about sex offenders residing at the Keele CCC. The Keele CCC can be categorized as a centre for high-risk offenders who work in the community in the daytime and reside at the Keele CCC in the evenings. These offenders need an intense amount of supervision.

[11] The newspaper headline (Exhibit E-1) read: *High-risk perverts to be free*. The article used several phrases and other information that made it apparent that at least some accesses to the OMS had occurred. The cases of six sex offenders were reported in the article.

[12] The fallout of the article with the general public of Toronto, as well as the offenders' concerns of the breach of private confidential information, led to an investigation into the matter.

[13] On January 4, 2001, Ross Toller (since retired), Mr. Kelly's predecessor, directed Karl Niemann, Regional Project Officer, Security, Regional Headquarters (Ontario), to conduct a fact-finding investigation (Exhibit E-17) into three allegations of wrongdoing by the grievor. Mr. Niemann's report was to be completed by February 1, 2001. These allegations specifically related to:

- (1) breach of the *Privacy Act*;
- (2) harassment of a supervisor; and
- (3) unauthorized access to property and improper use of equipment.

[14] Mr. Niemann's fact-finding investigation report into allegations of wrongdoing by the grievor was introduced (Exhibit E-18) and he testified that he had, with respect to allegation (1), interviewed a number of CSC employees, including the grievor.

[15] The investigation began with a probe into the OMS. Through cross-referencing and cross-checking the system, a qualified person pinpointed who accessed what files and on which dates. This procedure was completed and demonstrated that, on

November 15, 2000, the grievor had accessed 12 offender files, five of which were persons named in the *Toronto Sun* article.

[16] Mr. Niemann acknowledged that there were other individuals who had accessed some of those 12 files but they either worked at the Keele CCC and it was part of their caseload, or they had a reasonable "need to know" of the information on the OMS concerning a particular offender.

[17] The investigation also revealed that in the past the grievor's pattern of accessing the OMS was fairly consistent; in other words, he usually checked individuals who would eventually be clients of the program or were offenders from his own caseload. The 12 accesses were the most files ever accessed by the grievor in one day before or since November 15, 2000. The article in the *Toronto Sun* appeared one week after the accesses.

[18] An inmate admitted talking to the reporter of the said article and the District Director, Shelly Howard, interviewed him on three separate occasions. However, after receiving three different versions of the incident and considering the fact that the inmate did not have the ability to divulge the information that appeared in the newspaper article, it was determined that no credibility would be given to the inmate's confession.

[19] In cross-examination, the grievor's representative asked Mr. Niemann if he had interviewed the inmate and Mr. Niemann replied that he had not.

[20] When interviewed by Mr. Niemann, the grievor admitted that he had accessed the 12 offender files on November 15, 2000. In his report, Mr. Niemann determined that the grievor's explanation for accessing those 12 files was not plausible and that this infraction violated the principle of the "need to know" as outlined in the CSC Security Procedures Manual, Chapter 3.1.

[21] Mr. Niemann indicated that the grievor neither showed any remorse for his actions nor admitted that he would not access these types of files on the OMS again. Mr. Niemann submitted his report to Mr. Kelly on February 8, 2001; the grievor received a copy of the report on March 8, 2001.

[22] On March 15, 2001, after reviewing the report, the grievor sent a letter (Exhibit E-2) to Mr. Kelly in which he stated his responses to the three allegations of wrongdoing. A meeting was then scheduled for March 29, 2001 at the central district office in Toronto. The purpose of the meeting, according to Mr. Kelly, was to satisfy himself that the investigation report was accurate and whether or not the facts were on target. He stated: "After all, I was the decision-maker and I wanted to give Mr. De Lisa an opportunity to discuss his letter of March 15, 2001."

[23] The meeting on March 29, 2001 was attended by Derek Orr, District Director, Toronto Area, Ken Boone, President, PSAC Local 00079, Alec Browne, a parole officer, and Mr. Kelly; the grievor was also invited. However, as the meeting was about to commence, the grievor submitted to Mr. Kelly a letter from a Dr. Christopher Garrange, which read, in part: "The patient is not capable of attending a meeting with Mr. Orr."

[24] The grievor testified under oath that he had received the investigation report from Mr. Browne on March 8, 2001. He then telephoned Mr. Kelly and informed him that if there were to be a meeting concerning this issue, he would not attend it if Mr. Orr was going to be present, due to medical reasons. Mr. Kelly apparently replied: "Then bring me a doctor's certificate."

[25] In cross-examination, Mr. Kelly testified that at no time did he ever request a medical certificate from the grievor. In their testimony, Messrs. Browne and Boone neither acknowledged nor denied that that conversation had taken place.

[26] Mr. Kelly conveyed to the grievor that since he had not requested a medical certificate, the meeting was about to start and he was not prepared to ask Mr. Orr to leave. He then asked the grievor if he wished to participate in the meeting but the grievor chose not to and abruptly left. The meeting continued with Messrs. Browne and Boone confirming that they indeed were the grievor's representatives. During the meeting, the grievor's representatives raised six issues in the investigation report to which the grievor took exception.

[27] As a result of the March 29, 2001 meeting, Mr. Kelly sent a letter to the grievor on April 3, 2001 (Exhibit E-3) as per his commitment to the grievor's representatives that he would provide, in writing, the information gathered with respect to the six issues to which the grievor took exception.

[28] Mr. Kelly testified that, between his letter of April 3, 2001 and the letter of termination of April 10, 2001, no union representations were made to him. However, he consulted with Mr. Don Graham, Regional Chief of Staff Relations, on the letter.

[29] Mr. Kelly's decision to terminate the grievor's employment was based, as stated previously, on two allegations. In terms of the unauthorized access of OMS files, he explained that the grievor was well aware of the fact that he did not have a "need to know" of the files he accessed from the Keele CCC. Mr. Kelly stated that a parole officer needs two ingredients to access the OMS: a password and a "need to know/need to access". A parole officer would not access files of another parole officer at a different institution. As for obtaining the password for the OMS, each and every parole officer receives training on the OMS as well as the "need to know" principles before obtaining a password that allows them to access the system. Before logging on to the OMS, the screen indicates that you must comply with the security policies of the Government of Canada and the CSC. Exhibit E-4, the "OMS Entry Screen", states the following:

*Unauthorized access prohibited / ...*

*Username: ...*

*Password:*

*...*

*WARNING -*

*IN COMPLIANCE WITH THE SECURITY POLICIES OF THE GOVERNMENT OF CANADA AND THE CORRECTIONAL SERVICE, THE USAGE OF THIS COMPUTER IS CONSTANTLY MONITORED. ANY PERSON FOUND IN BREACH OR VIOLATION OF SYSTEM SECURITY WILL HAVE ACCESS TO THE COMPUTER SUSPENDED, PENDING A SECURITY REVIEW.*

*Press (ENTER) to continue*

[30] Counsel for the employer introduced Exhibit E-5, a document entitled *Information Sharing and Disclosure*, specifically page 13, paragraph 51, which defines what information may be disclosed when the public makes a request concerning an offender's file; Exhibit E-6, *Standards of Professional Conduct in the Correctional Service of Canada*, at page 7, paragraph 6, deals with the protection and sharing of



information and Exhibit E-7, a signed acknowledgement, dated May 20, 1983, by the grievor that he received the "Information Kit of the Department of the Solicitor General" that contained, among other things, the "Code of Conduct", "Operational Policies", "Protection of Personnel Information", the *Canadian Human Rights Act* and the "Rights and Responsibilities of Public Servants."

[31] Mr. Kelly reviewed Exhibit E-8, which concerns the grievor's training record and the orientation program he received and, in fact, the signed confirmation thereof on August 16, 1983. Mr. Kelly pointed to page 4, subparagraphs 2)b) "the need for confidentiality", 2)e) "the regulations for the handling, transmission, storage, destruction/shredding of classified information" and, finally, 2)d) "the review of the Security Classification of Information including the concept of "need to know"." Each parole officer receives approximately 12 weeks of training.

[32] Another set of rules on which each parole officer receives training is the *Code of Discipline in the Correctional Service of Canada* (Exhibit E-9). Mr. Kelly was referred to Standard 6 - "Protection and Sharing of Information" - and specially with respect to "Infractions" where it states:

*An employee has committed an infraction, if he or she:*

- *fails to properly safeguard all documents, reports, directives, manuals, or other information of the Service;*
- *fails to observe the provisions of the Privacy Act and the Access to Information Act;*
- *commits a breach or violation of the Security Policy of the Government of Canada.*

...

[33] Mr. Kelly lastly commented on Exhibit E-19, *Security of Information and Assets*, where he noted that the procedures in this policy state:

...

- *only those who have passed Security Assessments and Reliability Checks have access; and*
- *they have access only to the information they need to know to do their job.*

...

[34] In summary, Mr. Kelly confirmed that the grievor had indeed breached the "need to know" policies of the CSC by accessing OMS files at the Keele CCC.

[35] In cross-examination, the grievor's representative asked Mr. Kelly if the OMS existed in 1983. Mr. Kelly replied that it did not but added: "It really doesn't matter. OMS is just technology going from a hard copy to an automated system. There is more accessibility, but the authority to access has stayed the same."

[36] Joanne Miller testified to the effect that she met with the grievor on October 20, 2000 to discuss office procedures, the log-in and sign-out book as well as the sign-out policy for Government vehicles used by parole officers. She explained that it was during this conversation that the grievor "exploded" and left her office to speak to her supervisor, Anne Marie Gravel. Ms. Gravel called a meeting, with Ms. Miller present, to familiarize the grievor on office policies and the issues seemed to be resolved.

[37] After they left Ms. Gravel's office, the grievor and Ms. Miller proceeded to a clerical area where there was a chart used to log in and log out Government vehicles. The grievor was still agitated and said to Ms. Miller: "You'd better be careful, you'd better watch yourself because I know stuff about you."

[38] Ms. Miller then proceeded back to Ms. Gravel's office and related to her the grievor's comment. Ms. Miller requested that she no longer supervise him; however, she continued to supervise the grievor and assign his caseload, although communication was minimal and usually by e-mail.

[39] On December 4, 2000, Ms. Gravel officially assigned Rob Campney to supervise the grievor (Exhibit E-13). This represented little change as the grievor had, on an interim basis, been submitting his work to Mr. Campney since the beginning of November.

[40] Mr. Campney is currently on an assignment in Kingston; however, he was a parole supervisor at the downtown office from 1997 until July 2001. He has been employed with the CSC for 13 years.

[41] While testifying, Mr. Campney indicated that he and the grievor were not the best of friends. At an adjudication hearing with respect to a grievance filed by Brian Welsh (2001 PSSRB 29 (166-2-29492)), they found themselves on opposite sides.

[42] Mr. Campney went on to state that the work submitted by the grievor was not completed correctly and he met with the grievor to review the files he sent back for revision. Mr. Campney provided the grievor with a copy of *the Standard Operating Practices (SOPs) (700-03)* (Exhibit E-16) and explained the guidelines he needed to follow.

[43] Mr. Campney advised Ms. Gravel of this by e-mail (Exhibit E-15) and also indicated that additional information was given to the grievor to help him prepare his reports. He also indicated that he had advised the grievor that if he had any problems or questions about these reports, he should come and see him. Both e-mails are dated November 8, 2000 (Exhibit E-14).

[44] Counsel for the employer referred to Exhibit E-2, the grievor's letter of March 15, 2001 to Mr. Kelly, wherein he stated that:

...

*... Mr. Campney spend (sic) some time with me reviewing some of the changes that have occurred in the case management process since by-pass came into effect. I indicated to him at that time, that in order to complete some of my work during his absence over the next few weeks, I would be browsing the OMS network and reviewing files relative to cases I was assigned to work on... A review of the CA log will verify that a number of cases assigned to me were high-risk, high-need offenders requesting either Team Supervision or Keele CCC as their destinations....*

[Emphasis added]

[45] Mr. Campney testified that he absolutely did not agree or condone the grievor's browsing of the OMS. He testified that if he had said that, he would have documented it as he did with all meetings he had with the grievor. Mr. Campney went on to say that he provided the grievor with the work procedures he needed. He also mentioned that he could talk to an experienced parole officer and encouraged him to look at similar cases that are on hard copy on file in the office. The grievor's caseload did not have high-risk offenders.

[46] Since the grievor was new to the downtown office, the files assigned to him concerned low-risk to moderate-risk offenders. Ms. Miller assigned these particular files to the grievor in order not to overtax him. Mr. Campney testified that normally 20 to 25 files are assigned to a parole office in the downtown office. The 11 files in the grievor's dossier were the only ones which he should have accessed on the OMS. The 12 OMS files he accessed on November 15, 2000 were held by a different office, the Keele CCC, and assigned specifically to the Keele CCC parole officers. The files at the Keele CCC concerned high-risk offenders; the grievor's files did not.

[47] In cross-examination, the grievor's representative asked Mr. Campney whether he was sure that the grievor had never mentioned browsing the OMS. Again Mr. Campney replied that this was absolutely not the case as that would have raised an "alarm with him" and that not only if the grievor had made that statement, but if anyone else had made it for that matter.

[48] Mr. Orr testified that he was the one who assigned personnel to posting positions. In the grievor's case, because of a major conflict at the Toronto East office (harassment allegations on the part of the grievor), he assigned him to the Post-sentencing Unit and then to the Keele CCC. There the grievor went on cognitive skills training, a CSC sponsored program under the auspices of two physiologists. However, the grievor was unable to be certified after the training. It was then that Mr. Orr decided to post him to the Corcan office, as the grievor was separating from his wife and Mr. Orr felt that putting him back in parole work might burn him out. The Corcan office was a new challenge, an opportunity for the grievor, and he would be the manager responsible for counsellors for a two-year period through a program initiative.

[49] Mr. Orr relayed a telephone conversation he had with Mr. Van Rosen, the manager responsible for the Corcan office. Mr. Van Rosen was having difficulties with the way the program was being managed, as well as other difficulties at the workplace involving the grievor. Mr. Orr suggested that he complete an "Employee Performance Evaluation Report" (PER). The PER (Exhibit E-23) identified a number of objectives not met, such as attitude, teamwork, good working relations with staff members, attracting, developing and deploying staff and fostering a positive and productive work milieu, program control and formulating policy. The grievor disagreed with the PER and refused to sign it. The grievor's assignment at the Corcan office was

terminated after one year and since there was a need for a parole officer at the downtown office, he was relocated there. Mr. Orr stated that the letter of suspension pending the investigation could not be given to the grievor as, again, the grievor had not signed the registration book (the log) indicating his whereabouts. This was a security issue and when Ms. Gravel contacted the grievor to return to the workplace, he injured his back and the letter was sent by registered mail; however, it was returned as the grievor had moved.

For the Grievor

[50] Ken Boone has worked for the CSC since July 1974 as a parole officer and last worked at the Toronto East Office. His caseload there varied from 20 to 29 files. Since November 2000, he has been on another assignment.

[51] As a parole officer, Mr. Boone is responsible for supervision in the community, assessing release plans, interviews, gathering facts for community assessments, etc. Community assessments are requested by region or the institution where an offender wishes to relocate geographically. The end result of an assessment could be:

- (1) that an offender is not suitable for release;
- (2) that the preferred destination of the offender is not acceptable;
- (3) a recommendation to a half-way house or to the Keele CCC;
- (4) a recommendation to the National Parole Board to bring risk into an acceptable level.

[52] Community assessments are put into reports, such as the "Community Strategy Report" or the "Community Plan Progress Report", which are then entered into the OMS. Community assessments are given to the parole officers by the parole supervisors.

[53] The CSC introduced the by-pass process in an attempt to streamline case preparation work and case management; it was introduced in the spring of 1999.

[54] Mr. Boone indicated that parole officers were trained on two to three comprehensive lots but as he was older, he really did not buy into the process. However, he agreed to the implementation and participated in it. The process affected

the workplace because of the rigidity of the reports; it did, however, help “cross the t’s and dot the i’s.” After the reports are completed, the supervisor reviews them and “locks them”; that is, the supervisor enters the reports into the OMS. However, until the supervisor locks them in, any parole officer can access the reports.

[55] Mr. Boone testified that he received training on the OMS in the 1990’s and that 80 percent of his time is spent on this system. For instance, if a colleague is away on sick leave he might access the OMS on his colleague’s behalf. As well, on rare occasions, after receiving a call from the police concerning an offender in the area, he would check the OMS to see if in fact the offender was allowed to be there. Also, if there is a high-risk release he might get in touch with the Keele CCC to see if the offender meets the profile. He would sometimes access the hard files in the Records Office and ask the records clerk for the reports and sign out the files on “as we call them, the jacket.” Finally, if he were having a mental block, he might be referred to another parole officer for assistance.

[56] With regard to Exhibit E-8, the CSC’s training program, Mr. Boone testified that he recalled participating in it but could not remember when. He heard about the “need to know” phrase in the spring of 2000 when an area manager accused him of accessing a file and requested justification for doing so. Mr. Boone showed him that he had supervised the offender and this is his first recollection of the “need to know” principle. He assumed that that was a local rule of the Toronto East Office and was not satisfied that it was system-wide.

[57] Mr. Boone stated that Exhibit E-19, *Security of Information and Assets*, was brought to his attention only one week before the commencement of this hearing.

[58] Mr. Boone testified that he attended a meeting on January 25, 2001 with Mr. Niemann and the grievor where the grievor was questioned about the accessing of the 12 files on November 15, 2000 and which he admitted to have done. There was also another meeting scheduled which he and Messrs. Orr, Kelly and Browne and the grievor were to attend. However, the grievor had a doctor’s certificate stating that due to medical reasons he should not meet with Mr. Orr. Mr. Kelly, however, commenced the meeting with Mr. Orr present. Mr. Boone also testified that Ms. Miller had twice declined meeting with the grievor.

[59] Mr. Boone was not cross-examined by counsel.

[60] Alec Browne has worked for the CSC for 29 years. From April to December 2000, he was located in the downtown office, from December 2000 to July 2001, he was located at the Keele CCC and effective the end of July 2001, he returned to the downtown office.

[61] Mr. Browne testified that his caseload is approximately 25 files; however, the norm at the Keele CCC would be about 10 files and at the downtown office 18. At the Keele CCC there are high-risk offenders that you would see at least once a week, perhaps once a day. The downtown office has a total range of offenders; some are high-risk but more generally they are low-risk.

[62] In terms of the OMS, Mr. Browne testified that he has had training, but mostly on-the-job training from his partner, and he does have a password. In terms of by-pass, it affects evidence the same as before but it is more time-consuming as it is revolving continuously. In the past, he has received assistance by asking other parole officers for help and they would provide him with a name of an offender which he would then access on the OMS or sign-out a hard copy.

[63] Mr. Browne testified that he would have no problem working with the grievor again as they worked well together in the past.

[64] There was no cross-examination of this witness.

[65] The grievor testified that on January 8, 2001, he received, by registered mail, a letter of suspension.

[66] The grievor discussed with Ms. Gravel about being overwhelmed by the work and how things had changed since he had had a caseload of offender files and that he needed training to refer to SOPs and to interpret them in relation to his workload.

[67] With respect to Ms. Miller, the grievor testified that he never had a problem with her; he became familiar with her in the 1980s when he was the union president of the local and she was a member. He testified that Ms. Miller appeared friendly at the beginning of his employment at the downtown office but within a short period of time she began returning his reports requesting clarification. She would say: "You make the changes before I lock them in."

[68] The grievor indicated that they had other issues, such as with his signing in and out, the use of cellular phones and office procedures. He indicated that on October 20, they met in Ms. Miller's office and he raised some questions, which he thought were legitimate, such as how signing in and out of a logbook was going to protect him from danger. In other words, even if they knew his whereabouts, this offered no protection. Also, he mentioned that he did not have a cellular phone while others did and he did not feel that this was equitable treatment and that this raised safety issues. They discussed other issues, such as a flexible workweek, which was approved, and the meeting then ended. The grievor indicated that as he was leaving the room, Ms. Miller seemed upset. He said to her: "Are we going to have a problem?" She replied: "Are you threatening me?" Ms. Miller then left to go see Ms. Gravel.

[69] The grievor indicated that since he had never worked for Ms. Miller, he thought maybe this was normal behaviour.

[70] On October 26 and November 2, meetings were scheduled with Mr. Boone, Ms. Gravel and the grievor; Ms. Miller, however, did not attend. The grievor then asked Ms. Gravel if he could report to another supervisor and she indicated that she would take his request under review. Ms. Gravel also informed him that he was scheduled for by-pass training on January 8, 2001.

[71] The grievor was temporarily assigned to work for Rob Campney, whom he knew and with whom he had no problem; in fact, he found Mr. Campney helpful. The grievor claimed that he informed Mr. Campney that he was going to browse the OMS to get some help with his community assessments and Mr. Campney just shrugged his shoulders and left.

[72] The grievor admitted that he accessed, on November 15, 2000, the 12 OMS files but he could not remember the names of the specific offenders. He claimed that one of his assigned community assessments required a residency at the Keele CCC and that he had historically reviewed files on the OMS, which were not always his own, because the OMS is not just a "tool for accessing, it is a tool for researching."

[73] The grievor testified that since he had to send his community assessment to the National Parole Board, he needed to make logical arguments and he was using these files as reference material. In fact, while he worked at the Corcan office, he accessed



hundreds of cases on the OMS; although he did not have a caseload there, it was relating to the work he did.

[74] The grievor agreed that he had signed Exhibit E-7 acknowledging that he had received the "Training Information Kit" in May 1983. But with respect to the "need to know" principle (Exhibit E-8), no one ever communicated to him, orally or in writing, that accessing the OMS was unacceptable. He indicated that he thought that the OMS was introduced in the early 1990's and that he had received some training and therefore he was able to get a password and log-in but that was all.

[75] In accessing the 12 OMS files, the grievor looked at what was relating to his case: arguments, analysis. Sometimes he agreed and other files he opened he did not agree with. The most effective way to access these cases would be to drive to the Keele CCC as he had worked there before and was familiar with these types of cases. At other times he talked to other parole officers who provided him with names of cases and he would access them on the OMS. In other words, he did have a "need to know" in order to complete his caseload.

[76] In cross-examination, the grievor stated that it was absolutely untrue that his assignment was terminated at the Corcan office because of performance issues. He denied signing or in fact ever seeing the PER generated by Mr. Van Rosen.

[77] The grievor testified that he did not recall going to the sign-out log chart for Government vehicles with Ms. Miller on October 20, 2000. He responded that he did not remember and unless it could be demonstrated, there were only two e-mails (October 20 and October 24) stating that his whereabouts were unknown by his supervisor.

[78] The grievor testified that he was not assigned an easy caseload; in fact, he had many low-risk, a few medium-risk and two high-risk files - approximately 15 to 25 files - and they were assigned by Ms. Gravel.

[79] The grievor alleged that Mr. Campney was lying during his testimony when he denied that the grievor had informed him that he was going to browse the OMS and that Mr. Campney had just shrugged his shoulders.

[80] When the grievor was referred to Exhibit E-19, *Security of Information and Assets* and the "need to know" principle, he replied that he had an understanding of it but in his 18 years at the CSC, it had never been explained to him. He also confirmed, when questioned by counsel for the employer, that he understood his responsibilities and what to do and what not to do in terms of his job requirements.

[81] With respect to the grievor's letter of March 15, 2001 to Mr. Kelly (Exhibit E-2) in which he indicates "...if I had to do it again, I would access the same files in order to complete my casework reports", the grievor confirmed that even today he would access the files unless he was otherwise instructed not to. When probed as to whether he regretted his actions, he replied: "No, but I have a level of frustration as I haven't done anything wrong in accessing those files."

[82] In reply, the grievor testified that he had never seen the PER (Exhibit E-23) and that no one had ever told him that he could not "snoop". He explained that he was not browsing but was accessing files on the OMS for his community assessment and strategy reports. In fact, when he accessed the files at the Keele CCC, 30 to 40 cases came up on the OMS on a screen with "Finger Print Service" (FPS), which showed the last and then the first names. He narrowed the search and the 12 files came up and he looked at them in his "need to know" pertinent to the caseload he had at the downtown office.

[83] Ms. Miller testified that during the last seven years, she and Rob Campney were the only ones that assigned case files; never has a clerk or Ms. Gravel assigned case files. She was specific on what cases she would give the grievor: low-risk cases that were Mr. Browne's initially and they numbered 11. At no time did she give the grievor cases that were commercial; those are always handled by the Keele CCC and the grievor's explanation for accessing the arguments for his use is unlawful as it violates the *Canadian Charter of Rights Act*. Ms. Miller also indicated that after the Paul Bernardo/Karla Homolka trial, all parole officers at the CSC received a letter reminding them of the "need to know" principle.

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Allegation (2) - Harassment of a SupervisorFor the Employer

[84] Mr. Kelly testified that the grievor had received training on professional conduct and relationships with other staff members (Exhibit E-6) and on the code of conduct concerning infractions in relation to conduct with other staff members (Exhibit E-9).

[85] As reported in allegation (1), at the meeting on October 20, 2000, the grievor and Ms. Miller had some type of confrontation (real or perceived) over work issues.

[86] In a letter dated October 31, 2000 (Exhibit E-20), Anna Foshay, Assistant Registrar, Student Services and Information, York University, states that she had received a call on October 26, 2000 from someone inquiring as to whether a Joanne Miller or a Joanne Fox had graduated from York University. The caller thought the person's middle name began with the letter G and knew that she had been married and but was unsure under which name the records would be. Since Ms. Miller's record was pre-82, it was not in the computer system. Ms. Foshay informed the caller that she would look up the information and call back. When searching for the information, Ms. Foshay found nothing under "Fox" but did locate a Joanne Miller, with G as a middle initial, who had attended York University but had not graduated. She relayed this information to the caller. Ms. Foshay could not recollect if the caller was male or female since they do not keep a record of the people who call requesting confirmation of degrees.

[87] The information Ms. Foshay provided to the caller, however, was wrong. When Ms. Miller contacted Pat Foulkes, Assistant Registrar, Records and Scheduling, Ms. Foshay was asked to double-check the information and it was at that point that she realized that unfortunately a number of files starting with "FO" were misfiled in the file room, including the one for Joanne Fox. Ms. Foshay then contacted Ms. Miller to clarify the situation and apologize.

[88] Sheri Machan has worked for Corcan Employment Services since April 1, 2000 as an office administrator. As part of its mandate, Corcan promotes employment in the community for offenders as well as at the Corcan office itself. As Office Administrator, Ms. Machan is responsible for the functioning of the office.

[89] Ms. Machan testified that she was convicted of second-degree murder in 1984 and received a life sentence plus 10 years. She was released after serving nine years but will forever be on parole. As part of her rehabilitation, she has earned 11.5 credits in psychology from Queen's University and a few credits in criminology from Waterloo University.

[90] Ms. Machan went on to say that she works from 9:00 a.m. to 5:00 p.m. and loves her job. She enjoys working with Corcan's clients because she can "give back something and it is a pleasure to help someone." She works in the community with the Knights of Columbus, Martha's Table, who feed the needy, and has a circle at Diane Bulbous of the gate organization, which puts offenders together to help with their reintegration into society. She attends and speaks at many different engagements in order to help women get jobs and become active in the community.

[91] Ms. Machan's testimony revealed that in January 2000, after her release from Brampton Halfway House, she met with the grievor to apply for a position at the Corcan office. After being interviewed by Mr. Van Rosen and the grievor, she was hired. From April to September 2000, she had a very good working relationship with the grievor. "He was a good listener and I trusted and respected him."

[92] Ms. Machan testified that it was in late October 2000 that the grievor approached her with a CSC telephone directory and asked her if she could type up a number of labels for him. She typed the labels as he requested. He also had a computer disc and wanted to use one of the office computers but they were all in use at the time. He then asked Ms. Machan if he could use the computer in his old office but she informed him that it was no longer there.

[93] Ms. Machan testified that she told the grievor to give her the disc and that she would print the document for him. She stated that as she was opening the document, the grievor told her to let him know before she hit the print key. Since the printer is located outside of her office, the grievor wanted to be by the printer as the document came out. She hit the print key and as she was about to close the file, the letter came up on the screen. It concerned Joanne Miller not having a university degree and she thought it had a 1-800 number to call. Ms. Machan noticed that the letter was not signed and the name of the file was "j.m.". The grievor then retrieved the disc and left.

[94] Ms. Machan then went to see Mr. Elias Contantatos, an employment counsellor, as she was very upset. Later, Mr. Van Rosen had an employee, Bob Small, search the hard drive to see if he could locate the letter. The letter, however, was not located.

[95] This incident twiggged Ms. Machan's memory about a meeting she had with the grievor at *Druxy's* before the letters began to arrive. At that meeting, the grievor stated that he had information from Mr. Welsh, who had dated Ms. Miller, which questioned her university degree. Because of Ms. Miller's questioning of his reports and sending them back, the grievor stated he might have to use this information at a convenient time.

[96] Ms. Machan testified that she was very emotional with respect to this issue and met with a psychologist to help her. She also met with Ms. Gravel, who informed her to no longer report to the grievor as her parole officer as this would be considered a conflict.

[97] On October 30, 2000, the first registered letter (postmarked October 27, 2000) concerning Ms. Miller's lack of a degree was received at the Central District office as well as at other locations (Exhibit E-10). It read as follows:

...

*Information has been confirmed by the Registrar's Office, York University that Joanne Miller (nee Fox) never completed a university degree. This is a requirement for the position of Parole Supervisor.*

*This constitutes fraudulent action on the part of Ms. Miller. It is expected that appropriate action will be taken by the CSC.*

*Anonymous*

...

[98] Exhibit E-22 is a photocopy of an address label on an envelope addressed to Mr. Orr. Ms. Machan identified it as one of the labels she had typed for the grievor. The label is addressed as follows:

Correctional Service of Canada  
Central Ontario District  
ATTENTION: Derek Orr  
180 Dundas Street West  
2<sup>nd</sup>, Suite 215  
TORONTO, ON  
M5G 1Z8

[99] Ms. Machan testified that she was absolutely sure that she had typed this label because, firstly, it was a 2" x 4" label, secondly, she always types the word attention in upper case and, thirdly, she did not follow the Canada Post guidelines for the placing of the postal code; she typed it underneath the city. Ms. Machan indicated that this was not correct but she continued to do it in this fashion by force of habit; the postal code should be placed two spaces to the right of the province with one space between the first three and last three digits.

[100] Counsel for the employer asked Ms. Machan if Exhibit E-11 was similar to the letter (Exhibit E-10) she had printed for the grievor. She confirmed that it was as she remembered the third paragraph in particular; she thought it indicated a 1-800 number but in fact it was a number with the 416 area code and the letter was not signed. Exhibit E-11 reads as follows:

*The intent of this letter is, very simply, to right a wrong. Information has been confirmed by the Registrar's office, York University, that Joanne Miller (nee Fox) never completed a university degree. This is a requirement for the position of Parole Supervisor and until recently CSC did not require applicants to submit their degree. This constitutes fraudulent action on the part of Ms. Miller.*

*CSC, specifically the Deputy Commissioner, District Director, Area Director and Human Resources Management were advised several days ago. It is expected appropriate action would be taken. As of this date, no action has been forthcoming. CSC has only to investigate the truth.*

*Anyone who wishes to verify the accuracy of this information can contact York University's public information line at (416) 736-2100.*

*By disseminating this information, it is expected that pressure will be brought to bear to address Ms. Miller's dishonesty.*

*Anonymous*

[101] Ms. Machan testified that, because of these events involving the grievor, she had seen a psychologist for six months in an effort to deal with her emotions.

[102] In cross-examination, Ms. Machan agreed that Exhibit E-11 was similar to the letter she had seen on her computer screen but could not be sure if it was exactly the same. When questioned further, she confirmed that she could not be sure that it was the grievor who had sent out that letter.

[103] In reply, Ms Machan agreed that it was the grievor who had asked her to print a letter with respect to Ms. Miller's lack of a university degree as well as the labels for the envelopes.

[104] Ms. Miller testified that she first learned about the letter discrediting her credentials (Exhibit E-10) through Ms. Gravel who called Ms. Miller into her office and asked her if she had a university degree. Ms. Miller went to her office and demonstrated her degree, a 1975 Bachelor of Psychology degree from York University. After that, she went to see Mr. Orr who had seen the letter and was relieved to learn that Ms. Miller did indeed possess a degree.

[105] Ms. Miller stated that her first impression was to laugh but then she felt upset that someone was trying to discredit her reputation. She phoned Ms. Foshay who explained that someone had called to inquire about Ms. Miller's credentials and about the mix-up.

[106] Ms. Miller stated that after speaking with Ms. Foshay, she noticed that the postmark on the envelope was from the Atrium at Bay Post Office, which was located close to her office. She went to the post office with two colleagues (Steve McIntyre and Doug Ducharme) hoping that the sender would have been caught on camera or that she could get a description from the clerk at the post office. However, she did not get either.

[107] Exhibit E-21 is an e-mail dated November 7, 2000 from Catherine St. Aubin informing Ms. Miller that a letter (Exhibit E-11) had been received by a parole officer in Hamilton. The parole officer who received the letter had no idea why it had been sent to him. It was around that time that more of these anonymous letters were being received in Hamilton and at the downtown office. Mr. Campney began intercepting the envelopes and collecting them from the mail clerk before they were delivered.

[108] Ms. Miller testified that everyone she and Mr. Campney supervised had received a letter except for the grievor. She indicated that she was becoming extremely concerned that there were now two letters and the tone and implied threat were disturbing.

[109] Ms. Miller testified that she and Mr. Orr met with Inspector Mike Fedeninco, who suggested that Ms. Miller go to the Metro Toronto Sexual Assault and Threat Assessment Unit. The two detectives that interviewed Ms. Miller told her that there was a risk of threat and she could either lay a charge or information against the grievor. The envelopes that were retrieved (approximately 25 to 40) were checked for finger printing analysis to see if a link could be made to the sender. However, none was made.

[110] Ms. Miller testified that there were no other letters sent, either threatening or apologizing.

[111] On November 9, 2000, Mr. Boone sent an e-mail to the members of Local 00079 (Exhibit G-1) stating that he did not condone the sending of anonymous letters and his commitment towards creating and maintaining a harassment-free workplace.

[112] Mr. Niemann testified that during the investigation he completed, he interviewed Ms. Machan, Mr. Elias Contantatos, Ms. Miller, Ms. Foshay, Ms. Gravel and the grievor. Mr. Niemann verified that after the incident about the typing of the labels and printing the letter to which Ms. Machan testified, he interviewed Mr. Contantatos who confirmed that Ms. Machan had told him about the incident and that she was very upset. When Mr. Niemann interviewed Ms. Foshay, she indicated to him that there had been only one call placed to York University inquiring about Ms. Miller's degree and after the false information was released, all calls with respect to Ms. Miller were directed to her. There were several calls after the anonymous letters had been received by parole officers who wanted to confirm Ms. Miller's degree. One male caller identified himself as "Jeff Smith". However, it was the grievor's phone number that showed up on the call display.

[113] Mr. Niemann's investigation revealed that Mr. Welsh, the grievor's former colleague, called several times also trying to get information and in early January both he and the grievor went to York University to find out if Ms. Miller had a degree. When the clerk refused to co-operate with them, he threatened to subpoena her to retrieve



the information. The grievor was adamant that he had the correct information and he was going to have a police officer, whom he would not name, help with the investigation. Failing to access the information he wanted, the grievor went to the Scott Library to research the convocation records. However, he never found a graduate degree for Ms. Miller as he was looking for a Joanne Miller and not Joanne Fox, Ms. Miller's maiden name.

#### For the Grievor

[114] The grievor testified that he had hired Ms. Machan and that her interview had gone well even though he had concerns about her file. As a worker she was okay but with some relationships there were occasions when there were problems as there was a lot of dynamics.

[115] The grievor stated that he met with staff on special occasions but as a parole officer he conducted himself professionally and remembered first and foremost that the employee was an offender. As far as the meeting at *Druxy's* is concerned, the grievor stated that he never discussed any issues there.

[116] The grievor stated that Ms. Machan was mistaken when she testified that she had typed labels for him. As far as the disc which she claims the grievor gave her, he stated that he did give her a disc but not at the time she indicated. If Ms. Machan saw a letter with Ms. Miller's name on it, it is probably because Miller is a common name and also Ms. Miller's name is on a lot of documents.

[117] With respect to Exhibit E-11, the anonymous letter, the grievor stated that he was familiar with it although he never received a copy and neither did his next door neighbour, Joe Daoust, a parole officer and neither did Mr. Browne. He went on to state: "I was not offended that I never received one. Frankly, I couldn't have cared less about the letter as it was anonymous and I was being supervised by Mr. Campney not her at that point in time."

[118] The grievor confessed that in retrospect it was a poor decision to show up at York University. He stated, however, that management was looking for a scapegoat and "it was like someone dropped a safe on my head. My mind was confused and I was upset." He stated that he took it upon himself to find answers and he denied calling York University in October.

[119] The grievor further stated that he had absolutely no part in the creation or mailing of either letter (Exhibits E-10 and E-11).

[120] The grievor concluded his testimony by stating that in his 18 years working for the CSC, he had received a number of "bravo zulus" for exceptional work performed (Exhibits G-4 to G-7). He stated that he would absolutely like to return to work as he enjoys his work and his colleagues.

[121] In cross-examination, counsel for the employer asked the grievor whether his assignment at the Corcan office had been terminated because of performance issues. The grievor replied in the negative and in fact denied ever seeing or signing his PER.

[122] The grievor admitted in cross-examination that he had gone to York University and to the Scott Library to look at convocation records. He admitted as well to placing one call to York University but not several calls as counsel for the employer suggested. He stated that he did it only because he was curious as he had friends who worked under Ms. Miller's supervision.

[123] The grievor admitted that he was a witness for Mr. Welsh at an adjudication hearing. Although the issue of Mr. Welsh's lack of a university degree was mentioned, the grievor was at the hearing only to testify on audit.

[124] When asked if he had a prior disciplinary record, the grievor replied that he did not. Counsel for the employer then reminded him of an incident concerning the sending of threatening e-mails to a supervisor (Tony Lombardo). The grievor stated that it had occurred in 1996 and the discipline was rescinded at the fourth level of the grievance procedure. Counsel for the employer noted that Mr. Orr had signed the disciplinary letter, as the CSC's position was that the grievor was involved in harassment.

[125] Counsel for the employer again refreshed the grievor's memory after he could not recall the inappropriate use in 1999 at the Corcan office of Government telephones to access 1-900 numbers. He indicated that it was an error by Bell Canada, that he paid the amounts and no discipline was enacted.

[126] Counsel objected to the reference to the harassment grievance of 1996, as it was contrary to clause 17.05 of the Program and Administrative Services Group collective agreement.

ArgumentsAllegation (1) - Unauthorized Access of OMS FilesFor the Employer

[127] The grievor admitted accessing 12 high-risk offender files at the Keele CCC while he was working at the downtown office on low-risk files. These files were not part of his workload.

[128] Ms. Miller testified that she assigned the grievor a smaller, easier workload than the other parole officers because of the learning curve. Mr. Campney testified that the files the grievor accessed were not related to his workload, he had given the grievor SOP's, had assisted him personally and in fact referred the grievor to other experienced parole officers for assistance or suggested he use the hard copies on file. Ms. Miller also indicated that she was the only one that assigned files during the last seven years and the files assigned to the grievor were not from the Keele CCC.

[129] Counsel for the employer stated that the only explanation given by the grievor to Mr. Niemann during his investigation and in his letter of March 15, 2001 to Mr. Kelly was that he was authorized to do so since Mr. Campney had just shrugged his shoulders when the grievor informed him he was going to browse the OMS. Counsel for the employer stated that it was not until Mr. Campney denied at this hearing the grievor's statement that the grievor changed his mind and stated that it was to look at community assessment reports. If this was the real reason, why did the grievor not explain this at the time of the investigation?

[130] Counsel for the employer stated that the accessing of the 12 OMS files is a complete violation of all the SOP's, the *Code of Professional Conduct*, the *Code of Discipline* and the CSC security policies. She further stated that the grievor acknowledged receiving training (Exhibit E-8) and signed off on the "need to know" policies that have not changed since 1983.

[131] Counsel for the employer stated that the "need to know" principle is essential to the CSC in terms of the sensitivity of the files, both from a public and an offender's perspective, and has an enormous security component. The employer is entitled to expect that an employee with 18 years of service with the CSC will abide and respect the "need to know" principle.

[132] The arrival of the OMS did not change anything in reliance to the impact on CSC's policies or the expectation of integrity on its employees' professionalism. The OMS is only a technical tool to do the job. Ms. Miller and Mr. Kelly both testified that the security policy and the "need to know" principle have always been the same on the OMS. That is why the CSC spends large amounts of time training its employees. The CSC sent out letters to each and every employee as a result of the Paul Bernardo trial cautioning them on the access of files and the "need to know".

[133] The employer cannot be with its employee every minute of the day; it expects employees to use common sense and abide and respect the work procedures and policies and the warnings in place before entering into the OMS.

[134] Counsel for the employer stated that numerous pieces of evidence have been introduced and that Mr. Campney testified that he did not allow the grievor to access and browse the OMS by shrugging his shoulders or being mute on the subject.

#### For the Grievor

[135] The grievor's representative stated that the employer's case has not been established and there is no just cause for termination. The employer did not terminate the grievor's employment for disclosure to an outside source (Exhibit E-6, standard 6, "Sharing of Information") because it could not and has not connected him with the article in the *Toronto Sun*. In fact, the employer made it clear that the *Toronto Sun* article (Exhibit E-1) initiated the process on access to the OMS files but the CSC expanded it to three allegations, with one not being an issue in front of me.

[136] The grievor's representative stated that the grievor never denied accessing the 12 OMS files on November 15, 2000. He did not remember the specific names and because he had a password, he accessed 30 to 40 files at the Keele CCC and then narrowed his search to use these for references to complete his community assessments. There was relevance to these accesses as the grievor's evidence said he had a "need to know" for the work that he was doing.

[137] Ms. Miller testified that she was responsible for the distribution of all files before assigning them to the parole officers. Since Ms. Miller was not officially supervising the grievor, it is possible that in her absence he could have been assigned a

high-risk offender file. The employer did not provide a list of files on which the grievor was working.

[138] The grievor's representative further stated that the grievor's workload was overwhelming after being on assignment for three years and the return to work and the difficulties he and Ms. Miller were having only exasperated the transition. Mr. Campney was more helpful and the grievor did speak to other parole officers who gave him names of offenders to look up in the OMS to help him.

[139] The grievor's representative noted that both Mr. Boone and Mr. Browne testified that they would access files through the OMS during the course of their duties and that they also talked to other parole officers who would give them a name they might need for the completion of their community assessments, etc. She also noted that Mr. Campney agreed that accessing the OMS was legitimate as long as the supervisor was aware and agreed to it. On November 15, 2000, the grievor was using this practice when he entered the OMS to complete his reports. During his investigation, Mr. Niemann spoke to everyone about these accesses and indicated in his report that other staff had accessed these files as well but determined that they had the right to as they were working at the Keele CCC and there was no further investigation of these persons.

[140] The grievor's representative argued that if we are to accept the evidence, the only thing the grievor did wrong was to access files outside of the downtown office. He was not snooping or browsing or breaching privacy but accessing files on a "need to know" basis to complete his reports. This accessing does not differ from asking an experienced colleague for the name of an offender that might be relevant to the case at hand and accessing the OMS or looking at hard copies of reports.

[141] The grievor's representative further argued that the grievor did not violate Exhibit E-6, Standard 6, because that implies disclosure of information and that is not the issue at hand. Also, Exhibit E-9, the *Code of Discipline*, Standard 6, was not violated either. Exhibit E-19, *Security of Information and Assets*, at page 11 deals with information by records staff and that is not the case here. Therefore, accessing offender files does not constitute grounds for termination of employment.

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Allegation (2) - Harassment of a SupervisorFor the Employer

[142] Counsel for the employer stated that copies of the anonymous letter (Exhibit E-10) were first received on October 30, 2000 by registered mail and there is incriminating evidence introduced by Ms. Miller that was uncontradicted. The only evidence by the grievor was to deny that any harassment took place; there was no explanation or no evidence presented to contradict this.

[143] Counsel for the employer stated that Ms. Machan's testimony was disturbing as she was an offender/employee and she put a lot of trust in the grievor. The evidence is undeniably clear that in late October the grievor approached her with a CSC directory in which some names had been circled and asked her to type some labels. Also, because there were no computers available, he asked Ms. Machan to print a document. He rushed to the printer to ensure that he was the only one to see the document and, as testified to by Ms. Machan, the file name of the document was "j. m."

[144] Counsel for the employer stated that Ms. Machan's testimony confirmed that she had indeed seen a letter containing allegations that Ms. Miller did not have a university degree and included a phone number to call. After the incident, she talked with Mr. Contantatos and was visibly upset about what had happened. She also admitted the same facts to Messrs. Van Rosen and Niemann.

[145] With respect to the meetings at *Druxy's*, counsel for the employer stated that Ms. Machan had testified that she met with the grievor twice. At the first meeting, he said that he had information that Ms. Miller did not possess a university degree and it was confirmed by Mr. Welsh who had dated Ms. Miller.

[146] Counsel for the employer noted that it is interesting that the grievor admitted to Mr. Niemann during his investigation and as well in his letter of March 15, 2001 to Mr. Kelly (Exhibit E-2) that he had contacted York University concerning Ms. Miller's degree and had gone to the records office. Mr. Niemann testified that on January 25, 2001, the grievor was ready to subpoena the records clerk and then proceeded to the Scott Library to search the convocation records. These records take a lot of time to search and unless you have a particular interest, why would you spend

the time and energy to search a colleague's records? Counsel further stated that no reasonable person would go to all that trouble.

[147] With respect to Ms. Miller's degree, the grievor indicated in his letter of March 15, 2001 (Exhibit E-2) that he "could [*sic*] care less". Counsel for the employer, however, stated that the evidence is to the contrary. The grievor either had a very specific interest or had something in mind. Mr. Niemann was clear in his interview with the grievor that he was adamant that he had the right information that Ms. Miller did not have a university degree.

[148] Counsel for the employer noted that the grievor, in his letter of March 15, 2001 to Mr. Kelly (Exhibit E-2), said that it was Mr. Welsh who was really persisting in trying to obtain information on whether or not Ms. Miller had a degree. Counsel questioned, therefore, why the grievor did not have Mr. Welsh testify? She noted as well that in Mr. Niemann's investigation report (Exhibit E-18) it states that the grievor was assisted by an unnamed parole officer to investigate Ms. Miller. However, this parole officer was also not called as a witness on behalf of the grievor. She also noted that the grievor had been previously disciplined for sending harassing e-mails to a supervisor (Tony Lombardo).

[149] Counsel for the employer pointed out that the grievor, through his testimony and his letter of March 15, 2001 to Mr. Kelly (Exhibit E-2), was willing to attack Ms. Machan's credibility, discredit her and take away her achievements. His conduct is consistent with his willingness to attack the credibility of his supervisor, disregard CSC policies, snoop in files and probably consistent with releasing information to the media, in particular the *Toronto Sun*.

[150] Counsel argued that all circumstances need to be taken into consideration, such as the grievor's threat to Ms. Miller that she had better be careful, that she had better watch herself. The grievor in fact recalled the meeting of October 20 with Ms. Miller and the issue of signing in and out Government vehicles but denied going to the chart area where the comments were supposedly made. This is again, counsel argued, very convenient.

[151] The grievor also denied ever seeing or signing his PER (Exhibit E-23) and that he had ever discussed issues relating to Ms. Miller with Ms. Machan at *Druxy's*. It is interesting, counsel noted, that everyone received a copy of the anonymous letter except for the grievor.

[152] Counsel for the employer argued that I should look at the evidence on a balance of probabilities. The grievor has committed gross misconduct, totally disregarded all policies and harassed a supervisor. He has purposely attacked Ms. Miller and what is more troubling, counsel stated, is that he has shown no remorse. The grievor refuses to admit that he has done anything wrong. This enhances the breach of trust; the employer will never be able to trust him again.

[153] Counsel for the employer referred me to *Canadian Labour Arbitration*, by Messrs. Brown and Beatty, at § 7:4422 dealing with rehabilitation, and to *Faryna v. Chorny*, [1952] D.L.R. 354, on the issue of credibility. Counsel for the employer also referred me to the following cases: *Deigan* (Board files 166-2-25992, 25993 and 161-2-743); *Deigan v. Canada (Industry)*, Federal Court of Canada, Trial Division file T-1365-95, November 12, 1997; *Deigan v. Canada (Attorney General)*, Federal Court of Canada, Trial Division file T-1056-98, March 20, 2001; *Trevena* (Board file 166-2-28562); *Trevena* (Board file 166-2-27769); *Trevena v. Canada (Attorney General)*, Federal Court of Canada, Trial Division files T-956-98 and T-862-99, August 15, 2001; and *Ward* (Board files 166-2-16121 and 16122).

[154] Counsel for the employer stated that there is enough evidence to maintain the termination. However, as an alternative option, I could consider compensation instead of reinstatement.

#### For the Grievor

[155] The grievor's representative argued that in reference to the anonymous letters (Exhibits E-10 and E-11), the grievor denies any connection and no evidence was introduced that he had called York University. In Ms. Foshay's letter of October 31, 2000 (Exhibit E-20), she does not confirm if the caller was male or female.

[156] When Ms. Miller was made aware of the letter, she proceeded to conduct her own investigation but with no concrete results. She leapt to conclusions that it was the grievor who was responsible for sending out the letters. She was the one who



indicated that everyone had received an anonymous letter but the grievor. However, the grievor testified that Messrs. Daoust and Browne also did not receive one. Just because the grievor did not receive a letter, that does not connect him with the creation or distribution of the letter, or because of a poor working relationship with Ms. Miller one could draw the same conclusion. The grievor heard about the letter from another parole officer and said he did not care. However, when he was suspended on January 8, 2001, he did call York University as he was upset and did agree that it was not a smart thing to do.

[157] The grievor did testify at Mr. Welsh's adjudication hearing but this was after the visit to York University and he only testified as an auditor.

[158] The grievor's representative stated that the grievor adamantly denies that he had a conversation with Ms. Machan at the Corcan office or at *Druxy's* concerning Ms. Miller's university degree. He would never share information with an offender and, in any case, he was not privy to that information. She noted as well that in cross-examination Ms. Machan forgot about these conversations and that is why it is not in Mr. Niemann's report.

[159] Ms. Machan has printed labels for the grievor in the past and perhaps she was confused by the timing. She had no copy of the letter concerning Ms. Miller and someone else could have produced the label she claims she printed and identified. The grievor's representative stated that, with all due respect, Ms. Machan is on parole for the rest of her life and she has a job at stake with the CSC.

[160] The grievor's representative argued that with respect to this allegation, the employer has not demonstrated conclusively that the grievor created or distributed the anonymous letters and there is no just cause with respect to both allegations for termination of employment and requested an order for immediate reinstatement. The penalty is too harsh and punitive as the grievor has 18 years of service and no disciplinary record for the past two. His work performance was not an issue in the termination of his employment and if it was, the employer took no issue. There is no reason to believe the grievor could not work as a parole officer again and that the bond of trust is irreparably broken. At the very least, however, the grievor should be offered an opportunity to regain that trust.

[161] The grievor's representative cited the following cases: *Samra* (Board file 166-2-26543), *Nolan* (Board file 166-2-17111) and *Seager* (Board file 166-2-28549).

### Reply

[162] Counsel for the employer stated that the issue of disclosure is not an issue with the employer; it was only a factor that started the initial investigation.

[163] If a parole officer, who after training receives a password to enter the OMS, is correct in assuming that it is a free highway to serve yourself, then why would there be policies? The password is issued so that the CSC can go into the OMS and verify who had access, when, where and to what files. The grievor admitted that he signed the policies and the "need to know" principles.

[164] Counsel for the employer stated that Mr. Campney's testimony that accessing different files was allowed if authorized by the supervisor is taken out of context. It is files from the same office and same workload.

[165] With respect to Mr. Niemann's report in which he states that other personnel accessed those 12 OMS files, it was parole officers at the Keele CCC who had relevance with those files and not the grievor.

[166] As far as undermining Ms. Machan's credibility, what about the grievor's credibility, counsel asked. Ms. Machan related her story because she trusted and respected the grievor. The events which took place were very disturbing and she had to use the services of a psychologist for six months afterwards. The fact that she is an offender demonstrates the courage which she displayed in testifying against a parole officer. This was not easy as parole officers have a lot of clout in the system.

[167] Ms. Machan is simply stating the truth about the labels and the disc. Counsel agreed that Ms. Machan was confused about the exact date but not about the content. She argued that I have no evidence which would meet the test in a criminal court case but in administrative law it is the balance of probabilities and credibility of the witnesses that is needed in terms of clear, convincing and cogent evidence.

[168] It is the employer who determines if the bond of trust can ever be repaired. In this instance, it cannot.

Reasons for Decision

[169] The termination of the grievor's employment turns on two allegations: (1) unauthorized access of OMS files and (2) harassment of a supervisor.

[170] In the evidence adduced through the hearing, one could assume from the grievor's representative that the grievor was not treated in accordance with the rules of natural justice. It was suggested that the presence of Mr. Orr at the meeting of March 29, 2001, and meetings scheduled but not attended by Ms. Miller, obstructed procedural fairness. I am satisfied that the grievor was represented by his union representatives on March 29, 2001 and that the meetings with Ms. Miller would have, if anything, only exasperated discussions about allegation (2). I also notice that in the present adjudication the grievor was afforded an opportunity to rebuke the allegations (see *Tipple v. Canada Treasury Board*, Federal Court of Appeal file A-66-85, September 26, 1985).

Allegation (1) - Unauthorized Access of OMS Files

[171] Counsel for the employer's position with respect to allegation (1) is very clear: on November 15, 2000, the grievor accessed 12 OMS files from the Keele CCC without the "need to know", which violates the security policies of the CSC as the grievor was not authorized or instructed to make these accesses. In support of her argument, counsel for the employer introduced a number of exhibits, such as SOP's rules and regulations, the *Code of Conduct*, sharing and disclosing of information, professional conduct, the *Code of Discipline*, as well as the security of information and assets. In support of these workplace directives was a signed "Record of Acknowledgement" from the grievor that he had indeed received the above-noted training on these directives in 1983 and filed as an exhibit (Exhibit E-8).

[172] The grievor's position was that he had a right to access the OMS as a part of his duties in completing accurate community assessments or community strategies.

[173] Mr. Kelly's testimony demonstrates that the OMS, though a product of technology, only changed the accessibility to the information; the authority to access, however, remained the same. In the evidence of Mr. Browne, he agreed that the OMS had changed the accessibility but indicated that he had in the past received assistance by asking parole officers for help and they would provide him with a name of an

offender which he would then access on the OMS or through a hard copy. Mr. Browne testified that if a colleague was away on sick leave he might access the OMS on his colleague's behalf. He could on a rare request from police officers or a high-risk release from the Keele CCC contact them to see if an offender meets a profile. He also stated that at times he would be referred to another parole officer for assistance or sign out the hard copy "jacket".

[174] The testimony of the grievor's witnesses aligns with the testimony of Mr. Campney who assisted the grievor with SOP's and met with him to assist with the completion of his case files and told him that if he needed help to contact him, seek out another experienced parole officer or access the hard file copies.

[175] I found Mr. Campney to be credible and through his testimony he, in fact, not only admitted that he and the grievor were not the best of friends, but through Exhibits E-14 and E-15 recorded the meetings where he has assisted the grievor with SOP's and templates to help him with his case load. I am convinced that Mr. Campney, a sort of by-the-book individual as indicated in his testimony, would not at any time condone the grievor browsing the OMS and shrug his shoulders if it were brought to his attention.

[176] The grievor's contention was that he had not worked on a caseload for several years and did not have the appropriate training and lacked assistance from Ms. Miller. He said that he had high-risk files and the OMS was an opportunity to use such files as a guide to complete his work. The grievor stated that in the 15 to 25 files assigned to him by Ms. Gravel, he was in possession of at least two high-risk offender files.

[177] Ms. Miller and Mr. Campney testified that the grievor's files totalled 11 and none were high-risk. In fact, Ms. Miller's evidence, which was never contradicted in cross-examination, was that it was only she and Mr. Campney that assigned cases and there were no high-risk files assigned to the grievor.

[178] The question is not whether the files were of a low, medium or high risk but rather, did the grievor access the OMS without authorization?

[179] To the undersigned, the employer's policies and directives are very clear and concise. It is interesting to note that the grievor's original training occurred in 1983; however, training on the OMS, a requirement for a password to enter onto the OMS, did

occur much later in his career. Also, as a result of the Paul Bernardo/Karla Homolka trial, a caution was also sent to all employees concerning the "need to know."

[180] I am not convinced that employees do not occasionally access the OMS and enter other employees' caseloads and offender files as stated by Messrs. Browne and Boone. But this is done with the agreement of another parole officer, the parole officer supervisor or a request that could substantiate the reason for the access.

[181] The article in the *Toronto Sun* (Exhibit E-1) naming five of the 12 offenders one week after the grievor's access on November 15, 2001 could draw a negative inference that it was he who spoke to the reporter. The employer might have come to that conclusion. However, no motive or evidence was induced that, in fact, the grievor had committed such an act even though it was mentioned in counsel's final argument.

[182] In fairness to the employer, the crux of its case was not that the grievor provided the information to the reporter but rather that he breached the CSC policies by accessing the offender files without a "need to know". The employer should be able to believe that an employee would use common sense in accessing information that is sensitive in nature and in accordance with the policies, procedures and training it produces in that regard.

[183] For all the reasons above, I agree with counsel for the employer that the grievor was not authorized to access the 12 OMS files in question

#### Allegation (2) - Harassment of a Supervisor

[184] The employer's main witness, Ms. Machan, whom I found extremely credible, admitted that she was an offender and on parole for life. She demonstrated through uncontradicted evidence that she plays a significant role in the community and she has taken on responsibility for advancing her education through courses offered at Waterloo and Queen's universities.

[185] Ms. Machan testified that Exhibit E-22, the labels that were on the anonymous letters sent to the office, were typed by her as she has her own style in the format she uses. She also testified that it was the grievor who asked her to print a number of labels from a CSC directory which he gave her with the names of certain individuals circled.

[186] It was also her testimony that Exhibit E-11 was the letter she printed from the disc that had a file identified as "j.m." In cross-examination, she agreed that it might not be the exact letter but rather a similar letter that she saw on her computer screen. She had seen and identified that the letter on her screen was discrediting Ms. Miller's university degree, that it was not signed and it had a phone number to call which she thought was a 1-800 number but in fact was a number with the 416 area code. It is not unreasonable to assume that, as the grievor did not want anybody to see the letter at that time, he would quickly return from the printer to retrieve the disc.

[187] What motive would Ms. Machan have for lying about this incident? She testified that she respected and trusted the grievor, as he was the one who had hired her. It was only when she saw the letter she printed for him that the respect and trust for her parole officer and former boss ended. Mr. Niemann testified that his interviews with Messrs. Constantatos and Van Rosen confirmed that Ms. Machan approached them immediately after the printing of the letter and the grievor had left, as she was very upset with the related event. She is still dealing with this negativity and for six months sought the help of a psychologist.

[188] I find the grievor's testimony on this event particularly unbelievable. The grievor denies ever asking Ms. Machan to print those labels. Although he did give her a disc to print, according to him it was not at the time she indicated during her testimony. It is his belief that Ms. Machan is first and foremost an offender and she could not really be credible. I do not submit to that belief.

[189] The grievor admitted that he and Ms. Miller discussed workplace issues and an altercation of minimal scope occurred. Ms. Miller's version aligns more closely with Ms. Machan's testimony about what she heard at *Druxy's*. Ms. Machan testified that the grievor said he heard from Mr. Welsh that Ms. Miller did not have a degree and he might have to use this information against her. Ms. Miller testified that the grievor had said to her: "You'd better be careful. Watch out, I know stuff about you."

[190] During his testimony and in his letter of March 25, 2001 to Mr. Kelly (Exhibit E-2), the grievor stated that Ms. Miller's degree had no value for him and he could not care less.

[191] It is clear that on October 26 (Exhibit E-20) someone called York University looking for confirmation as to whether Ms. Miller (or Ms. Fox) had graduated. As the file was misplaced, the caller received erroneous information through the Registrar that Ms. Miller had not graduated. It was four days after the phone call that the first registered letters began to appear at the downtown office.

[192] During the grievor's examination-in-chief, he denied that he phoned York University to clarify whether or not Ms. Miller had a degree. However, later in cross-examination, he admitted making one call to the University after the letters were received, but not to several as counsel for the employer was suggesting.

[193] Mr. Niemann's testimony that the grievor's name came up on the call-display even though the caller identified himself as "Jeff Smith" was not contradicted by the grievor. In fact, the grievor admitted going to York University with Mr. Welsh to talk with the records clerk, but he stated it was only to clarify Ms. Miller's degree and to satisfy his curiosity as he had friends whom worked under Ms. Miller's supervision. It was also Mr. Niemann's testimony that in his interview with the records clerk at York University, she stated that when she refused to release the information with respect to Ms. Miller's degree, the grievor threatened to subpoena her. Having no success at York University, the grievor then went to Scott Library to search the convocation records.

[194] In his letter of March 15, 2001 to Mr. Kelly (Exhibit E-2), the grievor indicates that it would serve no purpose to name a police officer who he was told had investigated Ms. Miller's degree status. Would it not have been appropriate to have called this witness on the grievor's behalf to shed some insight into the reasons the police officer was interested in Ms. Miller's degree in order to corroborate the grievor's story? Again, in his letter (Exhibit E-2), he states that he was not really interested but rather it was Mr. Welsh who was persisting in trying to obtain the information with respect to Ms. Miller's degree status. I find the grievor's credibility, at the very least, suspect.

[195] For issues related to credibility, adjudicators often turn to the decision of the British Columbia Court of Appeal in *Faryna v. Chorny*, [1952] 2 D.L.R. 354. At page 357 of his decision, Mr. Justice O'Halloran wrote:

...

*... In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place in those conditions....*

...

[196] In the instant case, I find Ms. Machan's testimony more in harmony with the balance of probabilities. I do not believe that Ms. Machan had anything to gain by implicating the grievor in her testimony that he gave her a disc with a file marked "j.m." and by identifying labels she printed on his behalf. This in itself could cause Ms. Machan anxiety and fear of reprisal or retaliation. It is my belief that it took a lot of courage for her to speak up against the grievor's misconduct. On the other hand, the grievor's testimony denying the events and evading the question when he answered: "Yes I gave her a disc but not at the time she indicated", raises again the question of his credibility.

[197] It could not be proven that the grievor did in fact send the anonymous letters to parole officers at the downtown office and the region. However, as a reasonable person, I have concluded that either the grievor was the mastermind on formulating and promulgating the tainted letters or was the mule doing the deed on behalf of someone else.

[198] I am convinced that the grievor had Ms. Machan produce the labels for the anonymous letters and had her print from the file marked "j.m.", and that alone is enough to indicate his involvement in the harassment of his supervisor. The Treasury Board *Harassment in the workplace* policy states as follows:

...

***Policy objective***

*To provide a work environment that supports productivity and the personal goals, dignity and self-esteem of every employee.*



**Policy statement**

*Every employee must be treated fairly in the work place in an environment free of harassment. Harassment of another employee constitutes a disciplinary infraction subject to penalties up to and including discharge.*

...

**Appendix A  
Definitions**

*Harassment means any improper behaviour by a person employed in the Public Service that is directed at, and is offensive to, any employee of the Public Service and which that person knew or ought reasonably to have known would be unwelcome. It comprises objectionable conduct, comment or display made on either a one-time or continuous basis that demeans, belittles, or causes personal humiliation or embarrassment to an employee.*

*It includes harassment within the meaning of the Canadian Human Rights Act, i.e. harassment based on the following prohibited grounds of discrimination: race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability or conviction for an offence for which a pardon has been granted.*

*Sexual harassment means any conduct, comment, gesture or contact of a sexual nature, whether on a one-time basis or in a continuous series of incidents;*

- (a) that might reasonably be expected to cause offence or humiliation to any employee; or*
- (b) that the employee might reasonably perceive as placing a condition of a sexual nature on employment or on an opportunity for training or promotion.*

*Abuse of authority is a form of harassment and occurs when an individual improperly uses the power and authority inherent in his or her position to endanger an employee's job, undermine the performance of that job, threaten the economic livelihood of the employee, or in any way interfere with, or influence the career of, the employee. It includes intimidation, threats, blackmail or coercion.*

...

[199] I am convinced that the grievor was involved in harassing his supervisor, Ms. Miller.

Was Termination Appropriate in the Circumstances?

[200] The anonymous letters, a cowardly device used by persons devoid of honour, can take on many applications. The sender of those letters had a sole purpose in mind and that was to discredit Ms. Miller's honesty, integrity and credentials and thereby forcing the CSC to release her from her employment as she did not meet the statement of qualifications. I find this a malicious act of gross misconduct.

[201] In arriving at this conclusion, I am cognizant of clause 17.05 of the collective agreement between the Treasury Board and the Public Service Alliance of Canada for the Program and Administrative Services Group (all employees) (Expiry Date: 20 June 2003), which states:

*17.05 Any document or written statement related to disciplinary action, which may have been placed on the personnel file of an employee, shall be destroyed after two (2) years have elapsed since the disciplinary action was taken, provided that no further disciplinary action has been recorded during this period.*

[202] I have considered the objection by the grievor's representative and I agree that the grievor's past disciplinary record should not and has not influenced my decision. In fact, it should be noted that the wording of this clause in the collective agreement is very clear and concise. In my opinion, counsel for the employer would best be served in applying this clause as negotiated. I find the introduction through the backdoor of prior expired disciplinary infractions disturbing and offensive and suggest re-examination and reflection would be in order. The grievor's prior disciplinary record should not be at issue if it meets the test of clause 17.05 and in this case it has.

[203] Counsel for the employer referred me to *Canadian Labour Arbitration (supra)* concerning the discipline of employees with respect to the element of rehabilitative potential. At paragraph 7:4422 it states:

*7:4422 Rehabilitative potential. The theory of progressive discipline, evolving from the duty to warn an employee of the seriousness with which the employer views her employment record, is simply one manifestation of the recent arbitral recognition of the correctional theme underlying industrial discipline. Very simply, by progressively increasing the severity of the discipline imposed for persistent misconduct it is expected that the employee will be*

given some inducement and incentive to reform her conduct. As one arbitrator has put it:

One of the advantages to adopting a corrective disciplinary approach is that it enables the parties to know where they stand with each other. An employee who is subjected to corrective discipline knows that after receiving a warning he may receive a suspension and that after a suspension he may be discharged if he repeats an offence.

...

Increasingly, and in a number of different contexts, various arbitrators have inquired into and ultimately relied upon the grievor's ability to conform to acceptable and expected standards of behavior as a basis on which to ameliorate a disciplinary penalty. For these arbitrators, the common checklists of mitigating factors "are but special circumstances of general considerations which bear upon the employee's future prospects for acceptable behaviour", which for them is "the essence of the whole corrective approach to discipline". Basic to this general approach is an assessment of the grievor's ability and willingness to reform or rehabilitate himself so that a satisfactory employment relationship can be re-established, and of whether the grievor is "redeemable". It is therefore incumbent on the union to adduce evidence of pertinent mitigating factors, particularly if it relates to a mitigating factor about which the employer was unaware at the time it made its decision to terminate the employee. Although opinion is divided on this issue, several arbitrators have held that such an assessment may include an evaluation of an employee's behaviour during the period between the date of the discharge and the arbitration hearing. Thus, many arbitrators have explicitly examined and ultimately relied upon the rehabilitative potential of persons who, for example, had seriously threatened, or actually physically abused members of management, or engaged in an act of theft, or even sabotage, or were addicted to gambling, as a basis for substituting a period of suspension for the discharge initially imposed. As well, a positive prognostication as to the rehabilitative potential of an employee who immediately admits his wrongdoing and/or tenders an apology following his misconduct thereby recognizes the impropriety of his behaviour and thus would more likely be capable of conforming to the expected norms have relied on that fact as a basis on which to ameliorate the discipline imposed. This emphasis on the rehabilitative potential of the grievor seems particularly compelling in those instances when the arbitrator is satisfied that the employer's interest in

protecting the integrity of its service can be satisfied by some sanction other than the dismissal of the employee in question. Conversely, where arbitrators can imply, from the grievor's refusal to admit to a true statement of what must have been the facts, or from refusal to acknowledge the wrongfulness of his conduct, or from his failure to take some positive and substantial step to remedy the cause of his unsatisfactory performance, or refusal to comply with company rules by terminating competing employment, or refused to identify an accomplice, or where the resolution of marital problems causing culpable and non-culpable absenteeism appeared unlikely, or where the risk of recidivism appears high, or where the grievor's conduct had poisoned the work environment, what they conceive to be a lack of rehabilitative potential, they have relied upon that as a factor in determining not to exercise their discretionary powers to modify the discipline imposed....

...

[Footnote omitted]

[Emphasis added]

[204] In the instant case, I conclude that the facts surrounding the unauthorized access of the OMS and the non-compliance with the CSC rules perhaps would not rule out the possibility of rehabilitative potential. However, the grievor's action in the harassment of his supervisor, Ms. Miller, has poisoned the work environment to such an extent that I feel that the culmination of these two allegations justifies the employer's action in this case.

[205] For the purpose of argument only, if I found that termination was not warranted, the grievor's ability to work in a harassment-free, positive and trustworthy work environment with his managers, supervisors and other employees is, in my view, unattainable. Furthermore, I am without jurisdiction to order the employer to reinstate Mr. De Lisa to another position or another work site.

[206] I am cognizant of Mr. De Lisa's 18 years of service with the CSC as well as that at one point in his career, particularly through 1998 and 1996, as supported by Exhibits G-4 through G-7, he and the employer engaged in a mutually harmonious and productive working relationship. Notwithstanding the seriousness of his misconduct, I have decided that it is still appropriate to award Mr. De Lisa six months compensation in lieu of reinstatement at the rate he was receiving on the date of his discharge.

[207] For all these reasons, the grievance is dismissed to the extent indicated above.

**D.R. Quigley,  
Board Member**

OTTAWA, June 7, 2002.