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*Public Service  
Labour Relations Act*

Before an adjudicator

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BETWEEN

**JEAN-PIERRE LABADIE**

Grievor

and

**DEPUTY HEAD  
(Correctional Service of Canada)**

Respondent

Indexed as

*Labadie v. Deputy Head (Correctional Service of Canada)*

In the matter of individual grievances referred to adjudication

**REASONS FOR DECISION**

***Before:*** [John A. Mooney, adjudicator](#)

***For the Grievor:*** [Daniel Charest, counsel](#)

***For the Respondent:*** [Karl G. Chemsy, counsel](#)

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Heard at Quebec, Quebec,  
December 3 to 6, 2007, and June 10 and 11, 2008.  
(Written submissions filed July 21 and August 8, 2008.) (PSLRB Translation)

## **I. Individual grievances referred to adjudication**

[1] The grievor, Jean-Pierre Labadie, held a position as a correctional officer at the CX-01 group and level, at the Donnacona Institution (“the Institution” or “the penitentiary”) of the Correctional Service of Canada (CSC or “the respondent”) at the time of his dismissal.

[2] Mr. Labadie was indefinitely suspended without pay on May 6, 2005, following the publication of a book he authored entitled *À l’ombre du pénitencier de Donnacona* “[translation] In the Shadow of the Donnacona Penitentiary” (Exhibit E-1, Tab 3). The Deputy Head of the CSC conducted a disciplinary investigation, and Mr. Labadie was dismissed on September 30, 2005, after the results of the investigation were released.

[3] Pierre Laplante, Warden of the Institution, alleges in the letter of dismissal dated September 27, 2005, (Exhibit E-5) that Mr. Labadie violated the provisions of various documents related to his employment and breached his duty of loyalty to the CSC. The letter reads, in part, as follows:

[Translation]

...

*This letter is further to the disciplinary investigation report filed on August 26, 2005, regarding the publication of the book entitled À l’ombre du pénitencier de Donnacona, which you authored, and the interviews that you granted the media following the book’s publication. This investigation report was remitted to you on September 15, 2005, for your comments.*

*Upon analysis, I note that you violated the Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace, the Policy on the Prevention and Resolution of Harassment in the Workplace, the Values and Ethics Code for the Public Service of Canada, the Standards of Professional Conduct in the Correctional Service of Canada, and the Code of Discipline.*

*I believe that you committed an act of disloyalty altogether incompatible with your status as peace officer. You tarnished the reputation of the Correctional Service of Canada. You irreparably broke the bond of trust with your employer. Finally, I have taken the mitigating and aggravating factors of your situation into account and I am notifying you that, under section 12(1)(c) of the Financial Administration Act, I have decided to dismiss you as of September 30, 2005.*

...

[4] In the second paragraph cited above, Mr. Laplante mentions various policies, codes and standards. The first three documents are issued by the Treasury Board (“the employer” or “the TB”), while the last two are issued by the respondent. To facilitate the reading of this decision, I will refer to all of these documents as the policies of the respondent and the employer.

[5] Mr. Labadie filed two grievances against the deputy head of the CSC. He filed a first grievance on May 16, 2005, against the decision to suspend him without pay. Mr. Labadie stated that his suspension was unfair and unfounded.

[6] Mr. Labadie filed a second grievance on October 5, 2005, against the deputy head’s decision to dismiss him. In that grievance, Mr. Labadie stated that this disciplinary action was unfounded and violated his freedom of expression under the *Canadian Charter of Rights and Freedoms* (“the *Charter*”). He presented his two grievances up to the final level in the grievance process without obtaining satisfaction.

[7] Mr. Labadie referred his two grievances to adjudication under paragraph 209(1)(b) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22 (*PSLRA*). He referred the grievance regarding his suspension to adjudication on September 13, 2005, and he referred the grievance regarding his dismissal on November 30, 2005. At the request of his bargaining agent, the files were put on hold pending a notice on their part, which explains in part the delay between the referral and hearing of these files.

## **II. Summary of the evidence**

[8] Mr. Labadie testified. Two persons testified for the respondent: Mr. Laplante and Lynne Connelly, a policy analyst at the Office of Public Service Values and Ethics (OPSVE) of the Canada Public Service Agency (“the Agency”). Mr. Labadie adduced 5 exhibits into evidence, and the respondents adduced 13.

[9] Mr. Labadie wrote a book in which he levels accusations of illegal actions and perjury against certain employees and members of management of the Institution. Some persons are identified using their real names, while others are referred to using pseudonyms. Counsel for both parties have asked me to so proceed in this decision,

given the serious nature of Mr. Labadie's accusations. I have accepted their request. I have indicated in my decision which names are pseudonyms.

[10] When counsel for the respondent wanted to adduce into evidence a ring binder containing a disciplinary investigation report and appendices (Exhibit E-1), counsel for Mr. Labadie objected to the filing of the document found at Tab 9 of that ring binder. That document is a transcript of a meeting that Ms. Connelly and Paulette Arseneault had with Mr. Labadie and his representative at the time on June 8, 2005, at the Delta hotel at Quebec. Ms. Arseneault was Assistant Deputy Commissioner of Corporate Services of the CSC's Atlantic Region. According to counsel for Mr. Labadie, this document is not admissible because it is not reliable. It is a transcript of a recording made by CSC employees. Counsel for the respondent argued that it was admissible and that it was up to me to decide its evidentiary weight. At that time, counsel for the respondent indicated that he might not refer to that document. I therefore decided to return to this issue when counsel for the respondent did refer to the document. Counsel for the respondent never referred to it. Therefore, I did not consider this document in my decision.

[11] Ms. Connelly testified for the respondent. She stated that she is a policy analyst at the Agency's OPSVE, a position she has held for just over a year. From 2001 to 2005, she worked for the CSC. In 2005, she was manager of the Anti-harassment Program, CSC National Headquarters in Ottawa. In that position, her role was to advise management and the regional harassment prevention coordinators on interpreting the *Policy on the Prevention and Resolution of Harassment in the Workplace* ("the harassment prevention policy"). She was also secretary of the joint advisory committee on harassment prevention.

[12] Ms. Connelly explained that on May 31, 2005, she and Ms. Arseneault had been mandated by CSC Deputy Commissioner Denis Méthé, Quebec Region, to carry out a disciplinary investigation into the publication of Mr. Labadie's book and the broadcasting of the interviews that Mr. Labadie had granted to the media (Exhibit E-1, Tab 7). They had to determine whether Mr. Labadie had violated the *Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace* ("the policy on the disclosure of wrongdoing"), the *Values and Ethics Code for the Public Service of Canada* ("the *Values and Ethics Code*"), the harassment prevention policy, the *Commissioner's Directive 022 – Media Relations* ("the media relations directive"), the

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*Code of Discipline in the Correctional Service of Canada* (“the *Code of Discipline*”) and the *Standards of Professional Conduct in the Correctional Service of Canada* (“the *Standards of Professional Conduct*”). They filed their disciplinary investigation report on August 26, 2005.

[13] Ms. Connelly explained that, in his book, Mr. Labadie recounts various events that took place between 1999 and 2002 at the Institution, a maximum-security penitentiary in the Quebec Region. The book mainly relates the circumstances surrounding the grievance of Alain Friolet, a correctional officer at the penitentiary who was dismissed in 1999 for the theft of sweatshirts and jeans. Mr. Friolet had been intercepted at the end of his work shift by other correctional officers, and they had found those items in his possession. Mr. Friolet filed a grievance against his dismissal, and the respondent denied that grievance. Mr. Friolet referred his grievance to adjudication before an adjudicator of the Public Service Staff Relations Board (PSSRB). The adjudicator rendered his decision on September 10, 2002 (Exhibit E-1, Tab 11). The adjudicator ordered that Mr. Friolet be reinstated in his employment.

[14] According to Ms. Connelly’s testimony, Mr. Labadie claims in his book that, during those years, the Institution’s management was engaged in criminal acts. He wrote that there was a conspiracy between certain correctional officers and an inmate to have Mr. Friolet dismissed. Mr. Labadie also generally condemned the CSC, certain correctional officers and other CSC employees, the Department of Justice, the Royal Canadian Mounted Police (RCMP) and his bargaining agent.

[15] Ms. Connelly explained that, at the request of his publisher, Mr. Labadie used pseudonyms in his book to refer to certain employees. However, it is easy to identify the people for whom Mr. Labadie used a pseudonym. For example, Mr. Labadie uses a pseudonym to identify the Warden of the Institution, and there is only one warden of that penitentiary. The same applies for the Institution’s psychologist, since there are only two psychologists at the penitentiary.

[16] Ms. Connelly cited several excerpts from Mr. Labadie’s book and the interviews he granted to the media. Those excerpts are listed at Exhibit E-1, Tab 10. She and Ms. Arseneault had been struck by the severity and irreverent tone of the criticisms that Mr. Labadie directed at the CSC and its employees. Here are some examples:

[Translation]

[Page 161]

...

[Speaking of the Institution's management] *It is inconceivable that a government agency could allow influence peddling, blackmail, threats of all kinds, non-compliance with acts and regulations, and drug trafficking as part of its operating procedure.*

...

[Page 14]

...

*It is important to emphasize that this book sounds an alarm against a corrupt and regressive system.*

...

[Page 159]

...

*Furthermore, psychological harassment forms an integral part of the management regime at the Correctional Service of Canada. Harassment problems at Donnacona have two main sources: one is an inefficient management model resistant to all change, and the other is a lack of political will and ignorance of or non-compliance with acts and regulations applying to this issue. The malaise is deep-seated at the CSC. In fact, the management problems at Donnacona Institute seem to be a widespread phenomenon across all of Canada's federal penitentiaries. This mismanagement of staff is directly related to manager training and a glaring lack of competence among individuals in decision-making positions.*

...

[17] Ms. Connelly then explained the TB's policy on the disclosure of wrongdoing (Exhibit E-1, Tab 22) that was in force when Mr. Labadie was dismissed. (That policy ceased to be in effect on April 15, 2007, when it was replaced by the *Public Servants Disclosure Protection Act*.) The policy allowed public servants to disclose, voluntarily and in good faith, major wrongdoings in the workplace. It stipulated that all departments had to designate a neutral representative who would receive and assess allegations of wrongdoing. Jean-Yves Bergeron, Acting Warden of the Institute, informed Mr. Labadie by letter on May 11, 2005, that Cheryl Fraser was the senior

officer designated under this policy as regarded the CSC (Exhibit E-1, Tab 5). In that same letter, Mr. Bergeron also informed Mr. Labadie that Edward Keyserlingk was the federal Public Service Integrity Officer. Ms. Connelly stated that, to her knowledge, Mr. Labadie had not contacted those people.

[18] That same policy stipulated that public servants had to use the information to which they had access responsibly and in good faith, in accordance with their duty of loyalty. Employees had to follow the internal disclosure process, and could not make a public disclosure except in very specific cases, for instance, if there was an immediate risk to life, health or public safety.

[19] Ms. Connelly testified that she had asked Mr. Labadie whether he knew the policy on the disclosure of wrongdoing, and he had replied that he did, adding that he knew all of the respondent's policies.

[20] Mr. Labadie also told Ms. Connelly that he had sent Deputy Commissioner Richard Watkins a letter in which he alleged wrongdoings. Ms. Connelly examined that letter, and it did not allude to such wrongdoings. In the letter, Mr. Labadie instead made allegations of harassment by his supervisor.

[21] Ms. Connelly stated that Mr. Labadie had told her that he had disclosed wrongdoings to Pierre Mallette, President, Quebec Region, UCCO-SACC-CSN, who had informed Lucie McClung, Commissioner of the CSC, at national management-union meetings. Ms. Connelly and Ms. Arseneault examined meeting minutes from as long ago as November 2001 but did not find any mentions related to wrongdoings.

[22] Ms. Connelly testified that Mr. Labadie had told her that he had made his concerns known to the Member of Parliament for his riding, Hélène Chalifour-Scherrer, and that she had told him she would speak with then-Minister of Justice and Attorney General of Canada Martin Cauchon. Ms. Connelly asked Mr. Labadie about the nature of his concerns, but he did not elaborate further on the matter. Ms. Connelly attempted to locate documents that would reflect that conversation but was not able to find any.

[23] Ms. Connelly testified that Mr. Labadie had also told her that he had sent an email to then-TB President Lucienne Robillard (Exhibit E-1, Tab 12). The email sent to Ms. Robillard indicates that it is from Johanne Boutin, but Mr. Labadie is the one who sent it. On reading that email to Ms. Robillard, it becomes clear that Mr. Labadie is not

addressing wrongdoing, but harassment. During the conversation, Mr. Labadie alluded to the email he had sent to Cynthia Binnington at the Treasury Board Secretariat on July 31, 2003 (Exhibit E-1, Tab 12).

[24] Ms. Connelly and Ms. Arseneault concluded that Mr. Labadie had violated the policy on the disclosure of wrongdoing. He had written a book and granted six interviews to the media. His interviews had been broadcast on the radio a dozen or so times. He had not made use of the internal process set up under the policy on the disclosure of wrongdoing and had not contacted the public service integrity officer. He presented his complaints publicly without giving the CSC the opportunity to take note of his allegations and respond to them. His public statements were critical of the CSC and its employees and were extremely harsh. He had made scathing remarks about the CSC and levelled personal accusations against several persons. The nature of his position meant that he enjoyed considerable credibility with the public.

[25] Ms. Connelly stated that her mandate also called for her to determine whether Mr. Labadie's actions had violated the harassment prevention policy (Exhibit E-1, Tab 21). The purpose of that policy is to promote a healthy, respectful and harassment-free work environment through the prevention and swift resolution of any disputes. The policy provides the following definition of "harassment":

...

***Harassment** (harcèlement) - is any improper conduct by an individual, that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. It includes harassment within the meaning of the Canadian Human Rights Act.*

...

[26] Ms. Connelly testified that she and Ms. Arseneault had concluded that several passages of the book constituted harassment. For instance, Mr. Labadie wrote:

[Translation]

[Page 17, footnote 3]



[Speaking of preventive security officers] By “Office,” I mean the room where underhanded dealings and other activities of the like are cooked up. This is actually the office of the Coordinator, Correctional Operations, Jacques Montpassant [pseudonym]. He is the tyrannical and ever-present shadow hanging over everything at Donnacona Institution.

[27] In his book, Mr. Labadie portrayed two CSC investigators as incompetents:

[Translation]

[Page 34]

...

... The unabashed laxness displayed by these two men during the investigation leaves us mystified as to their competence and intellectual rigour.

...

[28] According to the witness, employees may make constructive comments about the work of their colleagues, but may not criticize them personally. Mr. Labadie should have known that his remarks were insulting.

[29] Ms. Connelly drew my attention to a passage in Mr. Labadie’s book where he makes the following comment about a psychologist at the penitentiary:

[Translation]

[Page 43]

...

... Manon Chalifoux [pseudonym] ... should not have told so many lies when she met with the investigators, if the meeting indeed took place. ...

...

[Page 44]

...

... I believe that, for doing the favour, she inherited a permanent position at the Institution before testifying at the proceedings against Friolet.

...

[Page 130]

...

*Manon Chalifoux's testimony is even more striking than Director Ivan Dupré's [pseudonym]. In fact, the psychologist already knew, before even placing her hand on the Bible, that she was going to give directed and inaccurate testimony. Indeed, she delivered, before the court, a testimony woven of lies and falsehoods. The facts she related never existed. . . . Moreover, this kind woman will not be able to offer up any other excuse for her actions, which shows a reprehensible complicity with the people who want Alain Friolet gone.*

...

[30] Ms. Connelly then turned to the *Values and Ethics Code* (Exhibit E-1, Tab 18). This code requires that an employee act at all times in such a way as to uphold the public trust. It sets out four families of values of the public service: democratic values, professional values, ethical values and people values.

[31] Ms. Connelly stated that Mr. Labadie severely criticized the Institution's management. She brought the following passage in the book to my attention:

[Translation]

[Page 163]

...

*. . . we have to start denouncing the injustices and crimes of these masters at manipulation, who do not hesitate to use threats and blackmail or retaliate against those who stand in their way.*

...

[32] Ms. Connelly also drew my attention to an excerpt of an interview given at the radio station CBVT Câble 6 Québec, Société Radio-Canada, on May 13, 2005 (Exhibit E-1, Tab 8):

[Translation]

[Page 1]

*. . . There are some offices . . . the preventive security office allows some inmates to bring drugs in, either for*

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*information or . . . all kinds of things that I can't name because it's not my business. But what is my business is that those people let dope inside the walls.*

[33] According to Ms. Connelly, by making these statements Mr. Labadie has not contributed to preserving and enhancing public confidence in the judicial system and the government in accordance with the *Values and Ethics Code*.

[34] Ms. Connelly then turned to the family of professional values of the *Values and Ethics Code*. Respecting those values means serving with competence, excellence, efficiency, objectivity and impartiality (Exhibit E-1, Tab 18, page 9). According to Ms. Connelly, Mr. Labadie contravened that family of values in choosing to make a public disclosure of wrongdoing without supporting evidence. He prejudiced the CSC by denigrating and criticizing its policies, programs and employees.

[35] Ms. Connelly then examined the family of people values found in the code. She and Ms. Arseneault concluded that Mr. Labadie did not respect those values because his criticisms were offensive and humiliating.

[36] Ms. Connelly testified that, in her opinion, Mr. Labadie violated Standard 1 of the *Code of Discipline*, which states that an employee commits an infraction if he or she “. . . makes public statements which harshly criticize the Service, the Government of Canada, or the Federal Crown, concerning policies, practices and/or programs of the government . . .” (Exhibit E-1, Tab 19, page 4). Mr. Labadie’s conduct also violated Standard 2 of the *Code of Discipline*, which states that an employee commits an infraction if he or she “. . . acts, while on or off duty, in a manner likely to discredit the Service . . .” (Exhibit E-1, Tab 19, page 6).

[37] According to Ms. Connelly, Mr. Labadie also violated the following standards of professional conduct (Exhibit E-1, Tab 20):

[Page 8]

. . .

***1. Standard One – Responsible Discharge of Duties***

*Staff shall conduct themselves in a manner that reflects positively on the Public Service of Canada . . .*

[Page 9]

...

## **2. Standard Two**

### ***Conduct and Appearance***

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

[Page 11]

### **3. Standard Three - Relationships With Other Staff Members**

*Relationships with other staff members must promote mutual respect within the Correctional Service of Canada and improve the quality of service. Staff are expected to contribute to a safe, healthy and secure work environment, free of harassment and discrimination.*

...

[38] Ms. Connelly added that Mr. Labadie had even attacked the adjudicator of the PSSRB who had rendered the decision in *Friolet v. Treasury Board (Solicitor General of Canada - Correctional Service)*, 2002 PSSRB 85 (Exhibit E-1, Tab 11). He challenged the adjudicator's professionalism and showed a lack of respect for the administrative tribunal. At page 161 of his book he wrote:

[Translation]

...

*. . . This administrative tribunal approved actions that it should never have accepted. The tragicomedy that played out within its confines was both sad and morbid. The deputy chairperson was unable to put an end to this parody of justice. But was it possible for her to have done so?*

...

[39] Ms. Connelly and Ms. Arseneault concluded that Mr. Labadie had not abided by the *Standards of Professional Conduct* because, not only had he failed to promote a professional image, but his book and the offensive and humiliating remarks he had made to the media discredited the CSC and tarnished the reputation of all of its employees.

[40] Ms. Connelly and Ms. Arseneault examined all of the documents that had been remitted to them, and none of those documents supported Mr. Labadie's accusations.

[41] Ms. Connelly and Ms. Arseneault concluded that Mr. Labadie had violated the five policies mentioned above.

[42] On cross-examination, counsel for Mr. Labadie asked Ms. Connelly whether she had conducted a survey on the public's perception of the CSC. Ms. Connelly replied that she had not.

[43] Ms. Connelly explained that Sue Roberts was Director, Internal Disclosure and Investigations, at the CSC. Counsel for Mr. Labadie then entered into evidence an email from Ms. Connelly to Ms. Arseneault dated June 21, 2005 (Exhibit F-2). In that email, Ms. Connelly had written that Ms. Roberts had told her that it was not necessary for employees to communicate with Ms. Roberts' office to disclose wrongdoing. Such a step was voluntary.

[44] Counsel for Mr. Labadie asked Ms. Connelly whether there had been only one report. Ms. Connelly replied that she and Ms. Arseneault had first prepared a preliminary report in late June or early July. They then remitted their final disciplinary investigation report to Mr. Méthé on August 26, 2005. The final report was "[translation] meatier" in terms of analysis. The report was remitted following a meeting with OPSVE representatives. She and Ms. Arseneault had decided to get those representatives' opinions on the disciplinary investigation report.

[45] Counsel for Mr. Labadie filed in evidence a letter from Michel Gauthier, Coordinator, UCCO-SACC-CSN, to Ms. McClung, Commissioner of the CSC, dated September 4, 2001 (Exhibit F-1). Counsel for the CSC indicated that he did not object to the filing of the letter, but wanted me to note that it is not necessarily evidence of the allegations it contains. In that letter, Mr. Gauthier informs Ms. McClung of his concerns regarding the testimonies given by inmates in *Friolet*.

[46] During Ms. Connelly's re-examination, she said that the purpose of the discussion that she had had with Ms. Roberts concerning the procedure to follow when disclosing wrongdoing was to establish whether it was necessary to contact the office of the designated senior officer and the OPSVE – that is, both of those organizations.

[47] Ms. Connelly then explained the differences between the preliminary investigation report submitted on June 21, 2005 (Exhibit F-3), and the final investigation report submitted on August 26, 2005 (Exhibit E-1, before Tab 1). In the preliminary disciplinary investigation report, she and Ms. Arseneault had concluded that Mr. Labadie had not violated the policy on the disclosure of wrongdoing; they arrived at the opposite conclusion in the final investigation report. The final disciplinary investigation report presents the analysis that led them to that conclusion.

[48] Ms. Connelly gave more specifics on the meeting she and Ms. Arseneault had had with the OPSVE representatives at the request of those representatives. The meeting took place in Ottawa on the premises of the OPSVE in late July or early August 2005. The OPSVE representatives mainly wanted to discuss the policy on the disclosure of wrongdoing. The OPSVE is responsible for that policy. The OPSVE representatives stated that the analysis was excellent. However, they said that the facts did not support the conclusion that Mr. Labadie had not violated the policy on the disclosure of wrongdoing. After the meeting, Ms. Connelly and Ms. Arseneault discussed that policy and decided to amend their conclusion. They concluded that Mr. Labadie had violated that policy.

[49] Mr. Laplante also testified for the respondent. He gave a history of his career at the CSC. Since November 2007, he has held the position of Senior Investigator at the security bureau investigations office at National Headquarters. Before that, he was Warden of the Institution, a position he held from March 1, 2003, onwards. From July 1999 to March 2003, he held the position of Deputy Warden of the Institution. From January 1995 to July 1999, he was Assistant Warden, Programs and Services, at the same penitentiary. From 1991 to 1995, he was a unit manager at the Federal Training Centre in Laval. He has been working for the CSC for nearly 30 years.

[50] Mr. Laplante explained that when he was Warden of the Institution, he was responsible for the management of the entire penitentiary. The budget for this institution exceeds \$30 million. The Institution employs 345 people full time, including 220 correctional officers. Mr. Laplante signed Mr. Labadie's letter of dismissal (Exhibit E-5), since he was Warden of the Institution at the time.

[51] Mr. Laplante got wind of the book's publication a week or two before its release. The book came out in early May. Mr. Laplante decided to discuss it with the Deputy Commissioner, Mr. Méthé. They discussed options and decided that it would be best to

make the first move. Thus, Mr. Laplante wrote to Mr. Labadie on April 11, 2005, to remind him of his duty of loyalty to the CSC (Exhibit E-1, Tab 1). The letter had a preventive aim. He would have liked to read the book to explain to Mr. Labadie the risk involved in its release. Mr. Laplante was worried about the effect that the book could have on the inmates and the stability of the Institution. We must not forget that the inmates have access to the media, via television, radio or newspapers.

[52] Mr. Laplante also feared that the book would undermine the efforts made in recent years to improve the workplace. There had already been several difficult incidents at the Institution. Two employees had committed suicide. The Friolet case had divided the employees. To resolve those problems, management had decided to make organizational changes. It had called on an outside agency, the Centre de recherche et d'intervention sur le travail, l'efficacité organisationnelle et la santé (Research Centre for Work, Health and Organizational Effectiveness). Management had received the unions' support for that initiative. Mr. Laplante feared that this book would reopen wounds that management was trying to heal.

[53] Mr. Labadie replied to Mr. Laplante's letter on April 14, 2005 (Exhibit E-6). Mr. Laplante had been surprised by the letter's haughty and demeaning tone towards him, as shown by the following excerpt:

[Translation]

...

*Sir, upon reading your letter I notice that your rhetoric has not changed one iota in over five years. You continue to write the same malarkey and accusations without any reasonable basis or serious evidence. . . .*

...

[54] The purpose of Mr. Laplante's letter was to prevent any breach of duty of loyalty, but Mr. Labadie perceived it as an attempt at censorship. Mr. Laplante cited the following passage from Mr. Labadie's letter:

[Translation]

...

*You want to read my book before it is published. Why? As warden, sir, are you part of an obscure censorship office empowered to blacklist books written by correctional officers*

*working in the Correctional Service of Canada? I'm sure that's not the case. I therefore refuse your pushy demand, and not for trivial considerations. I have my fundamental rights as a Canadian citizen and I intend to have them respected.*

...

[55] Mr. Laplante read the book the day it came out or the next day. He skimmed through it. His first impression was that Mr. Labadie described the Institution somewhat harshly and negatively and had exceeded the acceptable boundaries of a correctional officer's freedom of expression. Mr. Laplante decided that an investigation had to be carried out on the matter to determine whether Mr. Labadie had violated the CSC's directives. He could have chosen investigators from the Institution, but he preferred to choose people from outside the Institution and the region.

[56] On May 5, 2005, Mr. Laplante informed Mr. Labadie that a disciplinary investigation would be opened following the publication of the book (Exhibit E-1, Tab 3). The letter also informed Mr. Labadie that he would be suspended without pay beginning on May 6, 2005.

[57] Mr. Laplante said that he did not remember having received the preliminary disciplinary investigation report (Exhibit F-3). He might have received it, but he did not read it.

[58] The final disciplinary investigation report was filed on August 26, 2005 (Exhibit E-1, before Tab 1). Mr. Laplante received it at the end of August 2005 when he returned from vacation. At that time, he also read the transcripts of the interviews that Mr. Labadie had granted to the media (Exhibit E-1, Tab 8). It was then that he considered dismissing Mr. Labadie. The conclusions of the disciplinary investigation report confirmed the impressions he had had when he had read the book. Before making a final decision on this issue, he asked Regional Labour Relations to research case law on the subject.

[59] To make his decision, Mr. Laplante consulted the disciplinary investigation report dated August 26, 2005, and Mr. Labadie's file to see whether there were any facts that could mitigate or aggravate his situation. Mr. Laplante also consulted the case law research results that he had requested from Regional Labour Relations.



[60] Mr. Laplante stated that some of the facts mentioned in Mr. Labadie's book were taken from the adjudicator's decision in *Friolet*, but that others were not. For example, in his book, Mr. Labadie mentioned that a correctional officer had been suspended for having had someone else replace him during an English exam related to his work. The adjudicator's decision does not mention that fact.

[61] Mr. Laplante stated that what worried him most of all as Warden was the effect of the book on the Institution's reputation, on its employees and on the working climate at the penitentiary. Mr. Labadie attacked the integrity and reputation of several employees at the Institution. Mr. Laplante was struck by the words Mr. Labadie had used, such as "[translation] scoundrel" and "[translation] villain." Mr. Labadie accused managers of tolerating drug trafficking, death threats, intimidation and perjury. On that point, Mr. Laplante referred me to the following passage from the book:

[Translation]

[Page 11]

...

*From September 1999 to September 2002 at the Donnacona maximum-security penitentiary, the most notorious administrative and judicial saga in the penitentiary's history took place. It was the topic of every conversation and provoked unjustifiable criminal actions by members of management and certain correctional officers, ranging from false testimony to the fabrication of evidence, including incitement to perjury, perjury itself and death threats. . . .*

...

[62] According to Mr. Laplante, those statements are not based on concrete facts. Mr. Labadie relies on the adjudication decision in *Friolet*. However, the adjudicator does not say that there were death threats or that there was a conspiracy at the penitentiary. Mr. Labadie relies on the testimonies related by inmates in this decision and not on the conclusions of the adjudicator. One inmate had testified that there was a plot to dismiss Mr. Friolet; however, the adjudicator did not accept that accusation (Exhibit E-1, Tab 11):

...

[379] *The evidence for a conspiracy is based on the subsequently contradicted allegations of inmate M. I grant no credence to inmate M. I do not believe him when he says that Mr. Friolet put pressure on him to steal. I also do not believe him when he says that [names omitted] asked him to put the jeans in Mr. Friolet's bag. Inmate M is a clever observer and an inveterate informer. What did he see? What did he do? What did he hear? It is hard to know because he talks about everything he sees or thinks he sees, he says anything and takes centre stage in all his stories.*

[63] In his book, Mr. Labadie attacks the Warden of the Institution at the time, whom he accuses of giving false testimony before an adjudicator of the PSSRB:

[Translation]

[Pages 129-130]

...

*... It's incredible how many lies and inaccuracies he peppered throughout his testimony. ... Dupré [pseudonym] then allowed himself to be blindly guided by his Preventive Security Section without for a moment suspecting that he was being manipulated by his intelligence experts like a kid. What a disgrace! ...*

...

[64] In his book, Mr. Labadie implies that Ms. Chalifoux (pseudonym) gave false testimony in *Friolet* and obtained a permanent position for doing so.

[65] Mr. Labadie also implies that the Coordinator of Correctional Operations could endanger the life of an informant whom Mr. Labadie names "M" in his book:

[Translation]

[Page 133]

...

*[Speaking of informant M] However, the statements he made to Francine Cabana and Réginald Deblois are mystifying. What was his intent in acting with such imprudence? He knew he would be putting his life at risk if he revealed the conspiracy he had participated in against Alain Friolet. He knew full well that the Coordinator of Correctional Operations and his henchmen held the power of life or death over him. Just one bogus transfer to a penitentiary or sector that was inappropriate to his*

*particular status of informant could cost him his life almost instantaneously. He had no protection against the conspirators taking such a decision.*

...

[66] Further, according to Mr. Laplante, Mr. Labadie challenges the credibility of management at the CSC, including the credibility of the Commissioner and the Deputy Commissioner:

[Translation]

[Page 134]

...

*The concept of accountability is foreign to the Correctional Service of Canada. Fault is always redirected to the employees, who do their best but receive often contradictory instructions, which are, most of the time, impossible to carry out. The CSC has a very strange structure, which produces hair-raisingly inefficient executives. It is, therefore, not surprising to note that top officials at both the national and regional levels did not intervene when, during the proceedings, inmate B made his statements about officers who committed criminal acts, or when they realized that the Friolet case had become a huge mess supported only by the contradictory claims of a criminal. The powerlessness of Commissioner Lucie McClung and her regional subordinate, Richard Watkins, is truly tragic.*

...

[Footnote omitted]

[67] Mr. Labadie also cast doubt on the credibility of the promotion system within the CSC:

[Translation]

[Page 75-76]

...

*What is there to say about Marc Bourret [pseudonym], except that he is the starting point of this shameful affair? This preventive security officer is under the high protection of Jacques Montpassant and Pierre Boulé [pseudonyms]. He was appointed to his position even though he lacked the required linguistic qualifications, but it should be clarified*

*that the way the competitions for promotion are conducted by the CSC is obscure, to say the least. I do not stray from reality in expressing such an opinion. It is known that these competitions are so subjective that they leave no room for the merit of candidates. Conversely, if you get yourself noticed by someone in the group and do what he or she says without question, you have a very good chance of getting the promotion you desire.*

[Page 158-159]

...

*... The promotion system is marked by a spiteful partiality. It is not qualifications or merit that are taken into account, but the strength of the bond that those lucky enough to be promoted have formed with those having the power to grant appointments. Therefore, to receive a well-deserved promotion it is not enough to have the necessary intellectual tools; you must also curry favour with the decision-makers.*

[68] Mr. Laplante stated that Mr. Labadie's remarks gave the impression that all promotions in the CSC are "[translation] crooked," not based on candidates' qualifications, and handed to people who did a dirty job for management. To the contrary, the selection process is a serious process. The employees of the Institution do not participate in drawing up the lists of qualifications for the positions; that is done at the headquarters in Ottawa. The competitions are open to everyone in the country and are managed by the CSC regional office and not the employees of the Institution. Appointment authority is a power delegated to the CSC by the Public Service Commission of Canada, which has never withdrawn its delegation.

[69] Mr. Labadie also writes that management is incompetent:

[Translation]

[Page 159]

...

*In such an unorthodox situation, where lack of training is combined with the lack of an adequate academic background, the result is nothing but total incompetence.*

...

[70] Mr. Laplante clarified that the Warden of the Institution had a university education, despite what Mr. Labadie implies to the contrary. As well, every CSC

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executive must complete mandatory management training at the Correctional Management Learning Centre in Cornwall, Ontario.

[71] Mr. Laplante stated that Mr. Labadie had approached the Sureté du Québec (SQ) and the RCMP about a statement made to him by an inmate whom Mr. Labadie refers to as inmate B in his book. That inmate had allegedly said to Mr. Labadie and Viviane Mathieu, president of the local union, that certain persons working in the Institution's Preventive Security Section were colluding with an inmate, identified by Mr. Labadie as inmate M, to have Mr. Friolet dismissed. Inmate B alleged that certain persons working at the Institution had given narcotics to inmate M for taking part in the collusion. Mr. Labadie and Ms. Mathieu informed the SQ and the RCMP of that story.

[72] The Warden of the Institution then asked two of the Institution's employees to inquire with the SQ and the RCMP about Mr. Labadie's meetings with those two organizations. The purpose of that non-official investigation was to determine whether there was any basis for the accusations of drug trafficking. The two investigators filed their report on May 16, 2002 (Exhibit E-1, Tab 13). In that report, they indicated that the SQ had concluded that there were no grounds for investigation (Exhibit E-1, Tab 13, page 6), and that the RCMP had not recorded any official complaint because no fact relating to a criminal act had been reported to the RCMP, only hearsay (Exhibit E-1, Tab 13, page 9).

[73] Mr. Laplante emphasized that, in his book, Mr. Labadie also insulted the RCMP because of the way the police force had followed up on his complaint:

[Translation]

[Page 155]

...

*...It makes no sense to allow these aberrations to occur without reacting, while blindly trusting in this corrupt system. I used to respect the Canadian federal police. I swear I won't make the same mistake again.*

*The priorities of this police force are to serve and protect not the citizens, but the scoundrels and crooks. Don't bite the hand that feeds you, as the old saying goes. The RCMP implements it very well.*

*However, it is unfortunate to see the cowardliness and weakness of this prestigious police force. . . .*

. . .

[74] Mr. Laplante stated that such accusations made against the RCMP harm the CSC's relationship with that organization. The RCMP forms an important part of the judicial system.

[75] Mr. Laplante testified that he had dealt with the issue of drug trafficking at the Institution when he came into office in 2003. At that time, he asked that the penitentiary's processes for handling seized items be audited. The auditor's report came out in August 2003 (Exhibit E-1, Tab 14). The report concluded that there were no major problems regarding the handling of seized items, including narcotics, and the process followed for those items.

[76] In his book, Mr. Labadie attacks another partner of the CSC: the union. He gives the impression that the union is colluding with management, and that management is protecting the preventive security employees:

[Translation]

[Page 153]

. . .

*These union executives maintained absolute silence about the informants' statements. The preventive security officers are longstanding friends; they must be protected at all costs. . . . It is absolutely necessary that silence be kept and the truth be concealed. . . .*

*The regional chairperson of the time, Pierre Malette, also has his information, but he keeps a complicit silence. He doubtless believes he will be able to cash in that information for some advantage when it comes time to renew the collective agreement. So he, too, is ready to sacrifice the union members through his silence. . . .*

. . .

[77] Mr. Laplante stated that the Institution has to work with the unions to improve the work environment. These accusations do not help it in reaching that goal and can create negative feelings.

[78] The Institution had made efforts to make the penitentiary accessible to the media. Management wanted to dispel the media's outlandish image of penitentiaries. Mr. Laplante feared that Mr. Labadie's remarks to reporters were undermining those efforts.

[79] On May 5, 2005, Mr. Labadie granted an interview to Stéphane Gasse, radio host at CHRC in the Quebec region. It was an open-line program. Mr. Gasse had a polemical and sensational style, and enjoyed confrontations. In that interview, Mr. Labadie portrayed the employees of the Institution as "[translation] crooks" and "[translation] double-dealers." Mr. Labadie even alluded to criminal acts perpetrated by the employees of the Institution. Mr. Laplante felt personally attacked, because he was Deputy Warden at the time of the Friolet affair. Mr. Laplante drew my attention to the following passages of the radio interview (Exhibit E-1, Tab 8):

[Translation]

[Page 1]

...

*STÉPHANE GASSE: ... The impression I get from reading it ... is that at Donnacona, the crooks and double-dealers aren't always behind the bars.*

*JEAN-PIERRE LABADIE: Nothing gets past you, I see.*

...

[Page 2]

...

*JEAN-PIERRE LABADIE: Well, getting back to my book, the Friolet affair was quite simple. There was a prison guard who was got himself, there was a little frame-up between certain security officers and inmates who banded together for management, obviously to oust the guard, who was never at a loss for words and spoke his mind. He spoke his mind about everything that happened at Donnacona, from the drug trafficking to all kinds of things, and, of course, the decision-making authorities had a hand in that trafficking and were sick and tired of hearing him talk. ...*

...

[Page 7]

...

*JEAN-PIERRE LABADIE: ... I mean, it just doesn't make sense. We're in a society where inmates are locked up because they do trafficking, and then we, who are peace officers, and our administrators, who are also peace officers, would allow ourselves to commit the same crimes with the people who are locked up? And then the officer who exposes that gets told "Hey you, get the hell out of here, and we'll keep the others."*

...

[Emphasis in the original]

[80] Mr. Laplante also directed my attention to the following excerpt of the same interview, in which Mr. Labadie accuses preventive security correctional officers of ordering an inmate to commit theft:

[Translation]

[Page 5]

...

*JEAN-PIERRE LABADIE: Well, they made the inmate steal. They made him, they had him, they told him to put some, some things in Friolet's bag so he would be caught at the exit.*

...

[Emphasis in the original]

[81] Mr. Laplante testified that Mr. Labadie had revealed confidential information during this interview. He spoke about an inmate at the Institution who was well known in the Quebec region under the name Colosse Plamondon:

[Translation]

[Page 6]

...

*STÉPHANE GASSE: Why did "Colosse Plamondon" leave Donnacona?*

*JEAN-PIERRE LABADIE: Ah, Mr. Plamondon kind of controlled the prison. That is, you know, as far as inmates go, prisons are controlled by the inmates themselves. And*



*then, well, Mr. Plamondon's time was over. It was the time of other gangs. So Mr. Plamondon had to leave. That's all.*

...

[Emphasis in the original]

[82] Mr. Labadie said that Mr. Plamondon had been transferred because another gang had taken his place. That was not the case; he had not been transferred for that reason. Mr. Labadie was unaware of the facts of that transfer. He thus led people astray and fed the perception of the prison environment propagated by motion pictures.

[83] Mr. Laplante explained that a correctional officer must not discuss an inmate's place of incarceration. By discussing Mr. Plamondon's transfer in such a way, Mr. Labadie violated the media relations directive, which provides that personal information cannot be disclosed without the inmate's consent (Exhibit E-1, Tab 17, page 3, paragraph 11).

[84] Mr. Laplante said that the remarks Mr. Labadie had made to the media had affected him personally. Mr. Labadie was attacking his integrity. That had affected his family and children.

[85] Mr. Laplante testified that, to his knowledge, Mr. Labadie had never made a disclosure of wrongdoing to the senior officer of the CSC.

[86] Mr. Laplante stated that Mr. Labadie's discipline record was an aggravating factor that Mr. Laplante took into account in his decision to dismiss the officer. Mr. Labadie had committed one of the offences every year. Mr. Labadie was disrespectful and had antagonistic relationships with his supervisors and colleagues. To resolve those problems, management had given him the opportunity to take courses in interpersonal relations skills from June 3 to 7, 2002.

[87] In 2003, Mr. Labadie had been absent for health reasons. During that time, management had drawn up a specific supervision protocol for his reintegration into the workplace (Exhibit E-8). The purpose of the agreement was to resolve Mr. Labadie's antagonistic relationships with his colleagues and superiors. One of the clauses of the agreement required that Mr. Labadie undertake not to write a letter to anyone without the authorization of his bargaining agent. The following persons played a role in developing the protocol: Mr. Labadie; Mr. Laplante; Philippe Vignis, Director General,

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Human Resources Branch; Mr. Gauthier of the Confédération des syndicats nationaux (CSN); and Pierre Dumont of UCCO-SACC-CSN. According to Mr. Laplante, it is rare for the Institution to draw up such a protocol. It is also rare for the director of the Human Resources Branch to be called in to participate in this type of exercise. Management, therefore, took exceptional measures to find a solution for Mr. Labadie's reintegration. But Mr. Labadie withdrew from the agreement-development process and never communicated with Mr. Laplante to give him the reason.

[88] Counsel for the respondent entered into evidence several disciplinary action reports (Exhibit E-10). Counsel for Mr. Labadie objected to the filing of the last report in that series of reports on the grounds that the event related in the report did not appear on the list of disciplinary measures that Mr. Laplante had used to back up his dismissal of Mr. Labadie (Exhibit E-7). Counsel for the respondent, for his part, argued that the report was relevant because it related an instance of reprehensible behaviour by Mr. Labadie. He added that I had to accept that evidence by giving it the evidentiary weight it merits, since a reference to adjudication is a *de novo* process. I asked Mr. Laplante whether he had taken the incident related in this disciplinary report into consideration when he decided to dismiss Mr. Labadie. Mr. Laplante replied that he had not, since the incident added nothing to the file. I therefore accepted the objection by counsel for Mr. Labadie, because Mr. Laplante had not taken that incident into consideration when he decided to dismiss Mr. Labadie.

[89] The disciplinary action report dated February 27, 2002, relates an incident that took place on December 14, 2001. Mr. Labadie made uncalled-for remarks regarding two colleagues. The officer in charge of the entrance had asked twice to search the bag belonging to Mr. Labadie, who was entering the Institution. Mr. Labadie had displayed a defensive and largely uncooperative attitude. Mr. Labadie had also made insolent comments to the search coordinator of the Institution.

[90] The second disciplinary action report is also dated February 27, 2002. It is related to an event that occurred on December 16, 2001. On that day, Mr. Labadie exited the control wing carrying weapons while a fight was going on in a subjacent room. This exit by Mr. Labadie was not made under appropriate supervision.

[91] The disciplinary action report dated November 1, 2002, records disrespectful remarks made to a staff member. Counsel for Mr. Labadie objected to the filing of the report because that disciplinary action had been subject to a grievance and no decision

had been made regarding that grievance. Counsel for the respondent pleaded that I should admit this report into evidence, since it was relevant to the dismissal. I informed both counsel that I would take their arguments under advisement and would render a decision on the issue later in my decision on the merits of these grievances. Since that disciplinary action was subject to a grievance, I decided not to take it into account in my decision.

[92] The disciplinary action report dated July 8, 2004, addresses incidents that took place in February and March 2003. Mr. Labadie had shown a lack of respect towards a manager and certain staff members.

[93] The disciplinary action report dated October 6, 2004, is related to an incident that occurred on February 19, 2004, at the Colisée de Québec during the Quebec International Pee-Wee Hockey Tournament. The report states that Mr. Labadie threatened and intimidated retirees/volunteers during this tournament. Mr. Labadie identified himself as a correctional agent of the CSC by showing the retirees/volunteers his CSC identification card.

[94] Mr. Laplante said that the fact that the investigators had amended their conclusion regarding the policy on the disclosure of wrongdoing had no impact on his decision to dismiss Mr. Labadie. The fundamental reason for Mr. Labadie's dismissal was that he had committed disloyal actions towards the CSC through the remarks he made in his book and the interviews he granted to the media. His behaviour was incompatible with the duties of a correctional officer, and tarnished the reputation of the CSC. Mr. Labadie had broken the bond of trust with his colleagues and the organization to which he belonged.

[95] Under cross-examination, Mr. Laplante stated that the position occupied by Mr. Labadie had been an entry-level correctional officer position. Mr. Labadie patrolled the Institution but had little contact with its inmates. He had contact with them only 25 percent of the time.

[96] Mr. Laplante stated that he had stopped working at the Institution on October 15, 2007. Other people had left, too, since the publication of Mr. Labadie's book. The Warden of the Institution at the time now works at another penitentiary. Two preventive security officers have left. The first has been retired for a year, and the second has been on leave for two years because of a work accident, and it is very

unlikely that he will return. The psychologist and another employee mentioned in Mr. Labadie's book are no longer working at the Institution.

[97] Mr. Laplante stated that the employees mentioned in the book had not filed a harassment complaint. Some considered it, but they decided not to because they knew that a disciplinary process against Mr. Labadie was under way. No one had sought a civil remedy against Mr. Labadie, but some employees were seriously considering it.

[98] Mr. Laplante said that he was informed of the disciplinary investigation report (Exhibit E-1, before Tab 1) when he returned from vacation, probably in early August. Mr. Doyon of the regional Human Resources office telephoned him to tell him of the findings of the investigation. It is possible that Mr. Doyon faxed the report findings to him; he could not remember exactly. Mr. Laplante received the disciplinary investigation report between August 26 and 29, 2005, by priority post. Mr. Laplante made the final decision to dismiss Mr. Labadie on September 27, 2005.

[99] Mr. Laplante said that he had met with Mr. Labadie on September 16 to give him the disciplinary investigation report (Exhibit E 1, before Tab 1). Mr. Laplante had told Mr. Labadie that he could review the disciplinary investigation report with his union representative and prepare his comments. Mr. Labadie wrote to Mr. Laplante that he had no comments (Exhibit E-2).

[100] Mr. Laplante said that he was not aware of the memorandum of July 7, 2005, bearing a signature above his name. This letter asked the Director of Access to Information and Privacy, National Headquarters, to purge the attached disciplinary report (Exhibit F-5). Jean-Yves Bergeron, the warden who had been replacing him, may have signed on his behalf. According to Mr. Laplante, it was possible that the report appended to the memorandum was the disciplinary investigation report of June 21, 2005 (Exhibit F-3).

[101] Under cross-examination, Mr. Laplante reiterated that he had not seen the disciplinary investigation report of June 21, 2005 (Exhibit F-3). The only version of the disciplinary investigation report that he had seen was that of August 26, 2005 (Exhibit E-1, before Tab 1). In any case, even if he had seen the June 21 version, it would not have affected his decision to dismiss Mr. Labadie.

[102] Mr. Labadie testified. He started working at the Institution on December 4, 1998. He started writing his book in February or March 2004. The book was published on May 4, 2005. The book was printed in a run of 1750 copies. Between 1400 and 1450 copies were distributed to bookstores. The publisher kept two boxes of copies, and Mr. Labadie kept about 20 copies for him and his family. The book denounces the drug trafficking, influence peddling and corruption that flourished at the Institution.

[103] Mr. Labadie stated that he had found out that there was drug trafficking at the Institution in January 2000, in the wake of the Friolet affair. Inmate B had told Mr. Labadie and Ms. Mathieu on January 20, 2000, that the Friolet affair had been a frame-up organized by the Warden, three correctional officers and one of the Institution's psychologists, and that they had induced Inmate M to give false testimony to get Mr. Friolet dismissed. Mr. Labadie had written the statement, and Inmate B had signed it. Ms. Mathieu had forwarded Inmate B's statement to Francine Cabana, a Public Service Alliance of Canada (PSAC) grievance officer, who, in turn, had forwarded it to an attorney of the PSAC.

[104] Mr. Labadie had trouble accepting the fact that his fellow officers had engaged in criminal activity. In late January or early February 2000, he therefore shared his complaints with Corporal Donald Byrne of the RCMP's intelligence unit. Mr. Labadie told him of the meeting he had had with Inmate B and the facts relating to the adjudication of the Friolet case. Corporal Byrne told him that this was a lead to be followed, and that he would see if there were grounds to investigate. He added that they would have to wait until the reference to adjudication of Mr. Friolet's grievance had been finalized before anything could be done. Mr. Labadie returned to see Corporal Byrne in September 2001. Mr. Labadie told him about Inmate B's testimony in the reference to adjudication of Mr. Friolet's grievance. Corporal Byrne said that the investigation was "[translation] promising," but that they would have to wait until the adjudicator had made a decision.

[105] The adjudicator ruled on Mr. Friolet's grievance on September 10, 2002. The adjudicator ordered the CSC to reinstate Mr. Friolet. Mr. Labadie stated that he had obtained the parties' arguments in this reference to adjudication by making an access to information request.

[106] Mr. Labadie met with Corporal Byrne again on September 18 or 19, 2002. Corporal Byrne was accompanied by Corporal Guay, a commercial crimes investigator.

It was then that Mr. Labadie filed an official complaint. Corporal Guay telephoned Mr. Labadie in July 2003 to inform him that his superiors had removed him from the investigation, even though he had discovered “[translation] quite a bit.” Corporal Guay did not specify what he had discovered, and told Mr. Labadie that the RCMP did not want to continue with the investigation. In September 2003, Mr. Fortier of the RCMP telephoned Mr. Labadie to tell him that the file was closed. On January 13, 2004, Inspector Marc Proulx, the officer in charge of the RCMP’s Commercial Crime Section, wrote to Mr. Labadie that there were no grounds for pursuing the investigation (Exhibit E-1, Tab 15).

[107] Mr. Labadie stated that he could not accept the RCMP’s conclusion, as it seemed wrong. It seemed to him that the RCMP was trying to hide something.

[108] Mr. Labadie had not informed his superiors of this matter because one of the Institution’s managers had been identified by Inmate B as one of the individuals engaged in criminal activity.

[109] Mr. Labadie stated that the atmosphere was very tense at the penitentiary after the adjudicator had made his decision in the Friolet case. The preventive security officers, some correctional supervisors and a few members of the emergency response team threatened Mr. Labadie. Mr. Labadie felt watched. In contrast, Mr. Labadie got on well with the correctional officers of the CX-01 and CX-02 groups and levels.

[110] Mr. Labadie also shared his concerns with Ms. Chalifour-Scherrer, his riding’s member of Parliament. Mr. Labadie spoke to her about the case for almost two hours and gave her his notes on the matter. Ms. Chalifour-Scherrer said that the matter did not make any sense and that she would discuss it with the Honourable Martin Cauchon, Canada’s minister of Justice at the time; Cabinet; and the Prime Minister. She said that she would try to set up a commission of inquiry. She never communicated with Mr. Labadie again after the meeting. She lost her seat in the 2003 election.

[111] André Clavet of the Bloc Québécois was elected in Mr. Labadie’s riding in the 2003 election. Mr. Labadie met with him to discuss his complaints. Ms. Chalifour-Scherrer had provided Mr. Clavet with the notes she had obtained from Mr. Labadie. Mr. Clavet never contacted Mr. Labadie again after that meeting.

[112] Mr. Labadie also contacted Ms. Robillard, President of the TB. He sent her an email using the computer of his then spouse, which explains why his name does not appear on the email (Exhibit E-1, Tab 12). He told Ms. Robillard that he was a victim of harassment because he had privileged information on certain people at the Institution. Ms. Binnington, Assistant Secretary, Employment Equity Division, the TB, answered him on Ms. Robillard's behalf, telling Mr. Labadie to contact Jim Wladyka, Director of Workforce Wellbeing at the CSC. Mr. Wladyka never contacted Mr. Labadie.

[113] In his correspondence with Ms. Binnington (Exhibit E-1, Tab 12), Mr. Labadie did not mention the drug trafficking, because he did not know whom he was dealing with. He wanted to meet with TB representatives in person to disclose this information. He did not want to cause panic.

[114] Mr. Labadie shared his concerns with Mr. Mallette, President, Quebec Region, UCCO-SACC-CSN. Mr. Mallette said that he would try to do something to calm things down.

[115] In May 2005, Mr. Labadie contacted a representative of the federal government to find out whether he would be protected by the new act the Prime Minister at the time wanted to pass to protect whistleblowers if he published a book exposing criminal behaviour. The representative told him that he would be.

[116] Mr. Labadie admitted that the tone of his April 14, 2005, letter to Mr. Laplante had been somewhat arrogant (Exhibit E-6). But he had been under stress. He had been beside himself because he had been threatened by a preventive security officer in a corridor of the penitentiary. The officer had said to him that "[translation] such matters are settled with bullets, big guy." Another preventive security officer had threatened him in front of about 30 other officers.

[117] Mr. Labadie stated that he did not know about the media relations directive (Exhibit E-1, Tab 17). As for his meetings with the media, his publisher had organized them. He added that he had not granted any interviews to the media after May 11, 2005, when Mr. Bergeron had told him about his concerns about such interviews.

[118] Mr. Labadie stated that he had never been given the *Standards of Professional Conduct* (Exhibit E-1, Tab 20). To his knowledge, he had never signed the employee notice of receipt and undertaking that can be found at page 3 of that document.

[119] Mr. Labadie stated that he realizes that he did wrong. He now regrets his actions. He apologizes if he hurt anyone, as this had not been his intention. He wanted to stop the crimes. He lost everything in this experience: his job and his girlfriend. If he had thought more about the matter, he would have found another solution. At the time, he had been stressed and the victim of threats. Over a six-month period, two explosive devices had been planted at his home. His girlfriend left him because she could not handle the threats. If he could start over, he would report the crimes to the police or the Commissioner, but would wait for the right time. He would do things differently.

[120] Under cross-examination, Mr. Labadie stated that the publisher had written the text that appears on the back cover of his book. Mr. Labadie had agreed with what the publisher had written. The official report mentioned in the fourth paragraph of this text refers to the adjudication decision in *Friolet* (Exhibit E-1, Tab 11). Counsel for the respondent pointed out to him that, according to that paragraph, correctional officers had allowed a significant amount of drugs to enter the penitentiary. When counsel for the respondent asked him to indicate at what point in the adjudicator's decision such a thing was said, Mr. Labadie was unable to point to a specific passage in the book, but added that the parties' arguments in *Friolet* referred to it. Mr. Labadie added that he had summarized the adjudicator's decision and counsel's arguments in his book.

[121] Mr. Labadie stated under cross-examination that there had been rumours that some of the penitentiary's correctional officers were trafficking drugs.

[122] Mr. Labadie stated that he had accorded more credibility to Inmate B when the latter had testified on the drug trafficking at the penitentiary at Mr. Friolet's adjudication hearing and counsel for the respondent had not cross-examined Inmate B on the matter.

[123] In response to counsel for the respondent's question as to what evidence Mr. Labadie had to support the allegations made in his book that the Institution's appointments were biased, Mr. Labadie answered that he had overheard a manager tell a penitentiary employee who was looking for another job that "[translation] as long as I'm here, you're not going there."

[124] Counsel for the respondent referred Mr. Labadie to the following passage in an email Mr. Labadie had sent to Ms. Binnington on July 31, 2003: "[translation] I have



some highly embarrassing information for the Correctional Service of Canada” (Exhibit E-1, Tab 12). When counsel for the respondent asked Mr. Labadie what that information was, he answered that he had it at home, but refused to answer any further questions on the matter.

[125] When counsel for the respondent asked Mr. Labadie to indicate the documents that he had given to the RCMP, he answered that he could not answer that question.

[126] Mr. Labadie stated that he was unaware of the policy on the disclosure of wrongdoing.

[127] Mr. Labadie stated that he had discussed the wrongdoings with the Prime Minister, Stockwell Day, John Baird and Rona Ambrose. He had met with all of them.

[128] Mr. Labadie stated that he returned to work after injury-on-duty leave in May 2004. He admitted that he had signed the statement confirming that he had received the *Values and Ethics Code* (Exhibit E-11). The statement is dated February 17, 2004. He read the *Code* after his book was published.

[129] During the re-examination of Mr. Labadie, his counsel reminded him that he had returned from his injury-on-duty leave in May 2004. Counsel for Mr. Labadie asked him how he could have signed the statement confirming that he had received the *Values and Ethics Code* (Exhibit E-11) on February 17, 2004, given that he had been on sick leave at the time. Mr. Labadie answered that he had signed the statement when he returned to work after his injury-on-duty leave, but that the administrative officer, Ms. Leclerc, had asked him to date the statement February 17, 2004. Counsel for the respondent argued that Mr. Labadie’s response was inadmissible, as Mr. Labadie could have provided this information when he questioned him on the matter during cross-examination. I decided that Mr. Labadie’s response was admissible, as his knowledge of the *Values and Ethics Code* was related to the issues in these grievances. Moreover, there was no indication that Mr. Labadie was trying to hide this information during cross-examination.

### **III. Summary of the arguments**

#### **A. For the respondent**

[130] Counsel for the respondent argued that the issue was to determine whether Mr. Labadie had lacked loyalty towards the respondent and the Government of Canada. The underlying question is whether this lack of loyalty justifies Mr. Labadie's dismissal.

[131] Mr. Labadie criticized many people: the CSC, his co-workers, the RCMP, the Department of Justice, a PSSRB adjudicator and his union. He expressed severe criticisms of these individuals and organizations. Mr. Labadie suggested that everything was rotten at the CSC. He expressed himself in sensationalist, defamatory and vexatious language, using expressions such as “[translation] unabashed laxness,” “[translation] blatant lie,” “[translation] shameful affair” and “[translation] union lambs.”

[132] Mr. Labadie's position is not an ordinary one. He is a peace officer and a public servant. A public servant's right of expression is subject to certain restrictions, and Mr. Labadie did not respect them. If he had wanted to criticize the CSC so harshly, he should have resigned from his position.

[133] The effects of the disloyalty shown by Mr. Labadie will last. His book will remain in libraries and will be read for years to come. The listeners of his radio interviews will remember his words for a long time.

[134] Counsel for the respondent drew attention to the fact that Mr. Labadie had not tried to use the internal disclosure process before publicizing his views. Mr. Labadie had never disclosed his allegations to his supervisors. He had never made a disclosure to Mr. Laplante, the CSC senior officer, the OPSVE or the public service integrity officer. Even when Mr. Laplante proposed that he read Mr. Labadie's book so that the former could make some suggestions, Mr. Labadie refused his offer.

[135] The respondent did not ignore the issue of drug trafficking at the penitentiary. Various organizations have studied this issue. Mr. Laplante had requested an internal audit of the procedure for the seizure of contraband and had asked the auditors to pay particular attention to the procedure for handling narcotics at the penitentiary (Exhibit E-1, Tab 14). Mr. Laplante had also asked two CSC employees to investigate Mr. Labadie's dealings with the SQ and RCMP. In their report, these two employees stated that these police forces had determined that there were no grounds for an investigation (Exhibit E-1, Tab 13).

[136] There are exceptions to a public servant's duty of loyalty. In *Fraser v. P.S.S.R.B.*, [1985] 2 S.C.R. 455, the Supreme Court of Canada decided that an employee could publicly disclose illegal acts committed by government. Counsel for the respondent explained, however, that this exception is valid only if an employee can demonstrate the merit of his or her allegations, as emphasized by the Federal Court in *Grahn v. Canada (Treasury Board)*, [1987] F.C.J. No. 36, and *Read v. Canada (Attorney General)*, 2005 FC 798 (appeal to the Federal Court of Appeal dismissed: *Read v. Canada (Attorney General)*, 2006 FCA 283). In *Read*, the Federal Court found that it is not enough for an employee to believe in the truth of his or her allegations; there must be some rational basis for the allegations. In this case, Mr. Labadie did not prove that his allegations were founded or rational.

[137] Mr. Labadie's allegations are based on two sources. The first is Inmate B's statement to Ms. Mathieu and Mr. Labadie. Inmate B told them that Inmate M had received drugs from correctional officers. This is triple hearsay. Mr. Labadie should not have lent any credence to an inmate. Mr. Labadie's second source was rumours from his co-workers. The drug trafficking evidence is more than flimsy; it is non-existent. Mr. Labadie misled the public.

[138] Mr. Labadie's criticism of the CSC's system for promoting employees is also unfounded. Mr. Labadie's testimony shows that he is unfamiliar with the appointment process.

[139] Mr. Labadie's statement that CSC managers are not properly trained is also unfounded. He knows nothing about their schooling and academic studies.

[140] Counsel for the respondent argued that one could assume that the public disclosure of wrongdoing by an employee would have an impact on that employee's ability to carry out his or her duties afterwards. On this subject, he referred me to *Haydon v. Canada (Treasury Board)*, 2004 FC 749 (upheld in *Haydon v. Canada (Treasury Board)*, 2005 FCA 249).

[141] Counsel for the respondent pointed out that Mr. Labadie should have been aware of the policy on the disclosure of wrongdoing (Exhibit E-1, Tab 22), as it is mentioned in the *Values and Ethics Code* (Exhibit E-1, Tab 18), which Mr. Labadie had read.

[142] Mr. Labadie violated the media relations directive and put Mr. Plamondon's life in danger by speaking of the transfer of this inmate to another penitentiary. The directive prohibits the identification of inmates.

[143] Counsel for the respondent pointed out that Mr. Labadie was not a perfect employee, as the disciplinary measures taken against him during his employment at the CSC demonstrate. This factor aggravates the situation. There are no factors that could mitigate the penalty imposed on him.

[144] Counsel for the respondent ended his argument by stating that the bond of trust between the respondent and Mr. Labadie had been irreparably broken.

**B. For the grievor**

[145] Counsel for Mr. Labadie first pointed out that the reason for Mr. Labadie's dismissal was an alleged breach of his duty of loyalty resulting from alleged violations of the policies of the respondent and the employer. In other words, because he thought that Mr. Labadie had breached these policies Mr. Laplante concluded that the bond of trust between the respondent and Mr. Labadie had been broken. The breach of the duty of loyalty is the result of the alleged policy violations, and not a separate reason for dismissal. That said, the respondent did not prove the violations in question.

[146] Counsel for Mr. Labadie argued that the June 21, 2005 disciplinary investigation report rather than the August 26, 2005 report had to serve as the basis for the dismissal. The June 21, 2005, disciplinary investigation report differed from the August 26, 2005, report. The first report concluded that Mr. Labadie had not breached the policy on the disclosure of wrongdoing, while the later report concluded the opposite. Therefore, the August 26, 2005 report should be ignored.

[147] Counsel for Mr. Labadie pointed out that we learned only during the cross-examination of Ms. Connelly that the investigators had submitted a first disciplinary investigation report on June 21, 2005 (Exhibit F-3). Nothing indicates that this was a preliminary report. The investigators had written in the letter accompanying the report that they had "[translation] attached their disciplinary investigation report on Mr. Jean-Pierre Labadie." The letter does not suggest that this report was an incomplete, draft or preliminary report.

[148] According to counsel for Mr. Labadie, other evidence suggests that the June 21, 2005, disciplinary investigation report was a final report. Ms. Connelly testified that she had contacted Mr. Méthé for permission to amend the June 21, 2005, report. Why would she have done that if the June 21, 2005, report had only been a preliminary one? She would not have needed permission to amend a preliminary report.

[149] According to counsel for Mr. Labadie, another item of evidence that leads to the same conclusion is Mr. Laplante's memorandum to the Director of Access to Information and Privacy (Exhibit F-5). In that memorandum, Mr. Laplante asks the Director to verify and purge the disciplinary investigation report. The memorandum is dated July 7, 2005, well before the release of the second disciplinary investigation report. This establishes that the June 21, 2005, disciplinary investigation report was considered a final report, as draft reports are not purged.

[150] Counsel for Mr. Labadie did not believe Mr. Laplante when he claimed that he had not received the June 21, 2005, disciplinary investigation report and the memorandum about the purging of this report when he returned from vacation. It is impossible that Mr. Laplante did not receive these two documents, as Mr. Laplante testified that he became aware of the findings of the disciplinary investigation report in a conversation with Mr. Doyon on August 10, 2005. On that date, they could only have been talking about the June 21, 2005, disciplinary investigation report.

[151] How can the change in the investigators' findings about the policy on the disclosure of wrongdoing be explained? The OPSVE representatives told the investigators that their analysis of the policy was weak and that the facts mentioned did not substantiate the investigation findings. This is why the investigators amended their findings. They had no choice, given the central agency's intervention. The OPSVE had interfered.

[152] Counsel for Mr. Labadie reviewed the alleged breaches of the policies of the respondent and the employer as described in the June 21, 2005, disciplinary investigation report. Regarding the policy on the disclosure of wrongdoing, counsel for Mr. Labadie recalled that the investigators had concluded that Mr. Labadie had not breached this policy. Counsel for Mr. Labadie explained that his client could not have made his disclosure according to the usual hierarchical structure because the disclosure concerned his superiors. Mr. Labadie therefore turned to individuals outside the CSC, such as Ms. Robillard and other ministers. This testimony was not

contradicted. Mr. Gauthier also wrote to Ms. McClung about the inmate testimonies in *Friole*. As these individuals did not act on Mr. Labadie's complaints, Mr. Labadie went public with his complaints by writing his book and accepting invitations from the media, because he could not tolerate what was happening at the Institution.

[153] Regarding the harassment prevention policy, the investigators concluded that Mr. Labadie had violated this policy because he had made improper, offensive comments to some co-workers in the workplace (Exhibit F-3, page 28). According to counsel for Mr. Labadie, this conclusion is not valid, as the policy is concerned with employees' conduct in the workplace (Exhibit E-1, Tab 21). Mr. Labadie did not write his book or give interviews to the media while he was at work. Moreover, the policy does not apply to Mr. Labadie's case, because no one filed a harassment complaint. The respondent, therefore, cannot base Mr. Labadie's dismissal on an alleged violation of this policy.

[154] There is no evidence demonstrating that Mr. Labadie breached the *Values and Ethics Code*. The respondent is using the Code to cover all kinds of conduct that are not referred to in the Code. The *Values and Ethics Code* is concerned with employee conflicts of interest (Exhibit E-1, Tab 18, pages 6, 9 and 10). There is no evidence that Mr. Labadie was in a conflict of interest. The Code also addresses the delivery of services to the public, and relationships with co-workers (Exhibit E-1, Tab 18, page 11). The alleged acts have nothing to do with service delivery or Mr. Labadie's relationships with his co-workers. The respondent, therefore, cannot use this policy, either, to justify Mr. Labadie's dismissal.

[155] The investigators also concluded that, by granting interviews to the media, Mr. Labadie violated the media relations directive, as he had not been designated to serve as a CSC spokesperson. The purpose of this directive is to designate members of the CSC who can address media representatives and give interviews on CSC policies, programs and operations. (Exhibit E-1, Tab 17, page 2, paragraph 5). Mr. Labadie did not give any interviews on CSC policies, programs or operations; he gave interviews on his book. The respondent, therefore, cannot base the dismissal on an alleged violation of this directive. It must also be considered that media representatives contacted Mr. Labadie, and not vice versa. Moreover, Mr. Labadie did not disclose any confidential information about Mr. Plamondon, as alleged by counsel for the respondent. It was the interviewer who referred to this inmate, not Mr. Labadie.

[156] Counsel for Mr. Labadie then addressed the issue of the alleged violations of the *Code of Discipline* and the *Standards of Professional Conduct* (Exhibit E-1, tabs 19 and 20, respectively). Counsel for Mr. Labadie considers these two documents as one, as one completes the other. He first pointed out that Mr. Labadie never signed the statement confirming that he had received the *Standards of Professional Conduct*, found at page 3 of this document.

[157] Counsel for Mr. Labadie argued that the respondent had not submitted any evidence demonstrating that the CSC's reputation had been damaged by the book published by Mr. Labadie or by the interviews he had granted to media representatives. The respondent should have demonstrated public perception both before and after the book was published and the radio interviews were broadcast.

[158] The respondent also did not put into evidence the radio stations' listener ratings. This would have made it possible to evaluate the public impact of Mr. Labadie's radio interviews. As for Mr. Labadie's book, its public impact was limited, as Mr. Labadie sold only between 1400 and 1450 copies. Who will be reading this book in five years' time? There is, therefore, no evidence of actual harm to the respondent.

[159] Counsel for Mr. Labadie pointed out that there was no evidence to demonstrate that his client's conduct had jeopardized the relationship between the CSC and the RCMP.

[160] Mr. Labadie's conduct was not above reproach. He testified that he would not behave in such a manner again to disclose wrongdoing. Mr. Labadie admitted from the start that his conduct merited punishment, but that it did not merit dismissal.

[161] Mr. Labadie could be reinstated. His reinstatement would not be too difficult, given that a number of the Institution's employees are no longer working at the penitentiary. Mr. Laplante, the Warden at the time, and two other employees are working elsewhere. A preventive security officer is on sick leave and is not expected to return to work. Another preventive security officer has retired.

[162] Counsel for Mr. Labadie argued that the fact that Mr. Labadie stopped granting interviews to the media as soon as Mr. Bergeron wrote to him about his concerns regarding these interviews (Exhibit E-1, Tab 5) should be a mitigating factor.

[163] Counsel for Mr. Labadie then examined the case law he considered relevant. He referred me to *Haydon*, a decision in which the Federal Court listed the relevant factors in determining whether an employee has breached his or her duty of loyalty (at paragraph 49). One of these factors is the working level of the employee within the government hierarchy. Mr. Labadie did not hold a senior position. Positions at the CX-01 group and level are entry-level positions. In *Fraser*, the employer had dismissed an employee who had breached his duty of loyalty; in that case, however, the dismissed employee had held a senior position within the government hierarchy, as he had been a unit supervisor.

[164] A further factor listed in *Haydon* is the truth of the statement made by the employee. In the case at hand, Mr. Labadie honestly believed that Inmate B's statements were true. Furthermore, Corporal Byrne of the RCMP had told him at a meeting that the investigation on drug trafficking at the Institution was "[translation] promising."

[165] Two other factors listed in *Haydon* are the impact of the employee's conduct on his or her ability to carry out his or her duties, and public perception in this regard. According to counsel for Mr. Labadie, these two factors are the most important. The respondent did not prove that Mr. Labadie could not carry out his duties, or that his conduct changed public perception in this regard.

[166] As to the question of the harm done to the employer's reputation, counsel for Mr. Labadie referred me to *Tobin v. Treasury Board (Correctional Service of Canada)*, 2007 PSLRB 26. In that case, the employer had dismissed an employee who had committed an offence while off duty. The adjudicator decided that, as the employer had alleged that the employee had harmed the employer's reputation, the employer had to provide direct proof of the harm. Such proof had to include a description of the employer's reputation both before and after the incidents giving rise to the dismissal had occurred. In the case at hand, the respondent had not proven that the CSC's reputation was harmed by the publication of Mr. Labadie's book or the broadcast of his radio interviews.

[167] Regarding the severity of the disciplinary action taken against Mr. Labadie, counsel for Mr. Labadie referred me to *Haydon*. In that case, the employer had taken much less severe disciplinary action against an employee who had breached his duty of loyalty. Despite the employee having held an important position, the employer had



imposed a 10-day suspension for having granted an interview to the media in which the employee had criticized his employer. The adjudicator reduced the suspension to five days. The penalty imposed on Mr. Labadie is, therefore, too harsh. Counsel for Mr. Labadie asked me to substitute a six-month suspension for the dismissal.

### **C. Respondent's rebuttal**

[168] Counsel for the respondent argued that the question as to which report Mr. Laplante based his decision on to dismiss Mr. Labadie was of little importance. Mr. Laplante could have decided not to conduct a disciplinary investigation and it would not have affected the merit of his decision to dismiss Mr. Labadie. According to counsel for the respondent, the issue I must decide is whether Mr. Labadie's conduct merited dismissal. The hearing of a grievance is a *de novo* process. On this subject, counsel for the respondent referred me to *Tipple v. Canada (Treasury Board)*, [1985] F.C.J. No. 818 (C.A.) (QL).

[169] Counsel for the respondent argued that the reason for the dismissal was Mr. Labadie's breach of loyalty towards the respondent. This is clear in the letter of dismissal (Exhibit E-5). Counsel for Mr. Labadie is confusing the duty of loyalty with the policy on the disclosure of wrongdoing. The duty of loyalty is not based on this policy. Even if the investigators had concluded that Mr. Labadie had not violated this policy, it would not mean that Mr. Labadie had not violated his duty of loyalty. Those are two different things.

[170] Counsel for the respondent argued that the respondent is not obliged to demonstrate that it suffered harm because of Mr. Labadie's lack of loyalty. The employer only has to demonstrate breach of the duty of loyalty. Through his behaviour, Mr. Labadie weakened the public's confidence in the CSC.

[171] According to counsel for the respondent, Mr. Labadie's position is an important one, as his actions as a correctional officer have an impact on public safety.

[172] Regarding *Tobin*, that decision is not relevant, as it does not deal with the duty of loyalty. In that case, the employee had committed an offence while off duty, but that offence did not put his duty of loyalty at issue.

### **D. Parties' additional comments on *Tobin***

[173] As indicated above, counsel for Mr. Labadie referred me to *Tobin*, an adjudicator's decision regarding the burden of proof in cases that involve the harm caused to an organization's reputation. A few days after the end of the hearing on the present references to adjudication, the Federal Court of Canada allowed an application for judicial review of the adjudicator's decision in *Tobin (Attorney General of Canada v. Tobin*, 2008 FC 740). I therefore decided to give the parties' counsel the opportunity to comment on this decision in writing if they wished to do so. Both counsel sent me their written comments.

[174] Counsel for Mr. Labadie pointed out to me that the Federal Court's decision was not a final one. It is subject to an application for appeal before the Federal Court of Appeal.

[175] Counsel for the respondent argued that, as the adjudicator's decision in *Tobin* had been set aside by the Federal Court, the arguments made by counsel for Mr. Labadie that were based on the adjudicator's decision are no longer valid.

#### **IV. Reasons**

[176] Mr. Labadie referred to adjudication a grievance challenging his suspension without pay, and a second one challenging his dismissal. Both references were made under paragraph 209(1)(b) of the *PSLRA*:

*209. (1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to*

...

*(b) a disciplinary action resulting in termination, demotion, suspension or financial penalty;*

[177] I must rule on three issues raised in these grievances. First, did Mr. Labadie engage in the alleged conduct? Second, if so, did his conduct merit a disciplinary penalty on the part of the respondent? Third, if so, was the misconduct serious enough to justify Mr. Labadie's suspension and dismissal?

[178] Mr. Labadie published a book entitled *À l'ombre du pénitencier de Donnacona* and granted six interviews to the media, which were broadcast 12 times in all. In his

book and the interviews, Mr. Labadie made several allegations against several individuals and organizations.

[179] The parties do not agree on the reason provided to justify Mr. Labadie's dismissal. Counsel for the respondent argues that Mr. Labadie was dismissed because, in publishing his book and granting interviews to the media, he breached his duty of loyalty and violated the following policies:

- the policy on the disclosure of wrongdoing;
- the harassment prevention policy;
- the *Values and Ethics Code*;
- the *Code of Discipline*;
- the *Standards of Professional Conduct*; and
- the media relations directive.

[180] For his part, counsel for Mr. Labadie argues that the breach of the duty of loyalty was not a separate ground for dismissal, but the consequence of alleged breaches of the policies of the respondent and the employer. In other words, it is because Mr. Laplante believed that Mr. Labadie had violated these policies that Mr. Laplante concluded that the bond of trust between the respondent and Mr. Labadie had been broken.

[181] In my opinion, counsel for the respondent is right. The duty of loyalty is a legal principle that comes from the common law. Clearly, some elements of the duty of loyalty can be found in the policies of the respondent and the employer. The policy on the disclosure of wrongdoing, for example, establishes a procedure that makes it possible for employees to disclose wrongdoing without violating their duty of loyalty. But the duty of loyalty is a separate legal principle from the policies of the respondent and the employer.

[182] In my opinion, Mr. Laplante dismissed Mr. Labadie because he felt that Mr. Labadie had breached his duty of loyalty and because he had violated the policies of the respondent and the employer by publishing his book and granting interviews to

the media. This emerges from the letter of dismissal (Exhibit E-5), which states that Mr. Labadie breached his duty of loyalty to the CSC:

[Translation]

...

*This letter is further to the disciplinary investigation report filed on August 26, 2005, regarding the publication of the book entitled À l'ombre du pénitencier de Donnacona, which you authored, and the interviews that you granted the media following the book's publication. This investigation report was remitted to you on September 15, 2005, for your comments.*

*Upon analysis, I note that you violated the Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace, the Policy on the Prevention and Resolution of Harassment in the Workplace, the Values and Ethics Code for the Public Service of Canada, the Standards of Professional Conduct in the Correctional Service of Canada, and the Code of Discipline.*

*I believe that you committed an act of disloyalty altogether incompatible with your status as peace officer. You tarnished the reputation of the Correctional Service of Canada. You irreparably broke the bond of trust with your employer. . . .*

...

[Emphasis added]

[183] In my opinion, the third paragraph quoted above is not the consequence of the second one. The emphasis that Mr. Laplante puts on the reputation of the CSC and the bond of trust between the CSC and Mr. Labadie shows, in my view, that he considered the breach of the duty of loyalty to have been a separate ground for dismissal. This also emerges from Mr. Laplante's testimony. He stated that the fundamental reason for Mr. Labadie's dismissal had been Mr. Labadie's disloyalty.

[184] It is true that the August 26 disciplinary investigation report (Exhibit E-1, before Tab 1) did not deal with the duty of loyalty. However, Mr. Laplante was not obliged to limit himself to the reasons stated in that report when he decided to dismiss Mr. Labadie. The report was simply a tool that helped him make a decision about Mr. Labadie's conduct.

[185] In *Haydon*, the Federal Court explained that duty of loyalty is a common-law principle according to which an employee must serve his or her employer with fidelity and should not deliberately harm the employer's business and interests:

*43 It is an established principle of the common law that an employee is under a duty to serve his employer with good faith and fidelity and to not deliberately do something which may harm his employer's business . . . .*

[Emphasis added]

[186] As indicated by Donald J. M. Brown and David M. Beatty in *Canadian Labour Arbitration* (3rd ed.), arbitrators have held that public servants violate their duty of loyalty if they engage in public criticism that is detrimental to their employer's interests (at paragraph 7:3330):

. . .

*Beyond such direct conflicts of interest arbitrators have held that public servants and indeed all employees violate their duty of loyalty if they engage in public criticism which is detrimental to their employer's legitimate business interest. . . .*

[Emphasis added]

[187] In *Fraser*, the Supreme Court of Canada ruled that public servants breach their duty of loyalty if they criticize major government policies in a sustained and highly visible manner:

*41 As the Adjudicator indicated, a further characteristic is loyalty. As a general rule, federal public servants should be loyal to their employer, the Government of Canada. . . . But, having stated these qualifications (and there may be others), it is my view that a public servant must not engage, as the appellant did in the present case, in sustained and highly visible attacks on major Government policies. In conducting himself in this way the appellant, in my view, displayed a lack of loyalty to the Government that was inconsistent with his duties as an employee of the Government.*

[Emphasis added]

[188] Clearly, employees may occasionally criticize their employer, but they must demonstrate restraint, as the Supreme Court of Canada pointed out in *Fraser*:

*43 . . . A person entering the public service or one already employed there must know, or at least be deemed to know, that employment in the public service involves acceptance of certain restraints. One of the most important of those restraints is to exercise caution when it comes to making criticisms of the Government.*

[Emphasis added]

[189] In *Haydon*, the Federal Court explains this duty of restraint:

*43 . . . As such, a public servant is required to exercise a degree of restraint in his or her actions relating to criticism of Government policy, in order to ensure that the public service is perceived as impartial and effective in fulfilling its duties.*

[190] Did Mr. Labadie breach his duty of loyalty to the respondent through his words? In *Haydon*, the Federal Court lists some factors that help in determining whether an employee has breached this duty:

*49 In light of the above, the following factors are relevant in determining whether or not a public service employee who makes a public criticism breaches his or her duty of loyalty towards the employer: the working level of the employee within the Government hierarchy; the nature and content of the expression; the visibility of the expression; the sensitivity of the issue discussed; the truth of the statement made; the steps taken by the employee to determine the facts before speaking; the efforts made by the employee to raise his or her concerns with the employer; the extent to which the employer's reputation was damaged; and the impact on the employer's ability to conduct business.*

[191] An analysis of the allegations, criticisms and derogatory comments made by Mr. Labadie in his book and the interviews he granted to the media in light of the factors listed above lead me to conclude that he breached his duty of loyalty.

[192] The nature and content of Mr. Labadie's allegations and criticisms are very serious. His most serious allegation is that certain managers and employees of the Institution smuggled drugs into the penitentiary and then gave drugs to an inmate to gain his cooperation. These allegations are indictable offences liable to imprisonment. I shall not repeat all the passages from Mr. Labadie's book and interviews in which he makes these allegations, but I would like to draw attention to the more striking ones. The following remarks can be found on the back of the dust jacket of his book:

[Translation]

...

*According to an official report of September 2002, correctional officers allowed substantial amounts of drugs to be smuggled inside prison walls and then gave some to an inmate whom they wanted to give false testimony against one of their co-workers. This news item should have created a scandal, but it received no coverage. Everyone remained strangely silent. Jean-Pierre Labadie is finally breaking this silence.*

...

[Emphasis added]

[193] Although this text was written by the publisher of Mr. Labadie's book, Mr. Labadie gave his approval.

[194] Mr. Labadie repeated the same allegations of illegal acts in an interview he granted to CBVT Câble 6 Québec, Société Radio-Canada, on May 13, 2005 (Exhibit E-1, Tab 8):

[Translation]

[Page 1]

*... There are some offices ... the preventive security office allows some inmates to bring drugs in, either for information or ... all kinds of things that I can't name because it's not my business. But what is my business is that those people let dope inside the walls.*

[Emphasis added]

[195] Mr. Labadie also made drug trafficking allegations in a radio interview he granted to Stéphane Gasse of Québec's CHRC radio station on May 5, 2005 (Exhibit E-1, Tab 8):

[Translation]

...

*STÉPHANE GASSE: ... The impression I get from reading it ... is that at Donnacona, the crooks and double-dealers aren't always behind the bars.*

*JEAN-PIERRE LABADIE: Nothing gets past you, I see.*

...

[Page 4]

...

*STÉPHANE GASSE: . . . it's been documented that senior correctional officers at the Correctional Service of Canada have provided inmates with drugs?*

*JEAN-PIERRE LABADIE: Yes, yes, absolutely.*

[Emphasis in the original]

[196] In his book, Mr. Labadie also accused management and certain employees of the Institution of all sorts of other unlawful acts, including perjury, influence peddling and death threats.

[Translation]

[Page 11]

...

*From September 1999 to September 2002 at the Donnacona maximum-security penitentiary, the most notorious administrative and judicial saga in the penitentiary's history took place. It was the topic of every conversation and provoked unjustifiable criminal actions by members of management and certain correctional officers, ranging from false testimony to the fabrication of evidence, including incitement to perjury, perjury itself and death threats. . . .*

...

[Page 161]

...

*It is inconceivable that a government agency could allow influence peddling, blackmail, threats of all kinds, non-compliance with acts and regulations, and drug trafficking as part of its operating procedure.*

...

[Page 163]

...



*... we have to start denouncing the injustices and crimes of these masters at manipulation, who do not hesitate to use threats and blackmail or retaliate against those who stand in their way.*

...

[Emphasis added]

[197] Mr. Labadie accuses the Warden of the Institution of having given false testimony before a PSLRB adjudicator:

[Translation]

[Page 129]

...

*... It's incredible how many lies and inaccuracies he peppered throughout his testimony. ... Dupré [pseudonym] then allowed himself to be blindly guided by his Preventive Security Section without for a moment suspecting that he was being manipulated by his intelligence experts like a kid. What a disgrace! ...*

[Emphasis added]

[198] In his book, Mr. Labadie also accuses a penitentiary psychologist of lying to CSC investigators and giving false testimony before a PSLRB adjudicator in order to obtain a permanent position at the penitentiary:

[Translation]

[Page 43]

...

*... Manon Chalifoux [pseudonym] ... should not have told so many lies when she met with the investigators, if the meeting indeed took place. ...*

[Page 44]

...

*... I believe that, for doing the favour, she inherited a permanent position at the Institution before testifying at the proceedings against Friolet.*

...

[Page 130]

...

*... In fact, the psychologist already knew, before even placing her hand on the Bible, that she was going to give directed and inaccurate testimony. Indeed, she delivered, before the court, a testimony woven of lies and falsehoods. The facts she related never existed. ...*

[Emphasis added]

[199] It is important to note that even though, in some cases, Mr. Labadie uses pseudonyms in his book, the individuals he accuses are easily recognizable. For example, it is easy to recognize that the person whom Mr. Labadie calls Yvan Dupré was the Institution's warden at the time, because there was only one person who held that position. The same is true of the psychologist, whom Mr. Labadie refers to as Ms. Chalifoux, as there were only two psychologists at the penitentiary.

[200] Mr. Labadie's allegation that correctional officers from Preventive Security ordered an inmate to commit theft is also a serious allegation. Mr. Labadie said this during an interview he granted to Stéphane Gasse of the Quebec radio station CHRC on May 5:

[Translation]

[Page 5]

...

*... Well, they made the inmate steal. They made him, they had him, they told him to put some, some things in Friolet's bag so he would be caught at the exit.*

...

[201] The nature and substance of Mr. Labadie's criticisms of the Institution's management, although less severe than his allegations of unlawful acts, are nonetheless serious. In his book, Mr. Labadie writes that the CSC is managed according to a "[translation] corrupt and regressive system" (page 14) and that the Institution's management suffers from "[translation] total incompetence" (page 159). As for staffing, according to Mr. Labadie, favouritism rules.

[Translation]

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[Page 158-159]

...

... *The promotion system is marked by a spiteful partiality. It is not qualifications or merit that are taken into account, but the strength of the bond that those lucky enough to be promoted have formed with those having the power to grant appointments. Therefore, to receive a well-deserved promotion it is not enough to have the necessary intellectual tools; you must also curry favour with the decision-makers.*

[202] Mr. Labadie also does not spare the RCMP, whom he accuses of protecting the “[translation] scoundrels and crooks” instead of the public, and of being a cowardly and weak organization (page 155 of his book).

[203] As for the form of Mr. Labadie’s allegations, insults and criticisms, they were repeated over and over again in both his book and the interviews he granted to the media. Mr. Labadie used vitriolic, offensive and sometimes alarmist language.

[204] Another factor cited in *Haydon* for determining whether an employee has breached his duty of loyalty is the visibility of the expression. The fact that Mr. Labadie voiced his allegations and criticism in a book that was published gave them great visibility. Between 1400 and 1450 copies were distributed to bookstores. Although this is not a large print run, the number of people who could have read the book is nonetheless substantial. The same is true of the fact that Mr. Labadie granted six interviews to radio stations. According to Ms. Connelly’s testimony, the interviews were broadcast 12 times in all. Even though these radio programs were targeted at a more or less local audience, the fact remains that the Quebec area has a fairly large listenership. I must also point out that the individuals most affected by Mr. Labadie’s comments, that is, the employees and inmates of the Institution, could all access the book and the radio interviews.

[205] According to *Haydon*, the nature of an employee’s position is also a factor that can help in determining whether an employee has breached his or her duty of loyalty. Counsel for Mr. Labadie argues that Mr. Labadie’s position is not a senior one within the penitentiary hierarchy, as he was a CX-01 group and level correctional officer. It is true that the level of Mr. Labadie’s position was not very high, but the nature of a position entails more than its level. People in lower positions can have important responsibilities. This is the case for correctional officers. Correctional officers’ conduct

can have major repercussions for the safety of employees, prison inmates and the general public.

[206] Another factor cited in *Haydon* for determining whether an employee has breached his or her duty of loyalty is “the efforts made by the employee to raise his or her concerns with the employer” (at paragraph 49). Similarly, the Federal Court stated in *Read* that, before going public, an employee should exhaust internal recourses:

*[123] Furthermore, even if Cpl. Read had otherwise been justified in going public, which he was not, he was precluded from doing so because he had not exhausted internal recourses. The underlying rationale is that a loyal employee will give his employer a reasonable opportunity to correct the problem (see Haydon No. 2 at para. 47).*

[207] The obligation to exhaust internal procedures for disclosing wrongdoing before making public allegations is reiterated in the policy on the disclosure of wrongdoing. This policy also stipulates that employees must use the internal disclosure mechanism before making a public disclosure, and that employees must first make their disclosure to the senior officer designated for this purpose (Exhibit E-1, Tab 22, page 8). The same policy offers another avenue to employees who believe that their issue cannot be raised in confidence within their organization. Such employees may make their disclosure of wrongdoing directly to the public service integrity officer (Exhibit E-1, Tab 22, page 9). The policy warns employees who are considering making a disclosure without respecting the policy that “any unauthorised external disclosure could expose [them] to disciplinary action” (Exhibit E-1, Tab 22, page 2).

[208] In my opinion, Mr. Labadie did not use the internal resources available to him to be heard. He did not approach Mr. Laplante or any other member of the management team. Even when Mr. Laplante offered to read his book before it was published, Mr. Labadie refused his offer. He did not contact the CSC’s human resources representatives. He also did not contact the senior officer designated under the policy on the disclosure of wrongdoing, or the public service integrity officer. In my view, Mr. Labadie did not comply with the obligation mentioned in *Haydon* and *Read* to use internal resources before publicly criticizing one’s employer and, as a result, violated the policy on the disclosure of wrongdoing.

[209] Mr. Labadie said that he contacted ministers and the member of Parliament for his riding to share his concerns with them. In my opinion, these are not the people he

should have contacted. First, these individuals are not designated in the policy on the disclosure of wrongdoing. Second, it is not realistic to expect Cabinet members to deal with such disclosures. As mentioned above, Mr. Labadie should have followed the disclosure of wrongdoing procedure set out in the policy.

[210] I do not believe that the fact that the RCMP concluded that there were no grounds for conducting an investigation warranted Mr. Labadie going public with his allegations. To the contrary, a respected police force coming to such a conclusion should have been one reason more for Mr. Labadie not to go public with his allegations. Mr. Labadie wanted to, as it were, take the law into his own hands by going public with his allegations, despite the fact that the RCMP found that there was not enough evidence to justify an investigation.

[211] Counsel for Mr. Labadie drew to my attention an email dated June 21, 2005, (Exhibit F-2) in which Ms. Connelly wrote that Ms. Roberts, the CSC's Director of Internal Disclosure and Investigations, had told her that it was not necessary for an employee to contact Ms. Roberts' office to disclose wrongdoing. In my view, an employee can make allegations directly in public only in the circumstances listed by the Supreme Court of Canada in *Fraser*. Even if Ms. Roberts had been right, Mr. Labadie should nonetheless have tried to go through his employer before going public. But what is most important about this email is that the email was from Ms. Connelly to Ms. Arsenault, and described a discussion between Ms. Connelly and Ms. Roberts. Mr. Labadie played no part in this.

[212] Mr. Labadie testified that he had asked a representative of the federal government if the new *Act* that the then prime minister planned to introduce to protect the disclosure of wrongdoings would protect him if he published a book condemning criminal acts. That representative, whom Mr. Labadie did not identify, replied that Mr. Labadie would be protected by that new act. I am unable to give much weight to this evidence, because I was not provided with further details on the context of that conversation. Mr. Labadie failed to determine whether that representative was authorized to make such promises, whether the act covered disclosure made by publishing a book and whether that representative had read Mr. Labadie's book. However, the representative's answer is not really relevant since the act was not yet in force when Mr. Labadie wrote his book and gave his media interviews. The *Act* in question, the *Public Servants Disclosure Protection Act*, S.C. 2005, c. 46, was assented to

on November 25, 2005, and did not come into force until April 15, 2007. Moreover, it was unwise to rely on a government official's opinion expressed during a telephone conversation, given the complexity of the issue. Mr. Labadie should have consulted an expert in such matters. His union, for example, could have advised him on that subject.

[213] Counsel for Mr. Labadie brought it to my attention that Mr. Gauthier had written to Ms. McClung on September 4, 2001, to inform her that inmates had testified in *Friolet* that Mr. Friolet had been framed for the alleged theft of jeans (Exhibit F-1). Ms. McClung replied to Mr. Gauthier that she would make that letter a priority. I do not believe that Mr. Labadie can use the fact that Ms. McClung did not contact him to justify his public disclosure. To begin with, I would like to point out that it was not Mr. Labadie who wrote that letter, but, rather, Mr. Gauthier, and nothing indicates that Mr. Gauthier wrote it at the request of Mr. Labadie. It is also unknown whether Ms. McClung followed up on that letter. More importantly, however, that letter refers to the testimony of inmates, which, in my opinion, was not a reliable source.

[214] Counsel for Mr. Labadie questions the validity of the findings of the disciplinary investigation report dated August 26, 2005 (Exhibit E-1, before Tab 1), regarding the policy on the disclosure of wrongdoing. The investigators found that Mr. Labadie had violated that policy, but the same investigators came to the opposite conclusion in their disciplinary investigation report dated June 21, 2005 (Exhibit F-3). As I mentioned above, that report is simply a tool that helped Mr. Laplante come to a decision regarding Mr. Labadie's conduct. Since Mr. Laplante was not bound by the findings of the report, the fact that the investigators reversed their position on that issue is irrelevant. Mr. Laplante accepted the conclusion found in the report dated August 26, 2005. Evidence in this case shows that Mr. Labadie violated that policy.

[215] Counsel for Mr. Labadie claims that there was undue interference by the OPSVE with the investigators of the disciplinary investigation report. I do not agree with this allegation. The OPSVE cannot be accused of interference, since, according to the policy on the disclosure of wrongdoing, it is the role of OPSVE representatives to advise departments on the application of that policy (Exhibit E-1, Tab 22, page 4).

[216] It is also important to note that the Institution examined the issue of drug trafficking at the penitentiary. Mr. Laplante had requested an internal audit of the procedure for seizing contraband and had asked the auditors to pay particular attention to the procedure for handling narcotics at the penitentiary (Exhibit E-1,

Tab 14). Mr. Laplante had also asked two employees of the Institution to investigate Mr. Labadie's dealings with the SQ and the RCMP. In their report, these two employees stated that those police forces had determined that there were no grounds for an investigation (Exhibit E-1, Tab 13).

[217] Counsel for Mr. Labadie submits that it is not enough to show that he breached his duty of loyalty; to succeed, the employer must also provide direct evidence that the CSC's reputation was damaged by Mr. Labadie's actions. To meet the burden of proof in this respect, the employer was required to compare the CSC's reputation before the book publication and radio interviews with its reputation following those events. According to counsel for Mr. Labadie, the employer failed to do so.

[218] I must point out that in these grievances there is, in fact, no direct evidence, as envisaged by counsel for Mr. Labadie, that the CSC's reputation was tarnished by Mr. Labadie's book and radio interviews. In my opinion, direct evidence of damage done to the CSC's reputation is not necessary. In *Tobin*, the Federal Court found that no proof of loss of public respect is necessary to reach a conclusion that the employee, through his or her conduct, harmed the employer's reputation:

*[48] . . . As a result, the first consideration that the Adjudicator should have directed his mind to is the evidence used to support Mr. Tobin's termination, and whether that conduct "harms" the CSC's reputation since this is exactly what Ms. Stableforth found. Instead of doing this, the Adjudicator found that Mr. Tobin's off-duty conduct was irrelevant. It appears that his finding is based in his conclusion expressed in paragraph 88 that he required evidence from some source that would somehow create the opinion he was required to form and express. This is a misapprehension of duty. It is only the Adjudicator who can form the opinion through use of his or her own knowledge and analytical ability. No proof of loss of public respect is necessary to reach a conclusion. That is, whether the public's confidence in, and respect for, the CSC will be diminished if Mr. Tobin is not terminated is not a matter of proof; it is a matter of judgment, correctly, fairly, and reasonably applied.*

[Emphasis added]

[219] Counsel for Mr. Labadie submits that I cannot rely on that judgment, since it was appealed. In my opinion, I am bound by a decision of the Federal Court until it is reversed on appeal. Even though that decision did not deal with the duty of loyalty, but

rather the commission of a criminal act while off duty, I believe that it is the leading case regarding the obligation to prove damage caused to an organization's reputation.

[220] I am also of the opinion that, in the current case, it can be inferred that the CSC's reputation, and more specifically that of the Institution, were negatively affected by Mr. Labadie's conduct, owing to the nature and substance of Mr. Labadie's allegations (that is, serious allegations of illegal acts and perjury), their context (allegations made by a correctional officer against certain managers and employees of the penitentiary), their form (allegations made repeatedly using alarmist and offensive language) and their visibility (allegations made in a book and radio interviews). As will be seen later, the Supreme Court of Canada adopted a similar approach in *Fraser* to infer the adverse effect of an employee's conduct on that person's ability to perform his or her duties.

[221] I therefore conclude that Mr. Labadie breached his duty of loyalty to the respondent because of the nature and substance of the statements he made, their form, and their visibility. That he held a position related to security at the penitentiary and that he failed to make use of the internal disclosure process are also factors that led me to this conclusion. The most serious allegations, as regards their substance, are those made against the Institution as a whole, implying that management at the penitentiary condoned drug trafficking, protected those who engaged in it and gave drugs to an inmate to ensure his cooperation. The allegations of false testimony made against the penitentiary's Warden and a psychologist at the Institution are also serious. His criticisms of managers at the Institution who, according to him, demonstrate "[translation] total incompetence" are also serious. They undermine the credibility of that penitentiary. The number of organizations that he criticizes is also striking: in addition to the Institution, Mr. Labadie also condemns the CSC and the RCMP. Furthermore, he denounces several people whom he names or who are easily identifiable.

[222] Counsel for Mr. Labadie did not claim in the context of this reference to adjudication that Mr. Labadie's dismissal infringed on his right to freedom of expression under paragraph 2(b) of the *Charter*, but Mr. Labadie did make that allegation in his grievance. I would therefore like to clarify that the Federal Court has repeatedly found that the common-law duty of loyalty did not violate that paragraph



of the *Charter*. In *Haydon*, for example, the Federal Court found that the duty of loyalty constitutes a reasonable limit to the freedom of expression (at paragraph 45).

[223] Regarding his allegations of illegal acts, Mr. Labadie wishes in these grievances to invoke the exception to the duty of loyalty identified in *Fraser* for such acts. In that judgment, the Supreme Court of Canada recognized that a public servant may actively and publicly criticize the government if the government engages in illegal acts, and that this right outweighs the duty of loyalty:

*41 . . . And indeed, in some circumstances a public servant may actively and publicly express opposition to the policies of a government. This would be appropriate if, for example, the Government were engaged in illegal acts, or if its policies jeopardized the life, health or safety of the public servant or others, or if the public servant's criticism had no impact on his or her ability to perform effectively the duties of a public servant or on the public perception of that ability . . . .*

[Emphasis added]

[224] In *Grahn*, the Federal Court found that, to invoke the whistle-blowing exception to the duty of loyalty, employees must prove the truthfulness of their allegations, and failing that, they must suffer the consequences of their actions:

. . .

*The fact remains, however, that having chosen the drastic course of publicly accusing his superiors of illegalities, it was up to the applicant to prove his allegations if he wished to avoid the otherwise natural consequences of his actions. As the applicant himself admitted at the hearing before us, the record is devoid of such proof. The applicant's own unsubstantiated allegations are certainly not enough.*

. . .

[225] In *Read*, the Federal Court also ruled that, to invoke the illegal acts exception set out in *Fraser*, there must be some rational basis to the allegations:

*[70] . . . Dickson C.J. stated in Fraser that whistle-blowing would be permissible "if, for example, the Government were engaged in illegal acts . . . ". . . .*

*[100] As to the burden of justifying a public allegation of government illegality, it was found that Cpl. Read honestly*

*believed in what he had said. Honestly is not enough. There must be some rational basis to the allegations. . . .*

[226] Mr. Labadie's allegations of drug trafficking are based on three sources. The first is a statement made by Inmate B, who allegedly told Mr. Labadie and Ms. Mathieu on January 20, 2000, that another inmate, Inmate M, had informed him that certain penitentiary employees were smuggling drugs into the Institution, and that they had attempted to bribe Inmate M to lie to implicate Mr. Friolet in a theft committed at the penitentiary. Mr. Labadie claims that Inmate B made similar statements during his testimony in *Friolet*. In my opinion, basing such grave allegations on the claims of an inmate lacks seriousness. That is not a reliable source. As to Inmate M, the adjudicator had written in her decision that she did not grant him any credence (Exhibit E-1, Tab 11, paragraph 379).

[227] The second source for the allegations of drug trafficking is the adjudication decision in *Friolet*. Mr. Labadie writes on the back cover of his book, for example, that “[translation] [a]ccording to an official report of September 2002, correctional officers allowed substantial amounts of drugs to be smuggled inside prison walls and then gave some to an inmate whom they wanted to give false testimony against one of their co-workers. . . .” The “official report” in question is the adjudicator's decision in *Friolet*. However, that decision makes no mention anywhere of drug trafficking. When counsel for the respondent asked Mr. Labadie to indicate the passages in *Friolet* containing references to drug trafficking, Mr. Labadie was unable to do so. Mr. Labadie added that the representatives' arguments in that case referred to it. I cannot comment on the written arguments submitted by the parties in that reference to adjudication, since Mr. Labadie did not enter them in evidence. In the adjudicator's decision, her summary of their arguments makes no mention anywhere of drug trafficking.

[228] It is true that Mr. Gauthier wrote to Ms. McClung in September 2001 that an inmate had said certain things on the subject of drug trafficking (Exhibit F-1). I will not go into further detail on that matter, as, according to Mr. Gauthier's letter, that testimony was given in camera. Since Mr. Gauthier did not appear to testify in these grievances, I do not even know how Mr. Gauthier succeeded in obtaining that information. I therefore give no weight to that letter. And in any event, Mr. Gauthier's letter refers to the statement of an inmate, and it is not reasonable, or even rational, in my opinion, to base such serious allegations on the claims of an inmate.

[229] The third source is the rumours that were circulating around the penitentiary that certain officers were involved in drug trafficking. Mr. Labadie has never elaborated on that subject. He has not said, for example, who was spreading those rumours. In my opinion, relying on vague rumours is neither a sound nor a rational basis for making such serious allegations.

[230] Mr. Labadie does not have any evidence, either, that the Warden and a psychologist at the Institution gave false testimony before a PSSRB adjudicator. Regarding the psychologist, Mr. Labadie's allegations seem to be based, according to what he writes at page 51 of his book, on the statement that Inmate B made to him and Ms. Mathieu on January 20, 2000. As I have already stated above, an inmate's statement is not a reliable source.

[231] As to the allegation that Inmate M was forced to lie to bring about Mr. Friolet's dismissal, Mr. Labadie was once again relying on Inmate B's statement and Inmate M's testimony given when Mr. Friolet's grievance was referred to adjudication. I have already found that those individuals are not credible.

[232] What is striking in these grievances is that such serious allegations, punishable by imprisonment, are based on so little evidence and on unreliable sources. Therefore, after reviewing the evidence submitted, I find that Mr. Labadie's allegations of illegal acts are unsubstantiated, as in *Grahn*, and irrational, as in *Read*.

[233] I would like to add that, although I am of the opinion that Mr. Labadie's allegations are unsubstantiated, I have no doubt that he honestly believed that they were justified. He believed that he was acting in the public interest. In my opinion, he became totally consumed by his crusade against the Institution since Mr. Friolet's grievance. However, his sincerity does not in any way change the fact that his allegations were unfounded, and it cannot, in my view, excuse his breach of his duty of loyalty.

[234] Mr. Labadie also wishes to invoke the last exception to the duty of loyalty found in *Fraser*, which deals with the impact of an employee's public criticism on that person's ability to perform his or her duties and on public perception of that ability:

41 . . . And indeed, in some circumstances a public servant may actively and publicly express opposition to the policies of a government. This would be appropriate if, for example, . . . the public servant's criticism had no impact on his or her ability to perform effectively the duties of a public servant or on the public perception of that ability. But, having stated these qualifications (and there may be others), it is my view that a public servant must not engage, as the appellant did in the present case, in sustained and highly visible attacks on major Government policies. In conducting himself in this way the appellant, in my view, displayed a lack of loyalty to the Government that was inconsistent with his duties as an employee of the Government.

[Emphasis added]

[235] Counsel for Mr. Labadie submits that the employer failed to prove that Mr. Labadie is unable to perform his duties. In my opinion, that argument has no merit. In *Fraser*, the Supreme Court found that impairment can be inferred based on certain evidence, including the nature of the employee's occupation, and the substance, form and context of the criticism:

47 . . . As to impairment to perform the specific job, I think the general rule should be that direct evidence of impairment is required. However, this rule is not absolute. When, as here, the nature of the public servant's occupation is both important and sensitive and when, as here, the substance, form and context of the public servant's criticism is extreme, then an inference of impairment can be drawn. . . .

48 Turning to impairment in the wider sense, I am of opinion that direct evidence is not necessarily required. . . . It is open to an adjudicator to infer impairment on the whole of the evidence if there is evidence of a pattern of behaviour which an adjudicator could reasonably conclude would impair the usefulness of the public servant. Was there such evidence of behaviour in this case? In order to answer that question it becomes relevant to consider the substance, form and context of Mr. Fraser's criticism of government policy.

. . .

50 When one examines the substance of the criticisms (two major government policies and the character and integrity of the Prime Minister and Government), the context of those criticisms (prolonged, virtually full time, in public meetings, on radio, on television, in newspapers, local, national, international), and the form of the criticisms (initially restrained, but increasingly vitriolic and

*vi-tuperative) the Adjudicator's conclusion that Mr. Fraser's ability to perform his own job and his suitability to remain in the public service were both impaired was a fair conclusion. Though no direct evidence of the fact of impairment of capacity is required, here the evidence clearly established circumstances from which the inference of impairment is clearly irresistible. . . .*

. . .

[Emphasis added]

[236] In my opinion, Mr. Labadie's allegations impaired his ability to perform his duties and public perception of that ability, on account of the nature of his allegations (particularly the allegations of illegal acts), their context (allegations made by a correctional officer against management of the Institution and several penitentiary employees), their form (allegations made repeatedly using alarmist and offensive language) and the very visible manner in which he chose to go public with his allegations (expressed in a book and radio interviews). The fact that his allegations were unfounded also leads me to that conclusion.

[237] I have already concluded that Mr. Labadie violated the policy on the disclosure of wrongdoing. I do not believe it is necessary to go into the particulars of the violations of the respondent's and the employer's other policies, because, in my opinion, Mr. Labadie's breach of his duty of loyalty justifies his dismissal. The fact that his statements also breach certain provisions of policies of the respondent and the employer, however, adds to the seriousness of those acts.

[238] I am of the opinion that Mr. Labadie violated the policy on harassment. The purpose of that TB policy is to foster a sound, respectful and harassment-free work environment. The policy gives the following definition of "harassment" (Exhibit E-1, Tab 21, page 2):

. . .

**Harassment** (harcèlement) - *is any improper conduct by an individual, that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. It includes harassment within the meaning of the Canadian Human Rights Act.*

...

[239] In my opinion, the allegations of criminal acts described above and the allegations of perjury made against the Warden and a psychologist at the penitentiary constitute “improper conduct by an individual, that is directed at and offensive to another person or persons in the workplace” and that “would cause offence” to those persons. Mr. Labadie’s conduct is also one that “demeans, belittles, or causes personal humiliation or embarrassment.”

[240] Counsel for Mr. Labadie noted that no one has lodged a complaint of harassment against Mr. Labadie. In my opinion, a manager is not required to wait for someone to file a complaint before acting. The policy expressly provides that a manager must intervene when he or she believes that an employee has violated that policy (Exhibit E-1, Tab 21, page 4):

...

***Managers***

...

*f) They are expected to address any alleged harassment of which they are aware, whether or not a complaint has been made. This applies to situations that involve employees as well as other persons working for the Public Service.*

...

[241] Counsel for Mr. Labadie also submits that the policy does not apply, since Mr. Labadie’s allegations and criticisms were not made while Mr. Labadie was on duty. In my opinion, that argument is without merit. The policy states that harassment is any improper and offensive conduct “in the workplace.” In my view, the allegations of criminal acts and perjury that Mr. Labadie made against certain colleagues are related to the context of their work. If Mr. Labadie’s submission were correct, that would mean that an employee could harass a co-worker as long as it was done outside of the workplace. Obviously, that argument is not valid.

[242] I am of the opinion that Mr. Labadie violated certain provisions of the *Values and Ethics Code*. Mr. Labadie testified that he signed the statement indicating that he had received the *Values and Ethics Code* (Exhibit E-11) upon his return from sick leave in May 2004. That code stipulates that employees must demonstrate respect, fairness

and courtesy in their dealings with fellow workers (Exhibit E-1, Tab 18, page 11). The groundless allegations of illegal acts that Mr. Labadie made against certain managers and co-workers at the Institution are inconsistent with those provisions. The same is true for the unsubstantiated allegations of perjury made against the Warden and a psychologist at the penitentiary.

[243] I am also of the opinion that, by making unsubstantiated allegations of illegal acts against management and certain employees of the Institution and allegations of perjury against the Warden and a psychologist at the Institution, Mr. Labadie violated Standard 1 of the *Code of Discipline*, which states that an employee commits an infraction if he or she “. . . makes public statements which harshly criticize the Service, the Government of Canada, or the Federal Crown, concerning policies, practices and/or programs of the government . . .” (Exhibit E-1, Tab 19, page 4). It is also my view that Mr. Labadie, through those same allegations and his conduct, violated Standard 2 of the *Code of Discipline*, which states that an employee commits an infraction if he or she “. . . acts, while on or off duty, in a manner likely to discredit the Service . . .” (Exhibit E-1, Tab 19, page 6).

[244] For these same reasons, I am of the opinion that Mr. Labadie violated standards 1 and 2 of the *Standards of Professional Conduct* (Exhibit E-1, Tab 20, pages 8 and 9), which state that staff shall conduct themselves in a manner that reflects positively on the Public Service of Canada and the CSC. For these same reasons, I also believe that he violated Standard 3 of that same document, which states that “Relationships with other staff members must promote mutual respect within the Correctional Service of Canada and improve the quality of service . . .” and that staff “. . . are expected to contribute to a safe, healthy and secure work environment, free of harassment and discrimination” (Exhibit E-1, Tab 20, page 11).

[245] Although it is not clear whether Mr. Labadie was familiar with the *Code of Discipline* and the *Standards of Professional Conduct*, in my opinion he was responsible for knowing that information. In my view, public servants must be aware of the general terms of important documents that govern their conduct at work. Correctional officers must, in my opinion, know the *Standards of Professional Conduct*. Even if Mr. Labadie had not been familiar with that code, it would not have made a difference in my decision. With respect to that code, he is not being accused of having breached technical provisions of the code, but, rather, of having violated common-sense rules

that all employees must follow, such as conducting themselves in a manner that reflects positively on the employer and contributing to a healthy and secure work environment.

[246] At the hearing for these grievances, counsel for the respondent argued that Mr. Labadie's dismissal was also based on alleged violations of the media relations directive. That directive was part of a mandate that Mr. Laplante had given to Ms. Connelly and Ms. Arseneault for their disciplinary investigation. However, Mr. Laplante does not mention that directive in the letter of dismissal (Exhibit E-5). I believe that the respondent simply forgot to list that reason in the letter of dismissal. Counsel for Mr. Labadie did not comment on the fact that the letter of dismissal made no mention of that reason. Usually, adjudicators require that the employer put forward the same reasons at a reference to adjudication as those given when the employee was disciplined (see Donald J. M. Brown and David M. Beatty, *Canadian Labour Arbitration*, 3rd ed., at para 7:2200). Since the alleged violations of the media relations directive were not mentioned in Mr. Labadie's letter of dismissal, I will disregard that reason for dismissal. I am of the opinion, however, that Mr. Labadie breached his duty of loyalty by discussing penitentiary employees and inmates with the media. He accused several employees of criminal acts and spoke of inmates B and M. It is also my view that Mr. Labadie breached his duty of loyalty when, during a radio interview, he discussed Mr. Plamondon's transfer to another penitentiary. Correctional officers should know that they are not to discuss inmates with the media.

[247] I must now determine whether Mr. Labadie's conduct warrants his suspension and dismissal. Counsel for Mr. Labadie submits that, if I conclude that Mr. Labadie breached his duty of loyalty, I should substitute a lesser punishment for the current penalty. Counsel for Mr. Labadie suggests a six-month suspension. According to him, the bond of trust between the respondent and Mr. Labadie has not been irreparably broken. Mr. Labadie could be reinstated in his position, especially since many of the Institution's employees no longer work there either because they have retired or because they have accepted employment elsewhere.

[248] In cases of breach of duty of loyalty, the most important factor, in my view, for determining whether the disciplinary action is justified is assessing whether the bond of trust between the employer and employee has been irreparably broken. In this case, I am of the opinion that the bond has been irreparably broken. The respondent has



lost confidence in Mr. Labadie. It is normal that the respondent would lose confidence in a person who has accused several members of management and correctional officers of criminal acts punishable by imprisonment, especially when the allegations are unfounded. Mr. Labadie's conduct has also had a detrimental effect on his relationship with other correctional officers. Even though some have been replaced, it would be difficult for Mr. Labadie's colleagues to trust him, knowing that he made unsubstantiated allegations against co-workers and management at the Institution. Mr. Labadie's allegations may also have created difficulties in his relationship with the inmates, who, according to Mr. Laplante's testimony, are adept at taking advantage of discord between employees.

[249] The other important factor for determining whether Mr. Labadie can be reinstated in his position is the impact of his conduct on his ability to perform his duties. I have already addressed that issue above in the context of the exception to the duty of loyalty. I found that Mr. Labadie's conduct impaired his ability to perform his duties, and impaired perception of that ability. His conduct can only undermine his credibility in the eyes of management, other correctional officers, inmates and the general public.

[250] I do not believe that there are any mitigating circumstances that can justify a lesser punishment. Although Mr. Labadie has nearly seven years of service, his employment record is not entirely positive. Evidence submitted shows that he was disciplined a number of times in the past (Exhibit E-10). It is true that Mr. Labadie has stated that he regrets his actions. He now acknowledges that his lack of judgment at the time destroyed both his professional and personal life. However, I do not believe that that remorse can restore the bond of trust between the respondent and Mr. Labadie.

[251] Neither do I believe that the fact that Mr. Labadie stopped granting interviews to the media when Mr. Bergeron wrote to him to express his concerns regarding those interviews (Exhibit E-1, Tab 5) is a factor that is significant enough to mitigate the disciplinary action that has been taken. By then, the damage had already been done. Mr. Labadie had received previous warnings, which he had ignored. Mr. Laplante had offered, for example, to read his book before publication to assess whether it violated the employer's policies, but Mr. Labadie refused that offer.

[252] I am also of the opinion that the respondent was justified in suspending Mr. Labadie without pay for the duration of the disciplinary investigation following the publication of Mr. Labadie's book. The seriousness of Mr. Labadie's statements, the allegations of criminal acts made against managers and employees at the penitentiary, and the sensationalist manner in which he made his allegations in his book and in the media justified taking such a measure.

[253] For all of the above reasons, I conclude that the suspension and dismissal of Mr. Labadie are appropriate measures, and I deny Mr. Labadie's grievances.

[254] For all of the above reasons, I make the following order:

*(The Order appears on the next page)*

**V. Order**

[255] The grievances are dismissed.

October 16, 2008.

PSLRB Translation

**John A. Mooney,  
adjudicator**