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*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

MARTIN LAPOSTOLLE

Grievor

and

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

Respondent

Indexed as
Lapostolle v. Deputy Head (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Michele A. Pineau, adjudicator

For the Grievor: Éric Lévesque, counsel

For the Respondent: Pierre-Marc Champagne, counsel

Heard at Montreal, Quebec,
August 29 to September 1, 2011.
(PSLRB Translation)

I. Individual grievance referred to adjudication

[1] Martin Lapostolle (“the grievor”) was terminated from his employment on January 19, 2010 for misconduct. He had been employed by the Correctional Service of Canada (CSC or “the employer”) since January 20, 1997. When he was terminated, he was a correctional officer at the CX-02 level at the Sainte-Anne-des-Plaines Regional Reception Centre (“the Regional Reception Centre” or “the institution,” depending on the context).

[2] The termination was preceded by a disciplinary action of a one-day suspension on February 26, 2008. The grievor challenged the termination of his employment as abusive, if not excessive, because it did not account for all the circumstances. The employer argued that the grievor’s conduct irrevocably violated the relationship of trust required for its smooth operation.

[3] To understand the context of this case, it should be noted that the CSC is the federal government organization responsible for administering sentences of two or more years, as imposed by the courts. To that end, the CSC manages institutions of varying security levels. The Regional Reception Centre is a maximum-security institution that accommodates individuals who have been sentenced and who are being assessed for placement in a correctional institutional that corresponds to their needs. The Regional Reception Centre accommodates offenders who have protected status because they cannot be integrated into the general population. It also has a super-maximum-security special handling unit, where the most dangerous offenders in Canada are incarcerated, including criminal bikers. Another building contains offenders who have signed contracts to cooperate with the justice system by testifying in major cases often linked to organized crime. No contact occurs between those last two sections, and they are protected from each other.

II. Summary of the evidence**A. For the employer****i) André Courtemanche’s testimony**

[4] André Courtemanche worked as a correctional manager for many years. He is retired. He was the main investigator appointed by the employer to investigate the following two incidents: a) the grievor’s participation in a poker tournament in Las Vegas, and b) his meetings with individuals associated with organized crime.

[5] Mr. Courtemanche consulted the investigation file documentation and met with institution management, the grievor's supervisors and Paul Harvey, the institution's security intelligence officer. The grievor was interviewed in the presence of two union representatives, Michel Dumont and Éric Thibault.

[6] Mr. Courtemanche provided the following testimony on the first incident. The grievor was away from work from July 4 to 16, 2009, to take part in a poker tournament, apparently without the required approval. The grievor objected to the relevance of this evidence because the leave issue was settled before the hearing and because it was not mentioned in the termination letter. His objection was taken under reserve.

[7] The investigation also revealed that the grievor accepted, without informing his supervisors, a \$6000 sponsorship to participate in the tournament by an individual known to the Sûreté du Québec for his ties with the criminal world. The grievor's involvement in the tournament was posted on several poker websites, and an article appeared in Mirabel's local newspaper about his success at the poker table. At the Las Vegas tournament, the grievor wore a sweater with his sponsor's name. A picture of it appeared on the Internet.

[8] An investigator from the criminal intelligence division of the Sûreté du Québec informed the employer that, on June 11, 2009, the grievor was intercepted while a passenger in a vehicle travelling at a very high speed on highway 15. The grievor was with the driver, an individual identified by the provincial criminal biker intelligence team, the Carcajou squad, as having ties with members of the Quebec chapter of the Hells Angels. On June 17, 2009, the grievor and this individual were stopped once more by the Blainville police in the same vehicle while leaving a nightclub. The grievor was the driver. The individual with the grievor is the well-known owner of a strip club in St-Janvier ("the St-Janvier bar").

[9] Before the incidents of June 11 and 17, 2009, that is, on November 3, 2007, the grievor was intercepted by the St-Janvier police while he was in a limousine displaying the distinctive St-Janvier bar colours, along with two other individuals, including the grievor's 2009 Las Vegas poker tournament sponsor ("the sponsor"). The grievor was suspended for one day as a disciplinary measure for the incident of November 3, 2007, and he was warned that any subsequent offence could lead to more serious disciplinary action, up to the termination of his employment. He was warned that the

alleged misconduct tarnished the CSC's reputation, that he was to no longer visit the bar and that he was to cut his ties with the individuals identified there.

[10] In his investigation interview with Mr. Courtemanche, the grievor admitted to having a two-year contract with the sponsor to play in poker tournaments and that the entry fee to the Las Vegas tournament had been \$10 000. The grievor told Mr. Courtemanche that he received no notice indicating that he was not to associate with the individual with whom he had been intercepted on June 11 and 17, 2009. He did not see anything wrong with his poker activities. The grievor said that he was on the lookout, that he did not receive a commission and that he kept his personal life separate from his work life.

[11] Mr. Courtemanche testified that an incident involving a correctional officer and organized crime attracted media attention and implied that the CSC was infiltrated by the criminal world. Furthermore, correctional officers receive thorough training on the CSC's values and its *Code of Discipline*, including the risks involved in contacts with organized crime.

[12] In cross-examination, Mr. Courtemanche admitted the following. At the time of the June 11 and 17, 2009 incidents, the grievor worked in the pedophile protection unit but could have been called at any time to work in another unit of the Regional Reception Centre, including the section incarcerating criminal bikers. During his interview, the grievor responded frankly to questions asked of him but did not remember the warnings received in 2007. The Sûreté du Québec provided very few details about the grievor's activities because of ongoing investigations, except for the reference to individuals of interest.

ii) Alain Belleau's testimony

[13] Since April 2011, Alain Belleau has been a detective sergeant with Montreal's joint regional Carcajou squad ("the squad"), which leads the fight against criminal biker gangs. The squad comprises police officers from the Sûreté du Québec, the Royal Canadian Mounted Police and the Service de police de la Ville de Montréal. Detective Sergeant Belleau had earlier been assigned to criminal intelligence projects involving criminal bikers. He has been a police officer since 1996.

[14] His work consists of collecting visual information on bikers and people who gravitate to them during private parties in rented spaces or at public events, such as

boxing matches. Any contact between police officers and bikers is reported to the squad, including simple road patrol incidents.

[15] The Sûreté du Québec, the CSC and municipal police authorities share criminal and criminal biker intelligence. That makes it possible to identify individuals to wiretap, to provide access to the files of people visiting CSC institutions, including their addresses, and to create inmate profiles. Detective Sergeant Belleau testified that exchanging information with the CSC is vital to police operations. On November 5, 2009, the CSC was informed that the grievor had been intercepted on June 11 and 17, 2009, accompanied by an individual who blatantly displays his relationship with different influential members of the Hells Angels and who participates in their activities. Detective Sergeant Belleau explained that a correctional officer associating with a person under police surveillance could result in information being passed on that could jeopardize the squad's investigations. Following the incidents of June 11 and 17, 2009, the grievor became a person of interest to the squad and was put under surveillance.

[16] According to the witness, since June 17, 2009, the grievor has been stopped four other times by the police because of his associations with individuals under investigation by the squad; i) on July 21, 2009, by the Sûreté municipale de St-Janvier, when he was a passenger in a vehicle; ii) on March 1, 2010, at the Pierre Elliott Trudeau International Airport, with two individuals of interest to the squad returning from an international trip; an airport search revealed a bag belonging to the grievor containing a CSC badge; iii) on April 24, 2010, by the Sûreté municipale de St-Janvier, while he was driving alone at the wheel of a luxury vehicle belonging to a prosecutor and Hells Angels sympathizer, which now belongs to the grievor through a leasing company; iv) on August 26, 2010, when he was stopped while driving alone at the wheel of a Jeep identified as the property of a business connected to a Hells Angels sympathizer. Information on a fifth incident involving the grievor and noted by the squad on August 28, 2010 is incomplete.

[17] The Detective Sergeant stated that the owner of the St-Janvier bar blatantly displayed his relationship with the Hells Angels by wearing in clear view a medallion depicting them. He also said that the bar owner had been seen with criminal bikers at some of their events, including private parties and extreme boxing matches.

[18] In cross-examination, Detective Sergeant Belleau testified as follows. The disclosure of the incidents of June 11 and 17, 2009 was the first time that the CSC was informed in writing that one of its employees was linked to organized crime. Detective Sergeant Belleau did not know what other information was sent to the CSC about the grievor or of information exchanged during quarterly meetings between the Sûreté du Québec, the CSC and municipal police authorities. He added that the owner of the St-Janvier bar is currently facing criminal charges. Finally, he mentioned that the prosecutor and previous owner of the luxury car, which belongs to the grievor, is still an active member of the Quebec Bar and still works in criminal law, including criminal defence.

iii) Alain Giguère's testimony

[19] At the time of the grievor's termination, Alain Giguère had been the assistant warden at the Regional Reception Centre since August 2007. His first intervention was to suspend the grievor in December 2007 for one day as a disciplinary measure following the incident in which the grievor was intercepted by police aboard a limousine identified as belonging to the St-Janvier bar owner, an individual of interest to the squad. After checking into the allegations and obtaining the police report, Mr. Giguère met with the grievor to obtain his version of the facts. The grievor explained that he had met the owner of the St-Janvier bar through a childhood friend. Nevertheless, Mr. Giguère concluded that the grievor violated the CSC's rules and values and tainted its public image, even though he was not on duty. The grievor was warned that mixing with people associated with organized crime harmed not only the CSC's image but also puts him at risk of threats and blackmail. The grievor was warned to stop associating with individuals linked to organized crime. He was told that, if he refused to comply, his employment could be terminated. Mr. Thibault, the grievor's union representative, attended the meeting. The warning was provided in writing. Mr. Giguère was not involved in terminating the grievor.

[20] In cross-examination, Mr. Giguère did not remember a meeting in which the grievor, accompanied by Mr. Thibault, apparently asked for clarification as to the types of meetings he could have outside work. He also did not remember a written request to that effect. Mr. Giguère only remembered telling the grievor to be wary of his childhood friends and the places that they frequented.

iv) Louise Maillette's testimony

[21] When the grievor's employment was terminated, Louise Maillette had been the acting warden of the Regional Reception Centre and the deputy warden since 2005. She had been a manager since 1997. She decided to suspend the grievor without pay during the investigation of the June 11 and 17, 2009 incidents and decided to terminate the grievor based on the results of Mr. Courtemanche's investigation with his co-investigator, Gaétan Éthier. Ms. Maillette considered that the grievor failed to adhere to the value and ethics in the *Code of Discipline*.

[22] The mandate was assigned to external investigators to ensure neutrality and to avoid any conflict of interest. Ms. Maillette consulted the employee's file, the nature of earlier disciplinary measures and the provisions of the collective agreement on the gradations of disciplinary sanctions. She considered the grievor's written statement dated January 5, 2009. She considered as aggravating factors the incident of November 3, 2007; the numerous disciplinary measures in a short time; the grievor's failure to report his poker tournament sponsor; and the fact that the police had intercepted him twice. The sponsorship was particularly serious. Ms. Maillette felt that the grievor was well versed in the CSC's values and ethics and that he did not take seriously the earlier warnings about infringing the *Code of Discipline*. His contacts with the criminal world were jeopardizing the CSC's security in an institution that accommodates notorious offenders, some among the most dangerous.

[23] According to Ms. Maillette, employees working in a correctional setting must be reliable and must behave responsibly. Correctional officers have access to the employer's databases and therefore to much privileged information about offenders. Accordingly, an employee parading around with persons of interest to the police is putting himself in a situation that jeopardizes the institution's security. Correctional officers work on the same cases as the police to ensure public safety. Correctional officers cannot be vulnerable to an information leak, for example, about an offender's transfer conditions. Correctional officers must identify themselves as such when stopped by police and must report the incident to their employer.

[24] The details justifying the administrative action are in the disciplinary action report, and the attached letter is an administrative document confirming the termination.

B. For the grievor**i) Éric Thibault's testimony**

[25] Éric Thibault is a correctional officer at the CX-01 level at the Regional Reception Centre and has been a CSC employee since 2001. He has been the president of the union local since 2005. He represents correctional officers in cases of disciplinary action.

[26] On February 26, 2008, Mr. Thibault accompanied the grievor to a disciplinary meeting. Afterwards, the grievor thought that it would be a good idea to obtain clarification as to the people with whom he was allowed to associate outside work. One person in the St-Janvier bar limousine was a long-time friend. The grievor wanted to know if he could go out for lunch with him and continue to see him. Mr. Thibault and the grievor met with Mr. Giguère for about a half-hour to discuss the matter. Mr. Giguère would not clarify the conditions for the grievor's association with friends but did state that it would not be wise to associate with them in a public place. No mention was made of excluding anyone else from the grievor's associations. Mr. Thibault admitted that the one-day suspension disciplinary action in 2008 had not been challenged.

ii) Martin Lapostolle's testimony

[27] When the grievor submitted his grievance, he was a correctional officer at the CX-02 level at the Regional Reception Centre. He had been a CSC employee since January 20, 1997.

[28] When explaining the first disciplinary measure, the grievor testified that, on the evening of November 3, 2007, he met the brother of a close childhood friend in the St-Janvier bar. He accepted a dinner invitation and got into the limousine belonging to the St-Janvier bar owner to travel to the dinner. He had no malicious intent. Following the disciplinary action of February 26, 2008, he asked for clarification as to the people that he could associate with and whether he had to sever all ties with the brother of his childhood friend. Mr. Giguère's response was vague; the grievor could eat out with the brother but could not be seen in public with him. According to the grievor, Mr. Giguère was mostly concerned about him being in the limousine identified with the St-Janvier bar and that he stay away from the limousine.

[29] Following the disciplinary action, the grievor returned to the St-Janvier bar one time with some co-workers for a retirement party.

[30] The grievor testified that, on June 11, 2009, the owner of the St-Janvier bar, also a poker player, phoned him and asked him to play poker. While travelling in a vehicle, they were stopped for speeding by the Sûreté du Québec. The grievor identified himself to the police. He said that he was not aware in June 2009 of the St-Janvier bar owner's criminal background.

[31] As for the incident of June 17, 2009, the grievor testified that he observed the St-Janvier bar owner in a very intoxicated state at another bar. He offered to drive him home. During the trip, the vehicle was stopped for a spot check. The police officer simply asked the grievor for the usual identification papers and that he identify the passenger. He was not charged with any offence.

[32] The grievor stated that his sponsor owned an art gallery and knew that the grievor was a good poker player. When the grievor told him that he would like to play in a Las Vegas tournament, the sponsor offered to share the entry cost with him. The grievor won \$179 000, and they shared the winnings. The sponsor offered to sponsor him in tournaments for two years, but the opportunity did not present itself again.

[33] The grievor said that he knew the Hells Angels' prosecutor well because he had worked with him as a service station attendant before the prosecutor went to law school and became a Crown prosecutor. The grievor also said that he was friends with some individuals of interest to the squad.

[34] The grievor explained that the CSC badge found in his travel bag at the Pierre Elliot Trudeau airport on March 1, 2010 was an old badge without an official number that he kept as a souvenir. The grievor explained that on August 26, 2010 he was driving a Jeep that a friend had lent him because his car had broken down. As for the incident noted by the squad on August 28, 2010, the grievor explained that he did not show up at the airport for a trip to Las Vegas because he had to visit a notary to finalize the sale of his house.

[35] The grievor testified that he did an honest job for 15 years and that he had made a life choice by working for the CSC. He said that he is incorruptible because he knows where to draw the line. During the investigation into the incidents of June 11

and 17, 2009, the grievor testified that he did not see his friend's brother again for over six months.

[36] In cross-examination, the grievor specified that he continually works on his poker game but that he is not a professional player. According to him, Mr. Giguère was mainly angry about him being in the St-Janvier bar limousine, rather than about the people he associated with that night. The grievor admitted asking his best friend's brother to pay for the hockey sweaters for a team that he had been playing on for a number of years. He admitted that he did not report the sponsorship to his employer. The grievor maintained his version of the facts given in his written statement dated January 5, 2010.

III. Summary of the arguments

A. For the employer

[37] The employer argues that the grievor's conduct goes against the spirit of the CSC's *Code of discipline*. His contacts with the underworld, even though they were made outside work, were inappropriate for a correctional officer bound by higher ethical standards than the average public service employee. The employer can use harsh measures when leisure activities conflict with work activities.

[38] Those contacts undermine public trust in the CSC and pose a risk to the institution's security. The conduct was incompatible for a public servant employed in a confidential capacity, and it justified terminating employment. The employer admits that no related case law exists and that I should take guidance from other cases to render a decision.

[39] The grievor is a correctional officer in an institution that houses criminal bikers. He has access to all the confidential information about them. He must avoid putting himself in a vulnerable position with respect to that information. The employer pointed out that, even though the grievor's contacts were coincidental, they all involved the Hells Angels and its activities. The public will remember that the grievor was s a CSC correctional officer.

[40] Before terminating the grievor's employment, the employer imposed a disciplinary measure and warned him that he had to avoid contact with individuals of interest to the police or associated with organized crime. He was warned that more

misconduct could lead to termination. The disciplinary action was not challenged. Progressive discipline does not apply to the circumstances of this case. To keep the employer's trust, the grievor had to exercise good judgment in his friendships. It was not up to the employer to make decisions for him. The grievor did not have to drive the owner of the St-Janvier bar home; he could have taken a taxi. The grievor must have known that he was putting himself in a vulnerable position by agreeing to a major sponsorship. He must have also known that, since the people he was associating with were of interest to the police, then their business or other relations must have been questionable.

[41] Since the relationship of trust is broken, the employer argues that, if I do not uphold the grievor's termination, I should award him appropriate compensation, rather than reinstatement.

[42] In response to the grievor's objection that he was taken by surprise at adjudication by the reasons for the termination, the employer states that the disciplinary report was given to him at the same time as the termination letter and that he was aware of all the reasons put forward. The termination letter is in all respects consistent with article 17 of the collective agreement, which does not provide for any specific formality.

[43] The employer asks that I dismiss the grievor's objection about the evidence produced post-termination. The evidence of the post-termination activities is relevant, in that it shows that the relationship of trust was violated. It also shows recidivism, because the grievor continued to have contact with the same individuals and their entourage. Furthermore, the Carcajou squad now has the grievor on file.

[44] In summary, the employer highlights that correctional officers are held to a higher ethical standard. When choosing this career, they must agree to the accompanying obligations. The employer is responsible for the public and the offenders, and I must not substitute my judgment for its judgment. Its decision was fair and reasonable. The grievor made choices incompatible with his duties. He must face the consequences.

[45] In support of its arguments, the employer cites the following decisions: *Dionne v. Treasury Board (Solicitor General of Canada - Correctional Service)*, 2003 PSSRB 69; *McKenzie v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 26; *Flewelling*

v. Canada, [1985] F.C.J. No. 1129 (C.A.) (QL); *Courchesne v. Treasury Board (Solicitor General)*, PSSRB File No. 166-02-12299 (19820719); *Simoneau v. Treasury Board (Solicitor General of Canada - Correctional Service)*, 2003 PSSRB 57; *Belix v. Treasury Board (Solicitor General)*, PSSRB File No. 166-02-17582 (19880714); *Cadieux c. Banque Nationale du Canada*, [2006] D.A.T.C. no. 173; *Shaver v. Deputy Head (Department of Human Resources and Skills Development)*, 2011 PSLRB 43; *Alberta Union of Provincial Employees v. Lethbridge Community College*, 2004 SCC 28; and *Saskatchewan Wheat Pool v. International Longshore and Warehouse Union (ILWU-Canada) Local 1000 (Grain Services Union) (Watamanuk Grievance)*, [2004] C.L.A.D. No. 285 (QL).

[46] The employer requests that the grievance be dismissed.

B. For the grievor

[47] The grievor argues that this case presents a number of challenges, despite the employer's high standards and concern for appearances. He points out that his employment was terminated for activities in his private life and that he has a right to privacy. If the state interferes in a person's private life, then the wrongdoing must seriously call into question the argued integrity.

[48] No decision, in Quebec or elsewhere, deals with the issue of "crime by association." The grievor's conduct is not linked to an offender but to a person suspected of having ties to organized crime, which is why his private life is a significant issue.

[49] The grievor objects first to the reasons for terminating him. The termination letter refers to the events of June 11 and 17, 2009, but does not mention the sponsorship, which is mentioned only in the disciplinary report. The grievor submits that Ms. Maillette's explanation did not hold water when she testified that the disciplinary action report and letter were given at the same time. The dismissal letter is an administrative procedure for the pay department, but the real reasons are contained in the disciplinary report. Although the letter was administrative in nature, it simply stated that the grievor was terminated. The reasons are not important. Accordingly, the employer had to prove that the events of June 11 and 17, 2009, were sufficiently reprehensible to justify the termination.

[50] The grievor argues that it is improper to terminate an employee because of the employee's contact with a person associated with organized crime. The grievor played

poker, participated in a tournament and visited a strip club. Do those facts, without judging or categorizing them, justify termination? The employer initially dealt severely with the grievor because he was in a limousine with a childhood friend and in a situation in which he met the owner of the St-Janvier bar. At that moment, he was unaware that the bar owner was an individual of interest to the squad. On November 3, 2007, the grievor was not implicated in the police intervention. The employer's only criticism of the grievor is that he got into the limousine associated with a strip club. The evidence does not clearly show that he had been warned not to associate with the individuals in the limousine, which is why he asked for clarification about maintaining his friendship with a childhood friend. The grievor points out that the suspension was imposed for two reasons, of which the limousine incident was the less serious.

[51] When the grievor was suspended in 2008, the CSC had no information that the St-Janvier bar owner was involved in organized crime. Therefore, the employer cannot argue that the grievor was warned about his association with individuals linked to organized crime. The employer did not find out that the squad had the bar owner on file until it investigated the police interventions of June 11 and 17, 2009. The grievor did nothing illegal, and the employer cannot prohibit his associations. He was disciplined based on an association with a strip club owner with a limousine.

[52] After the 2008 suspension, the grievor refrained from associating with his childhood friend. He returned to the St-Janvier bar only for a retirement party with his co-workers. The employer never prohibited the grievor from associating with the seven individuals in the limousine on the evening of November 3, 2007. No incidents occurred between November 3, 2007 and June 11, 2009. No evidence shows that the grievor was aware that the St-Janvier bar owner was on file with the squad and that his situation changed after 2007.

[53] Poker is not a prohibited activity. Nothing prevented the grievor from playing at the casino after receiving the call from the St-Janvier bar owner. The only complaint about that outing is the speeding ticket. The grievor did not conceal his identity. He did nothing illegal. He was in the St-Janvier bar owner's personal vehicle. The vehicle was not associated with organized crime or morally questionable, as was the St-Janvier bar limousine. The CSC's image or integrity has not been jeopardized.

[54] The incident of June 17, 2009 was simply chance. Although it is true that the grievor could have let the St-Janvier bar owner take a taxi, he was unaware that the bar

owner was under strict surveillance. The police stopped them simply for a spot check. The grievor did nothing illegal. His wrongdoing was being with the St-Janvier bar owner in his personal vehicle, which did not violate the 2008 warning. The grievor argues that he did not hide anything and that it is unreasonable for him to have to report to the employer every time he is stopped by the police, especially for incidents as trivial as speeding or an identification check.

[55] The grievor argues that I must ignore the June 2009 incidents and the findings of the investigation into the St-Janvier bar owner several months later, because it was *a posteriori* evidence. The grievor did not know in June 2009 that the owner of the St-Janvier bar was associated with the Hells Angels. That became known only during the investigation. Through that information, the employer made links to other individuals with whom the grievor associated. Accordingly, it cannot be concluded that the grievor was at fault. Detective Sergeant Belleau reported what he now knows, not what he knew when the incidents occurred for which the grievor was reprimanded.

[56] The grievor maintains that there is no proof that the sponsor of the poker game was associated with organized crime at the moment of the sponsorship. The only link is that he was in the St-Janvier bar in 2008, at the same time as the grievor, and that he also entered the owner's limousine. The grievor contests using the squad's findings about the sponsor's history to justify terminating his employment. The squad put the sponsor on file because of a connection to the St-Janvier bar owner, who was already on file. He owns an art gallery and is not a criminal. Financing the entry fee for a poker tournament, which is a game, is a permissible activity.

[57] The grievor maintains that his associations noted by the police after June 17, 2009 constitute after-the-fact evidence irrelevant to the grievance. He also argues that that evidence changes the context of two incidents that were not by themselves illegal. If the sponsorship merits a sanction for not being declared, termination is not the appropriate penalty.

[58] The grievor argues that the case law cited by the employer deals with situations in which correctional officers were involved with inmates or former inmates and that the *Code of Discipline* is clear that such associations are prohibited. The grievor claims that he was accused by association and states that termination is too harsh a consequence. Although he was careless, it does not warrant termination.

[59] The grievor asks that I allow the grievance and that I rescind the termination.

C. The employer's reply

[60] The employer replies that the reasons for the termination are clearly explained in the disciplinary report and that the grievor did not object to the same type of disciplinary report for the one-day suspension for similar incidents. The important thing is that the employee be informed of the reasons. The format matters little.

[61] Clearly, the sponsorship was one of the reasons used to justify the termination. Taking unauthorized leave to attend a poker tournament in Las Vegas was removed from the disciplinary report. However, the employer maintains that I should consider, to assess the grievor's reliability, the disciplinary report of February 28, 2008. The report resulted in a one-day suspension for the grievor for (among other accusations) inappropriately accessing the employer's database, which contains the files of offenders incarcerated at the Regional Reception Centre.

[62] The employer argues that the grievor's written statement dated January 5, 2010 contradicts his position that he was unaware that the St-Janvier bar owner and his entourage were linked to organized crime and that the events of June 11 and 17 were just chance. The grievor admitted in his testimony to lunching with his childhood friend.

[63] The employer argues that the CSC had reliable information that the St-Janvier bar owner was associated with criminal bikers because of its regular contact with the Sûreté du Québec. That information is in the Sûreté du Québec report dated November 25, 2009.

[64] The sponsorship is not denied. Detective Sergeant Belleau's hearsay evidence is admissible, considering that he works on a team that shares information. The grievor did not object to that part of Detective Sergeant Belleau's testimony.

[65] The employer argues that the grievor simplistically summed up the events and that he did not account for the many activities of the St-Janvier bar owner, such as participating in boxing matches sponsored by the Hells Angels and wearing a medallion depicting them.

[66] The employer does not believe that the grievor has reformed. Despite its warning of February 26, 2008 to avoid being seen with individuals potentially involved with the criminal community, the grievor admitted in his testimony that he returned to the St-Janvier bar for a retirement party and that he was stopped on June 11 and 17, 2009 in the company of the St-Janvier bar owner. That conduct cannot be trivialized as a simple matter of a speeding ticket. The grievor also testified that he did not go to Las Vegas a second time because he was prevented from going, not because he was unable to. He did not reform in any way. His links with organized crime are very serious.

IV. Reasons

[67] The termination of the grievor's employment is based on a misconduct that has two aspects, a) agreeing to sponsorship from a person associated with organized crime, and b) meeting twice with a person associated with criminal bikers.

[68] The facts are not disputed. The grievor admitted taking the sponsorship. His meetings with an individual associated with criminal bikers, in this case the owner of a St-Janvier bar, were confirmed by a police report prepared on November 25, 2009. In dispute are the seriousness and the consequences of the grievor's conduct.

[69] The employer maintains that the grievor's conduct was unbecoming of a CSC employee and that it was inconsistent with the duties of a correctional officer in a federal institution that accommodates high-risk offenders, including criminal bikers. The employer stated that it has lost all trust in the grievor.

[70] The grievor maintains that, during the incidents, he was unaware of the links of the sponsor and the St-Janvier bar owner to organized crime and that the employer interfered unduly in his private life by judging his associations. The grievor states that he is incorruptible in his relationships with those individuals.

[71] Holders of public office, with duties that include exercising the government's authority in the penitentiary system, require the personal characteristics of fairness and integrity. Those who accept the job of correctional officer also accept the personal constraints that come with it, that is, to favour the interests of the employer and to act at all times with integrity, even outside work hours. Such a constraint applies not only to correctional officers but also to any person holding a job that includes peace officer duties. Those principles are set out in *Flewwelling* and *Dionne*, with which I agree.

Accordingly, I dismiss the grievor's objection that the employer does not have the right to monitor what he does in his private life.

[72] In the February 26, 2008 disciplinary measure, the employer emphasized that the St-Jérôme police observed the grievor in the presence of individuals identified by the police as having ties to organized crime. The employer pointed out that that conduct was likely to tarnish its image and that a repeated incident could result in more severe disciplinary action, including termination. Therefore, I find that, after that direct warning, the grievor had the requisite understanding, even though he did not know all the circumstances, to mistrust individuals connected with the owner or with the St-Janvier bar. I find that the grievor, as an intelligent and reasonable person, was able to assess what constitutes associations incompatible and inconsistent with the responsibilities of a correctional officer. The grievor did not need a roadmap from the employer to do so.

[73] Moreover, according to undisputed evidence, the St-Janvier bar owner did not hide his ties to the Hells Angels. He openly wore a chain around his neck with a medallion engraved with an inscription promoting them. I find it difficult to believe the coincidences that the grievor cited about the meetings with the St-Janvier bar owner. The grievor admitted to returning to the bar for a retirement party even after receiving disciplinary action. I find implausible the grievor's version that, after two years without contact, the owner of the St-Janvier bar spontaneously invited him to play poker with him. Then, a few days later, the grievor met him by chance again. Offering the St-Janvier bar owner a ride while knowing that he was to distance himself from that person shows either the grievor's lack of judgment or his intention to disregard the warnings. Even were I to hold that the instances of police interception were routine, the grievor should have known that he risked losing his job by continuing to associate with people connected to organized crime.

[74] I find that the grievor demonstrated wilful ignorance about the sponsorship. He was fully aware that the sponsor had business relations with the owner of the St-Janvier bar, because that is how he met him in the limousine on November 3, 2007. In addition, a large amount of money was involved that would not have been loaned unsecured, especially in the organized crime community. The grievor then became vulnerable. His statement that he is incorruptible is unsupported. That false self-esteem demonstrates poor judgment.

[75] On the issue of evidence about the disciplinary action imposed for taking unauthorized leave between July 4 and 16, 2009 to attend the sponsored poker tournament, I uphold the grievor's objection that that evidence is not relevant because the parties settled the matter. However, the fact that the grievor agreed to the \$6000 sponsorship to attend the poker tournament that took place during that period is a relevant factor that I considered in my findings.

[76] The evidence of the grievor's associations obtained after the grievance was filed is relevant in that it contravenes his statement that he refrained from any contact with criminals after receiving a first disciplinary penalty. Four subsequent incidents in which he was stopped by police, either while in the company of individuals of interest or as the driver of a vehicle associated with criminals, are no coincidence. His frequent association with individuals linked to organized crime is not a coincidence either, regardless of whether it involved childhood friends or people he had known for a long time. Therefore, the incidents of June 11 and 17, 2009 cannot be considered isolated.

[77] The grievor's counsel cited several decisions in which employees were reinstated after breaching the *Code of Discipline*. In *Amos v. Treasury Board (Solicitor General Canada)*, PSSRB File No. 166-02-14678 (19850107), a correctional shop instructor's employment was terminated for, among other things, purchasing art from an offender and for meeting with him several times, therefore having a relationship that was inconsistent with his duties. However, the adjudicator found that no evidence indicated that the employee posed a danger to the institution. The employee was reinstated in his position.

[78] In *Cudmore v. Treasury Board (Solicitor General - Correctional Service Canada)*, PSSRB File No. 166-02-22426 (19930310), the correctional officer had established relationships with former offenders by hiring them to do repairs in his apartments as part of a government rehabilitation program, without informing his immediate supervisors. A three-day suspension without pay was substituted for an eight-day suspension without pay.

[79] In *Jalal v. Treasury Board (Solicitor General - Correctional Service Canada)*, PSSRB File No. 166-02-27992 (19990421), the correctional officer had been charged with shoplifting, which he failed to report to his employer. He denied the theft and pleaded not guilty to the charges. In that case, the adjudicator found that the misconduct did not warrant termination because it was not established that the

misconduct was sufficiently related to the correctional officer's duties, that the misconduct had tarnished the CSC's reputation or that the officer was unable to perform his duties. A penalty of 20 months without pay was substituted for the termination.

[80] In *Babineau v. Treasury Board (Solicitor General - Correctional Service Canada)*, PSSRB File Nos. 166-02-28509 and 28510 (19990409), the correctional officer purchased a hunting rifle from an offender that had been granted parole. The grievor admitted his mistake but maintained that, given his clean disciplinary record, termination was too severe a penalty. The adjudicator offered him the chance to resign, to avoid marring his file with a suspension, or to replace the termination with a one-year suspension without pay or benefits.

[81] In *Chénier v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2002 PSSRB 40, the correctional officer was terminated for three incidents, namely, providing an offender with a prohibited item (a bank card) and for accepting gifts from offenders (a \$50 bill, and money to purchase a pizza for them that he shared), all of which contravened the *Code of Discipline*. Only one of the three incidents, deemed serious, was allowed, since the other two incidents were not proven. The adjudicator substituted an 11-month penalty for the termination.

[82] In *Simard v. Treasury Board (Solicitor General Canada - Correctional Service)* 2003 PSSRB 53, an instructor from the CORCAN sorting centre admitted to having a personal relationship with an offender. The employee did not report to the hearing of her grievance and failed to provide any explanation, other than her testimony at the disciplinary investigation. The adjudicator found that the relationship of trust had been broken and that the dismissal was justified.

[83] In *Ville de Sorel-Tracy c. Syndicat des pompiers du Québec, section locale de Sorel*, 2002 T.A. AZ-02142038, a firefighter's employment was terminated for having ongoing dealings with criminal bikers outside work hours. The employee regularly went to bars where criminal bikers could be found. He knew several of them and had hung out with some of them in his youth. He greeted them, sat at their table and conversed with them while drinking beer. He once visited a private club owned by bikers to check the cold room's compression motor. Everyone, including the employer, had seen and known of his meetings for a number of years. His conduct eventually annoyed the employer, which abruptly ended his employment.

[84] The arbitrator found that it was improper for a firefighter to regularly associate or to fraternize with criminal bikers, especially because of his or her responsibilities, such as ensuring the security of property at the scene of a fire as well as public safety during certain demonstrations. However, he emphasized that, before penalizing an employee for such conduct, the employee should be warned and given clear instructions to stop the association. The case involved a part-time firefighter who did not wear his uniform during his associations and who was in contact with those people when he was hired. No code of ethics was in place for firefighters, and no directive existed about their associations. The arbitrator found that, in the absence of a notification that that kind of association was not acceptable, termination was too severe a penalty. However, the arbitrator stated that the penalty should not be lenient so that the complainant would understand the importance of not being seen in public with criminal bikers. A three-month suspension was substituted for the termination.

[85] In *La Fraternité des policiers et policières de la Régie de police Thérèse-de-Blainville c. Régie intermunicipale de police Thérèse-de-Blainville (Sauro)*, 2006 T.A. AZ-50407609, a police officer was terminated for, among other things, associating with a person connected to the Italian mafia, which violated the internal code of discipline for police officers. The code prohibited association with individuals “[translation] with a questionable or criminal reputation, or from frequenting places with such a reputation, except in the line of duty.” The police officer had been seen in uniform dining with the person at a restaurant. The arbitrator found that the evidence did not demonstrate that that person was of questionable or criminal reputation or that that person was in any way linked to organized crime, since the rumours circulating in the police force were insufficient. The arbitrator stated that, nevertheless, the police officer had lacked elementary prudence, or even good judgment, which would have been very costly had the evidence shown a link between that person and organized crime. For other reasons related to the other counts of discipline, a six-month suspension without pay was substituted for the termination.

[86] In my opinion, *Amos, Cudmore, Jalal, Babineau, Chénier* and *Simard* are of little interest because they involve relationships with offenders, which is not the case with the grievor’s alleged associations. In this case, reducing penalties for such misconduct is not persuasive. While not identical, *Ville de Sorel-Tracy* and *La Fraternité des policiers et policières de la Régie de police Thérèse-de-Blainville* are more relevant because the

occupations of the complainants can be associated to a certain extent with the grievor's.

[87] For the last two cases, I take the principle that, to penalize an employee for his or her associations or relationships outside work hours, the employer's concerns must be reasonable, based on the following three criteria:

- a) the nature of the duties performed by the employee;
- b) the type of relationship with the associated individuals; and
- c) other circumstances.

a) the nature of the duties performed by the employee

[88] The grievor is a full-time correctional officer working in an environment in which offenders, including criminal bikers, are housed. The grievor can be called on at any time to work in the unit in which they are housed and has access to their files, which include confidential information such as police information. Those job activities can expose the grievor, who is involved with individuals associated with criminal bikers outside work, to favour, within the scope of his work, the interests of those individuals, at the expense of the employer's interests. The information to which the grievor has access because of his work reasonably justifies the employer's fears that his involvement with those third parties could potentially be prejudicial to its interests. This situation is different from the firefighter's, in which documents were laying around a public place and in which the employer could have prohibited firefighters from entering the dispatch room.

[89] On that point, I dismiss the grievor's objection about the distinction to be made between the termination letter as an administrative document and the disciplinary report. In this case, both documents were given to him at the same time, on the day of his termination, and both were explained in the presence of his union representative. Whether the reasons for the termination of employment were explained in one document or the other does not change the nature or seriousness of the impugned conduct. The collective agreement does not specify the form the disciplinary action is to take. The important point is that the employee must be fully informed of the employer's reasons. In that respect, I find that the employer met its obligation to

provide sufficient reasons for its decision to terminate the grievor, and I need not interfere with its approach.

b) the type of relationship with the associated individuals

[90] The evidence shows that the grievor's ties with the St-Janvier bar owner and the sponsor of his poker tournament were more than casual acquaintances. He knew them through a childhood friend. He knew the Hells Angels' prosecutor because he had worked with him before becoming a correctional officer. He initially associated with them publicly, then more personally, by going to the casino when invited, travelling in the personal vehicle of the St-Janvier bar owner and by accepting a sponsorship that involved sharing the winnings from the tournament. Those circumstances show that the grievor's connection to individuals associated with criminal bikers was close, which made him vulnerable, with respect to the CSC's interests. This situation differs from that of the firefighter, who associated with individuals linked to criminal bikers in the views of the employer, and the police officer, who had had just one meeting with an individual apparently linked to the Italian mafia.

c) other circumstances

[91] Image is another factor. In my opinion, it is not normal for a CSC employee to flaunt his association with individuals openly associated with criminal bikers and to visit locations that they knowingly frequent, even when not on duty. I deem such conduct incompatible with the duties of a peace officer who regularly deals with people from that environment as part of his job. The employer is not required to prohibit conduct that is clearly reprehensible to all. Theft is unacceptable conduct, even if no applicable directive exists. The same principle applies to associations.

[92] In this case, the grievor received an initial disciplinary penalty and a clear warning to end such associations, which was not the case with the firefighter in *Ville de Sorel-Tracy*. Contrary to *La Fraternité des policiers et policières de la Régie de police Thérèse-de-Blainville*, the employer in this case demonstrated that it made the grievor aware of the St-Janvier bar owner's ties with organized crime.

[93] By associating publicly with individuals involved in organized crime, the grievor tarnished the CSC's image. Given all the circumstances, the conduct of which the employer accused him renders him unable to perform his duties with integrity. The

evidence is sufficient to convince me that the relationship of trust with the employer has been irreparably broken and that, given the mandate of the Regional Reception Centre, the grievor would pose a risk to its security were he reinstated. The grievor's years of service and rank do not mitigate my findings.

[94] It is my view that the *a posteriori* evidence is relevant in that it demonstrates that the grievor did not reform and that he continued to associate with criminal bikers even though his employment was terminated for such conduct. That evidence tends to show that the employer's fears about breach of trust are justified.

[95] Another reason I am upholding the termination of employment is that the grievor still does not acknowledge the seriousness of his behaviour and denies that his associations are problematic.

[96] Considering all the circumstances and the grievor's job, dismissal was a reasonable penalty.

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

(The Order appears on the next page)

V. Order

[98] The grievance is dismissed.

December 5, 2011.

PSLRB Translation

**Michele A. Pineau,
adjudicator**