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*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

ALAIN RICHER

Grievor

and

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

Respondent

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

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Steven B. Katkin, adjudicator

For the Grievor: Ariane Pelletier, Union of Canadian Correctional Officers -
Syndicat des agents correctionnels du Canada - CSN

For the Respondent: Anne-Marie Duquette, counsel

Heard at Montreal, Quebec,
December 14 to 16, 2010 and April 27 and 28, 2011.
(PSLRB Translation)

I. Grievance referred to adjudication

[1] Alain Richer (“the grievor”) was working as a correctional officer at the CX-01 level at the relevant time. He had been employed by the Correctional Service of Canada (CSC or “the employer”) since July 18, 2005 at the Archambault Institution in Sainte-Anne-des-Plaines, Quebec (“the institution”). On July 3, 2008, he filed a grievance to challenge his dismissal for off-duty conduct. As a remedy, he requested reinstatement into his position.

[2] The termination letter (Exhibit E-10-5), dated June 25, 2008 and signed by Warden Ninon Paquette, reads in part as follows:

[Translation]

...

This letter is further to the investigation report filed on May 1, 2008 about the events that occurred in your home on January 15. You received a copy of the investigation report and had an opportunity to provide your comments at a meeting on May 9.

In my opinion, the January 15 events are completely incompatible with the very nature of the Correctional Service of Canada’s (CSC) operations, its mission and your status as a peace officer. Your actions tarnished the CSC’s image and irreparably breached the bond of trust with your employer. After my analysis, I find that you violated the Values and Ethics Code for the Public Service, the Standards of Professional Conduct and the CSC’s Code of Discipline.

Finally, I considered the mitigating and aggravating factors specific to your situation and inform you that . . . I have decided to terminate your employment, effective June 27, 2008.

...

[3] The grievance was referred to adjudication on September 5, 2008.

[4] The parties were not available for a hearing until December 14, 2010.

II. Summary of the evidence

[5] The provisions of the employer’s *Code of Discipline*, enacted in its Commissioner’s Directive 60 (Exhibit E-10-8), which it filed, read as follows:

...

GENERAL RESPONSIBILITIES

...

3. *Employees of the Service are responsible for adhering to the Standards of Professional Conduct. Arising from the Standards of Professional Conduct are a number of specific rules that employees of the Correctional Service of Canada are expected to observe. Some examples of infractions are given in a list below each specific rule. These lists are not exhaustive.*

...

STANDARDS OF PROFESSIONAL CONDUCT

...

Conduct and Appearance

6. *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. . . .*

Infractions

An employee has committed an infraction, if he/she:

...

- c. acts, while on or off duty, in a manner likely to tarnish the Service's image;*
- d. commits an indictable offence or an offence punishable on summary conviction under any statute of Canada or of any province or territory, which may tarnish the Service's image or affect his/her continued performance with the Service;*

...

[Emphasis added]

[6] The grievor also allegedly violated rule 2 of the *Standards of Professional Conduct of the Correctional Service of Canada* (Exhibit E-10-7):

...

2. RULES OF CONDUCT AND APPEARANCE

The behaviour of a person, whether or not on duty, shall do honour to Correctional Service Canada and the Public Service. All employees shall behave in a manner that enhances the reputation of the profession, through both their words and their actions. . . .

...

. . . As role models for offenders, employees shall adopt high standards that offenders can respect and try to emulate. . . . Employees shall ensure that they present themselves, both on and off duty, as responsible and law-abiding citizens.

Employees who commit criminal acts or other serious violations - particularly in the case of repeat offences or misconducts that are sufficiently serious to lead to incarceration - are not representative of the type of behaviour deemed acceptable at Correctional Service Canada, at either the personal or the professional levels. . . .

...

[7] It is also alleged that the grievor violated the *Values and Ethics Code for the Public Service* (Exhibit E-10-6). The provisions cited by the employer read as follows:

...

Ethical Values: *Acting at all times in such a way as to uphold the public trust.*

- *Public servants shall perform their duties and arrange their private affairs so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.*
- *Public servants shall act at all times in a manner that will bear the closest public scrutiny; an obligation that is not fully discharged by simply acting within the law.*

...

[8] When he received his initial training, the grievor signed a form acknowledging that he received the *Code of Discipline* and the *Standards of Professional Conduct of the Correctional Service of Canada*. He also signed a declaration stating that he agreed to adhere to the standards of professionalism and integrity set out in those documents (Exhibit E-10-1). The declaration also mentioned that the employer expected employees

to read and to familiarize themselves with the *Standards of Professional Conduct of the Correctional Service of Canada*. The employer expected employees to speak to their supervisors if they required any explanations or clarifications.

A. For the employer

[9] Suzanne Sergerie testified for the employer. However, I did not reproduce her testimony in this decision since I did not consider it relevant to the issues that I must decide.

[10] Sylvain Mainville has been an officer with the Terrebonne police for 13 years, of which 3 were with the narcotics squad. On January 15, 2008, at approximately 04:25, while he was on patrol with another officer, he received a call about an individual who had apparently lost consciousness in the bathtub. He called for an ambulance to provide assistance and headed to the address, which was the grievor's residence.

[11] Inside the grievor's home, Officer Mainville found the grievor unconscious in the bathtub. As he glanced around the room, Officer Mainville noticed a syringe containing liquid and a small black case in which he found narcotics, including cocaine, hashish, cannabis, crack, amphetamines and methamphetamines. He seized them.

[12] Officer Mainville said that, after he helped the attendants place the grievor in the ambulance, and as they were about to leave for the hospital, the grievor's first partner appeared. She told the police officers that other drugs were in the home. Officer Mainville instructed her to turn them over to the police. He confirmed that the grievor's first partner gave the police the drugs.

[13] Officer Mainville explained that he wrote an incident report (Exhibit E-2) in which he mentioned the drug possession. He indicated that the amount of substances seized led him to believe that they were to be trafficked, which is what he wrote in his report. In the request to file legal proceedings addressed to the Crown (Exhibit E-1), the wording of the offence mentions the possession of cocaine, crack, cannabis, etc., for the purpose of trafficking.

[14] Officer Mainville made a list of the seized substances (Exhibit E-6) and sent samples of what he believed were narcotics to Health Canada for analysis. The Health Canada analyst's report (Exhibit E-8, in a bundle) identified the following substances: cocaine, cannabis (marijuana), amphetamines, speed, methamphetamines and cannabis

resin (hashish). The analysis was conducted between April 18 and May 21, 2008.

[15] The summons issued to the grievor on June 27, 2008 (Exhibit E-7) accused him of the following three indictable offences under the applicable provisions of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19: the possession of methamphetamines, amphetamines and cocaine. The summons also accused the grievor of two offences punishable on summary conviction, namely, the possession of cannabis resin (hashish) and cannabis (marijuana). When he appeared before the Court of Quebec, Criminal Division, on November 25, 2008, the grievor pleaded guilty to both charges. The Court granted a discharge (Exhibit S-9), conditional on the grievor signing an 18-month probation order (Exhibit E-5).

[16] André Courtemanche has a criminology degree and has been a CSC employee since 1979. On January 15, 2008, he held the position of CSC Security Administrator for the Quebec region. He worked in that position twice — from 1992 to 1998 and from 2003 to 2008. He indicated that, in that capacity, he managed the security files for all CSC penitentiaries in the Quebec region. It included equipment, policies, emergency plans and liaisons with police forces. Mr. Courtemanche said that he took part in several investigations while working for the CSC and that was he a qualified investigation trainer. Between 1998 and 2003, Mr. Courtemanche was the institution's deputy warden.

[17] Mr. Courtemanche testified that an employee on his team advised him of information received from the Terrebonne police department that police officers had entered the grievor's home and had seized illegal substances. Mr. Courtemanche notified Ms. Paquette and contacted the Deputy Director of the Terrebonne police department on January 16, 2008 to obtain copies of all documents about the incident. By letter dated January 17, 2008, the Deputy Director of the Terrebonne police department sent the following documents to Mr. Courtemanche (Exhibit E-11):

- request to file legal proceedings;
- summary of facts;
- list of witnesses;
- occurrence report;
- narrative;

- case tracking;
- report to a justice of the peace about a seizure without a warrant;
- exhibit control;
- drug offence and disposition report; and
- photographs.

Mr. Courtemanche believes that he shared the documents with Ms. Paquette. On January 21, 2008, she asked him and Philippe Vignis, Director of Human Resources for the CSC's Quebec region to investigate the events at the grievor's residence on January 15, 2008. Their investigation report is dated May 1, 2008 (Exhibit E-10-4).

[18] Mr. Courtemanche testified that he and Mr. Vignis began their investigation by reading the documents from the Terrebonne police department. They then met with the grievor on February 8, 2008. He was accompanied by two representatives of the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN ("the bargaining agent"), Luc Querry, President of the bargaining agent Local, and Ariane Pelletier, Union Advisor.

[19] Mr. Courtemanche indicated that Ms. Pelletier asked for copies of the Terrebonne police department documents. He checked with CSC counsel, who did not object. According to Mr. Courtemanche, CSC counsel then changed her position after discussing the matter with the police department's counsel. Mr. Courtemanche then sent Ms. Pelletier a copy of the letter from the Deputy Director of the Terrebonne police department and instructed her to contact the police department for copies of the documents. Mr. Courtemanche said that, after his discussion with CSC counsel, he decided not to take into account the documents from the police department in the investigation report.

[20] Mr. Courtemanche admitted that, by February 8, 2008, Health Canada had not yet sent the investigators the results of its analysis of the seized substances. In addition, the criminal charges against the grievor had not yet been laid. Hence, they did not have all the material they would have liked for their investigation before they met with the grievor.

[21] The grievor provided his version of the facts in his interview with the investigators. According to the investigation report, the grievor explained that, after

his relationship with his first partner ended, he entered another relationship, which lasted about 10 years and ended in 2007. He said that he was having a hard time with the separation from his second partner. He stated that he asked for help in May 2007 through the employer's Employee Assistance Program (EAP) and that an appointment was made with a psychologist for July 2007 but that it was postponed until September 2007.

[22] According to Mr. Courtemanche, with respect to the substances seized by the police, the grievor said that, around mid-August 2007, when he was going through one of the most difficult periods of his life, he met a couple at a campground who told him about their experience using cocaine. According to the investigation report, the couple offered to sell him their drugs and the equipment needed to take them, worth \$1100, for \$400. The grievor paid the couple only \$280 and agreed to pay them the balance later. The grievor gave them his personal contact information for that purpose. As for the substances he purchased and his drug use, the investigation report states the following as the grievor's version:

[Translation]

...

The employee acknowledges that he purchased illegal substances, which were given to him in a box, but he could not identify everything that he bought from the couple. He said that he could not tell the difference between cocaine and crack.

He acknowledged taking cocaine three times and Ecstasy twice during the fall. He admitted to taking cocaine in different forms, including by injection.

...

[23] The investigation report describes the January 15, 2008 incident as follows:

[Translation]

...

On or about January 14, 2008, after his evening shift, Mr. Richer . . . suffered from insomnia. In his words, at approximately 02:00, he took "a few" over-the-counter sleeping pills [according to a footnote, the grievor stated

that he took two pills]. *He took a hot bath. He plugged the drain and let the hot water run gently to maintain the temperature. Still unable to sleep, he said that he took two "Ativans" from his deceased father's prescription.*

. . .

[24] Mr. Courtemanche testified that the grievor seemed so dejected that he and Mr. Vignis offered him EAP assistance, although his supervisor had already offered it twice. The grievor replied that he was already receiving good care.

[25] The investigators submitted a draft of their report to Ms. Paquette, who told them that a further report was needed, concerning the grievor's drug use. The investigators met with the grievor a second time in February 2008. The grievor and Ms. Pelletier were in Mr. Courtemanche's office, while Mr. Vignis participated by teleconference. Mr. Courtemanche asked the questions. Mr. Vignis was to take notes. According to Mr. Courtemanche, they had a poor telephone connection, and Mr. Vignis was unable to hear everything that was said.

[26] The investigation report's conclusions stated the investigators' concerns that the grievor had obtained illegal drugs and that he could face criminal charges, which, in the investigators' opinion, were incompatible with a correctional officer's duties. Mr. Courtemanche said that a peace officer must abide by the law. If the person who sold the drugs to the grievor were incarcerated at the institution and saw the grievor, then that person could ask for favours by threatening to report the grievor to the authorities.

[27] Mr. Courtemanche testified that a correctional officer using "hard" drugs represents a risk to the security of the institution and its employees. He pointed out that correctional officers are required to work with firearms and that they may be called on to act in emergency situations that require enhanced reflexes. According to Mr. Courtemanche, even if the grievor's version of the facts were accepted, which would mean that it was the first time he bought drugs, it would still show a lack of judgment, since the public must be able to trust those who uphold the law. Mr. Courtemanche pointed out that a correctional officer must lead an exemplary lifestyle. If the media got wind of drug use issues, the public's trust and the employer's image would be negatively impacted.

[28] In cross-examination, Mr. Courtemanche admitted that the investigators based

their questions to the grievor on the documents received from the Terrebonne police department. However, in an email to the bargaining agent's regional president on May 5, 2008 (Exhibit S-3), he stated that the documents were not considered in the analysis and drafting of the investigation report and that the investigators restricted themselves to the grievor's testimony.

[29] Mr. Courtemanche said that they were aware of the grievor's allegations that his second partner, who worked at the institution, had threatened to have him fired.

[30] With respect to the impact of the January 15, 2008 incident on the employer's image, Mr. Courtemanche replied that he had not seen any articles in the media on the subject.

[31] Simon Brunet was a correctional manager at the institution when the events took place. He was the grievor's supervisor from 2005 to 2007, and in 2007, he became the manager of the unit in which the grievor worked.

[32] Mr. Brunet indicated that he met with the grievor in his office on or about December 17, 2007, after reading an anonymous note left by an institution security intelligence officer, alleging that the grievor used cocaine. The grievor told him that he did not know where the note had come from and assured him that he did not have a drug problem. The grievor told him that he tried cocaine a year-and-a-half earlier and that he had not used any since. He told Mr. Brunet that his second partner, who worked at the institution and with whom his relationship had ended poorly, was aware that he had taken cocaine. He thought that she wanted to ruin his reputation. Mr. Brunet asked the grievor to let him know if he had any other information on the note's origins. He also offered to help if the grievor had a drug problem. He explained to the grievor the consequences of drug use and said that it was not compatible with his job, since it could make him vulnerable to the criminal element. According to Mr. Brunet, the meeting lasted 20 to 30 minutes. Mr. Brunet's only record of the meeting was to inform the security intelligence officer that the information had not been validated.

[33] Mr. Brunet called the grievor into his office once again on January 14, 2008, when the institution's security intelligence officer received a second anonymous note, which alleged that the grievor had used drugs at the institution. The grievor denied that he used drugs, inside or outside the institution, and repeated that his second partner might be the source of the information. Mr. Brunet expressed concern about

the information, in terms of both the institution's security and the possible impact on the employer's trust in the grievor. Mr. Brunet again offered to assist the grievor through the EAP, but the grievor indicated that he did not need help.

[34] Mr. Brunet said that he was surprised when he learned of the January 15, 2008 incident. He stated that the grievor was a good employee. When asked how he would react were the grievor reinstated in his position, Mr. Brunet replied that he would have a reduced level of trust in him.

[35] Mr. Brunet stated that, after the January 15, 2008 incident, the notes that he took during his meetings with the grievor and that were attached to the investigation report were turned over to Ms. Paquette on January 31, 2008 (Exhibit E-10-3).

[36] In cross-examination, Mr. Brunet said that the grievor did not provide his second partner's name during their first meeting. Mr. Brunet understood that she worked at the institution. Mr. Brunet said that, at first, the grievor did not know where the note had originated and that he then thought it possible that it had come from his second partner, but he was not certain. Mr. Brunet did not attempt to determine the author of the notes.

[37] Mr. Brunet indicated that he had been an EAP referral agent for approximately three years and that he would have ensured that the grievor was referred to qualified resources had he asked for help. He said that the grievor never told him that he had requested EAP assistance.

[38] When questioned about the statuses of other employees with drug use problems, Mr. Brunet replied that some still worked for the CSC while others had been dismissed. Mr. Brunet stated that he had not been informed of the investigation into the grievor's actions.

[39] Ms. Paquette has been the institution's warden for three years. She has worked for the CSC for 27 years and has held management positions at different levels. When she was informed of the January 15, 2008 incident, she decided to suspend the grievor from his duties. On January 21, 2008, she instructed Mr. Courtemanche and Mr. Vignis (Exhibit E-10-2) to investigate the events.

[40] Ms. Paquette testified that, during the investigation, the grievor contacted her to find out when the results would be known. He had been told that the disciplinary

action could go as far as a dismissal. She said that the grievor did not see the connection between his conduct and his employment. He told her that what happened in his bedroom stayed there. Ms. Paquette told him that she did not understand why he did not make the connection with his job and that he would be contacted once the investigation completed.

[41] Ms. Paquette testified that a copy of the final investigation report was given to the grievor. A meeting was held on May 9, 2008 at the CSC administrative office in Sainte-Anne-des-Plaines to obtain his comments. Ms. Paquette could not specify the name of the bargaining agent representative who accompanied him. She believed that the institution's deputy warden was also present.

[42] According to Ms. Paquette, the grievor questioned why he could be dismissed when he was going through a period of distress. He did not agree with the report's contents since, in his opinion, it made him out as a drug addict. Ms. Paquette indicated that the employer had no complaints about his work.

[43] After considering the grievor's comments, Ms. Paquette convened him to a second meeting to give him his termination letter. She said that she made her decision after considering several factors. She pointed out that, among other things, the grievor held peace officer status. As such, he had to conduct himself in an upright manner aligned with the employer's values to serve as an example for inmates and to contribute to their social reintegration. Ms. Paquette said that those values are not limited to the workplace but extend to correctional officers' personal activities. She said that drug use poses a security problem in prisons and that the grievor's drug use could have made him vulnerable. Ms. Paquette stated that the employer must be able to trust employees who perform security duties and that the public relies on CSC employees for their safety. With respect to the employer's image, Ms. Paquette testified that the public expects CSC employees to act within the law and that an incident such as this could undermine public trust. Ms. Paquette told the grievor that his actions irreparably breached the bond of trust required between an employer and an employee.

[44] Among the aggravating factors that she considered, Ms. Paquette pointed out the fact that the grievor purchased a large amount and variety of drugs from strangers and that he gave them his personal information to guarantee a later payment of the balance. Furthermore, in his two meetings with Mr. Brunet, the grievor was warned that

drug use was incompatible with his duties as a correctional officer. The grievor had read the CSC's standards of conduct. He had ample opportunity to disclose his problems and to seek help. According to Ms. Paquette, the fact that the grievor denied using drugs demonstrated that he lacked candour.

[45] Ms. Paquette indicated that the mitigating factors that she considered included the death of the grievor's parents and the difficult separation that he had experienced, along with his psychological distress.

[46] In cross-examination, Ms. Paquette stated that she was advised of the anonymous notes about the grievor before January 15, 2008 and that she asked Mr. Brunet to meet with the grievor to let him know about them. Ms. Paquette said that she did not attempt to communicate with the grievor's second partner. The notes were anonymous, and since the grievor denied doing the things of which he had been accused, Ms. Paquette said that management believed him and gave him the benefit of the doubt. As far as management was concerned, the matter was settled. Ms. Paquette testified that the drug analysis report had not yet been produced when the investigation was conducted.

[47] Ms. Paquette testified that, after reading the draft investigation report, she thought that the investigators should delve further into certain aspects, including how often the grievor used drugs. When she received the final report, she had no further doubts. Before deciding on the disciplinary action, Ms. Paquette consulted regional contacts and considered the grievor's comments. She did not recall telling him that his distress was not important but that the consequences of drug possession were important. She said that, before the grievor's meetings with Mr. Brunet, she was not aware of his separation problems or the allegation that his second partner was attempting to ruin his reputation.

[48] With respect to the grievor's alleged request for EAP help, Ms. Paquette said that it was possible that he made such a request since it is a confidential process and employees are not required to advise management. When asked if a disciplinary investigation is conducted each time an employee admits to using cocaine, she replied that each case is handled individually. She indicated that, when it comes to drug use, an employee who violates the *Code of Discipline* risks losing his or her job.

[49] As for the allegation that the grievor tarnished the employer's image, Ms.

Paquette said that his dismissal was not divulged to either the institution's staff or inmates and that the investigation report was confidential. She admitted that, to her knowledge, the media did not report the January 15, 2008 incident. However, she pointed out that, as the institution's warden, she could not afford to wait for the media to report such an incident.

[50] With respect to the alleged breach of the bond of trust between the employer and the employee, the grievor's representative asked if the fact that the grievor had not used drugs for two and one-half years could help re-establish that trust. Ms. Paquette replied that, in the grievor's meetings with Mr. Brunet, the grievor said that he did not take drugs, and management believed him.

[51] When asked if the grievor and his bargaining agent representatives requested copies of the documents on which the investigation was based, Ms. Paquette replied that, to her recollection, the only documents not provided were those from the Terrebonne police department. Those documents were not used in the investigation.

B. For the grievor

[52] Concerning the January 15, 2008 events, the grievor said that he met with Mr. Brunet the day before and that his shift was from 16:00 to midnight. When he got home, he felt anxiety, anger and pain. He drank two beers to help him fall asleep faster. Still awake at 02:00, he decided to take two Dormex tranquilizers that, according to him, normally take effect after 15 to 20 minutes. Approximately one hour later, he took an Ativan, which he had obtained from his deceased father's medicine cabinet. He then took a bath. He let the hot water run gently, knowing that the drain was plugged. Apparently, he fell asleep in the tub. He woke up in the ambulance on the way to the hospital.

[53] The grievor said that, at his first meeting with Mr. Brunet, Mr. Brunet informed him that rumours were circulating that he was shooting cocaine and asked him if it were true. According to the grievor, he admitted to using cocaine without indicating that it had been recently, around the beginning of November 2007. The grievor said that he felt uneasy about revealing it to Mr. Brunet. With the distress that he was experiencing from the separation from his second partner, which occurred in May 2007, he did not want any further problems with his employer. He knew that there could be repercussions. Mr. Brunet offered him EAP assistance. The grievor told Mr.

Brunet that his second partner was most certainly the source of the rumours, since she was the only one aware of his drug use. According to the grievor, his second partner had threatened to have him fired if he did not agree to leave the institution if they separated.

[54] During their second meeting, on January 14, 2008, Mr. Brunet informed the grievor that he had received an anonymous letter accusing the grievor of using drugs at work. The grievor replied that he had used drugs in the past but that he did not have a drug problem at that time. Mr. Brunet offered him assistance once again. The grievor told him that he had help on the outside. In cross-examination, the grievor said that he contacted a psychologist for his drug problem before Christmas 2007 and that his first appointment with her was scheduled for January 17, 2008.

[55] The grievor testified that he had used EAP services in the past for domestic problems and again after his separation. He explained that, when his second partner left him, he asked for a police officer to be present while she moved out (Exhibit S-7). According to the grievor, his second partner had filed an assault complaint against him, which the Crown dropped due to insufficient evidence. He believed that his second partner spread the rumour in the workplace, making the work atmosphere difficult for him.

[56] The grievor testified that his correctional officer training (Exhibit S-8) did not include a module on drugs and that approximately two hours were spent discussing inmate substance usage and the procedures for searching for drugs.

[57] The grievor testified that, during his first meeting with the investigators, Ms. Pelletier requested copies of the documents received from the Terrebonne police department about the January 15, 2008 events. The investigators told her that she had to submit an access to information request.

[58] The grievor said that they read him the investigation's terms of reference. Its purpose was to shed light on the January 15, 2008 incident. He explained the circumstances surrounding the purchase of the drugs. He said that the couple who sold them to him showed him how to inject cocaine. The grievor said that he injected cocaine three times.

[59] The grievor testified that the investigators called him in to a second meeting

because they had submitted the draft investigation report to Ms. Paquette, and she wanted a further explanation. The grievor noticed the poor phone connection and raised the possibility of redoing the interview. Mr. Courtemanche told him that he would discuss the matter with Mr. Vignis and that he would get back to him, if necessary.

[60] The grievor stated that he received a copy of the final investigation report in early May 2008. With respect to Section III of the report, entitled “[translation] Employee’s Version,” the grievor testified that it was accurate to a certain degree with respect to the facts about the purchase of the drugs. He said that the use of the word “[translation] acrimonious” to describe his relationship with his second partner did not accurately reflect the full context of his relationship.

[61] The grievor felt that Section IV of the report, entitled “[translation] Analysis and Findings,” was open to interpretation. In his opinion, the report’s reference that the investigators believed that he was experiencing “[translation] some psychological distress,” was not an accurate reflection of his experience. He disagreed with the finding that he refused all offers of assistance and that he missed appointments with his psychologist. The grievor stated that he sought help outside the EAP and provided an explanation for postponing his meeting with the psychologist.

[62] As for Section V of the report, entitled “[translation] Conclusions and Recommendations,” which states that the grievor did not object to the accuracy of the facts reported by the Terrebonne police department, the grievor said that he could not have objected because he did not have access to the documents that the investigators received from the police. The grievor said that, contrary to what was stated in the report, he did not have a drug dependency, but rather, an emotional dependency on his second partner.

[63] The grievor testified that, during his meeting with Ms. Paquette, she seemed particularly concerned about his purchase and use of the drugs. He said that, during the meeting, he raised most of the same points that he disagreed with in the investigation report, namely, omissions and misinterpretations.

[64] The grievor stated that he stopped using drugs in November 2007 and that, following the incident, he took steps to get help with his addiction. Between early February and October 2008, he met with a counsellor from the Le Tremplin

Rehabilitation Centre more than 20 times and he testified that he was not a drug addict. The grievor said that he received a lot of support from his new partner, whom he began seeing in early 2008, and that she helped him feel alive again.

[65] In cross-examination, the grievor admitted that he was aware of the *Standards of Professional Conduct of the Correctional Service of Canada*, the *Values and Ethics Code for the Public Service* and the *Code of Discipline*.

[66] The grievor stated that he kept his drugs locked in his night table. He said that his first partner was aware that he had them. He said that he tried cocaine once when he was 27 and then again when he bought the drugs in 2007.

[67] When questioned by the employer's counsel as to whether he was aware that possessing illegal substances was incompatible with his duties as a correctional officer, the grievor replied that he thought that what took place in his bedroom was his own business but that he now understood. He said that he did not understand the impact on his job since he always reported to work in good condition.

[68] The grievor said that the couple from whom he bought the drugs showed him how to inject cocaine. He admitted taking Ecstasy on that weekend. He said that he did not get rid of the other drugs that he bought due to his negligence. He felt that he had been unable to assess the repercussions and inevitable consequences of possessing the other drugs because he did not use them.

[69] The grievor testified that, in May 2007, his family physician prescribed antidepressants. However, after discussing it with the physician, he decided to cure his depression without medication. He said that he saw his physician once between May 2007 and January 2008.

[70] In the grievor's opinion, at no time did he compromise the security of the institution or his co-workers because, whenever he did not feel well enough to work, he took a day of leave. The grievor did not think that the possession of all the seized drugs was incompatible with his duties as a peace officer. He did not feel that he had a drug addiction, which was confirmed by the addiction counsellor from whom he had received treatments.

[71] The grievor's first partner received a call between 04:00 and 05:00 on January 15, 2008, advising her that the grievor was unconscious in the bathtub. She arrived on

the scene after the police officers and ambulance. She went to the bathroom, where she saw drugs. She looked around to see if any other drugs were in his home and found a bag that contained what she believed was cocaine. She then went to the hospital at which the grievor was being treated.

[72] In cross-examination, the grievor's first partner said that among the drugs she saw in the bathroom was a vial containing a transparent water-like liquid, as well as pills and a syringe. She found a bag of powder and a syringe in an unlocked dresser drawer in the grievor's bedroom.

[73] Sylvie Cardinal is a patient care associate at the institution's health care centre. She knew the grievor as a co-worker in January 2007 and has been his new partner since the end of that year, although she did not live with him at that time.

[74] Ms. Cardinal testified that the grievor was well thought of by the nursing staff and that he was always in a good mood. She noticed a change in May 2007 when he spoke several times of the deterioration of his relationship with his second partner and her threats to have him fired if he left her. He told her that the atmosphere at work was unbearable due to the rumours circulating about him.

[75] Ms. Cardinal said that she had no knowledge of the grievor's drug use. After the January 15, 2008 incident, she visited him at the hospital and supported him in his process with Centre Le Tremplin, accompanying him to several appointments. She said that the grievor has recovered his smile and joie de vivre.

[76] Yves Gagnon was introduced as an expert witness. He is a drug addiction counsellor at Centre Le Tremplin and has the official title of Human Resources Officer. He treated the grievor. Mr. Gagnon has worked as a drug counsellor since he obtained his degree in Psychology in 1988. He began working as a counsellor at Centre Le Tremplin in 1994. Throughout his career, Mr. Gagnon has taken several professional development courses, such as impact psychology, psychopharmacology and personality disorders, along with how to use drugs to treat psychological disorders. For the past 15 years, Mr. Gagnon's professional activities have included participating on the Addiction Severity Index (ASI) provincial support committee. That committee is made up of clinical practitioners. Their purpose is to make suggestions to addiction researchers in the "Recherche et intervention sur les substances psychoactives - Québec" group to improve treatments. Mr. Gagnon is also a member of several other

committees, including the Mental Health Committee and the Le Gardeur Hospital Committee, which monitors people contemplating suicide. He also lectures on mental health and addiction and is an addiction trainer at Centre Le Tremplin. The employer's counsel did not challenge Mr. Gagnon's qualifications. I accepted him as an expert witness in drug addiction detection, assessment and intervention.

[77] Mr. Gagnon explained the process for preassessing clients and assigning files to counsellors at Centre Le Tremplin. He said that all clients with addictions are met with individually, as was the grievor. He explained that the grievor's file was given priority and that it was assigned to him.

[78] The grievor first met with a nurse from Centre Le Tremplin on February 5, 2008 to undergo a detoxification bio-psycho-social assessment (Exhibit S-10-8) and a summary assessment (Exhibit S-10-9). The first question on the summary assessment asks what motivated the client to seek help from the Centre. The grievor identified three things, in the following order: he began using drugs after he separated from his second partner, his family physician suggested that he work on his addiction and he was suspended from work without pay. At the first meeting between Mr. Gagnon and the grievor, on February 13, 2008, an ASI assessment was completed (Exhibit S-10-11). The counsellor assesses the severity of the client's addiction. In Mr. Gagnon's comments on the grievor's answers to certain questions, he indicated that the grievor used cocaine three or four times per month between September and November 2007, by snorting, smoking or shooting. He further indicated that, in fall 2007, the grievor also used GHB (liquid Ecstasy) and Ecstasy four times. In January 2008, he took GHB in combination with an Ativan and a sedative.

[79] Mr. Gagnon testified that he categorized the grievor as having a temporary drug problem due to his depressed psychological state caused by the breakup with his second partner. According to Mr. Gagnon, the grievor's use of cocaine was of concern. The grievor was considered at risk of addiction because he was injecting cocaine. His drug use was not a problem at that point.

[80] The grievor's individual meetings were spread over eight months. For the first six months, they were weekly, then they changed to biweekly. Mr. Gagnon said that the grievor was forthcoming, open and cooperative and that he never missed an appointment.

[81] The grievor's addiction assessment report, dated June 27, 2008, addressed to the CSC and signed by Mr. Gagnon (Exhibit S-10-10), stated that the grievor did not display a drug dependency and that "[translation] he apparently did not have a substance abuse problem either." He stated that the conclusions were based on the grievor's answers to the ASI questionnaire, the individual meetings and information that the grievor reported.

[82] The grievor's final addiction rehabilitation tracking report, dated November 4, 2008 (Exhibit S-10-14), indicated that "[translation] the risk of slipping back into cocaine use appears quite low"

[83] In cross-examination, Mr. Gagnon stated that the grievor explored GHB three or four times and that the frequency of one or two episodes mentioned in the assessment report was incorrect. According to Mr. Gagnon, the substance that the grievor used most regularly was cocaine.

C. Employer's rebuttal

[84] The employer called the grievor as a rebuttal witness. The grievor admitted that, overall, the information in Centre Le Tremplin's summary assessment (Exhibit S-10-9) was correct.

[85] When the employer's counsel asked why he did not reveal to the investigators that he took GHB on January 15, 2008, the grievor replied that, since he had taken it twice in the past, with no effects, he did not feel that he needed to mention it to the investigators.

[86] The grievor said that he began seeing a psychologist before January 15, 2008 and that he had appointments with her since December 2007.

III. Summary of the arguments

A. For the employer

[87] The employer noted that, in August 2007, the grievor purchased drugs from a couple that he did not know. As he admitted to the investigators, and as evidenced in his answers to the ASI questionnaire and the detoxification bio-psycho-social assessment at Centre Le Tremplin in fall 2007, the grievor used cocaine three times per

month, GHB three or four times, and Ecstasy once per month.

[88] The employer pointed out that, when the grievor met with Mr. Brunet on December 17, 2007, the grievor claimed that he did not have a drug problem and that he had not used cocaine for a year-and-a-half. Mr. Brunet offered him assistance and warned him of the possible consequences on his employment. At his second meeting with Mr. Brunet, on January 14, 2008, the grievor once again denied being a drug user and claimed that he did not have a problem. The next morning, the police seized a large quantity of drugs from the grievor's home. The employer believes that the grievor did not begin therapy with a psychologist or register with Centre Le Tremplin until after the January 15, 2008 incident, when he was caught red-handed.

[89] The employer referred to the reasons for the grievor's dismissal, as set out in the termination letter, which were the January 15, 2008 events, the tarnishing of the employer's image, the breaching of the bond of trust with the employer and the violation of CSC standards. The employer also mentioned the criminal charges against the grievor.

[90] The employer argued that Ms. Paquette considered the mitigating factors put forth by the grievor before making her decision, including the death of his parents, his psychological distress and the end of his relationship. The employer referred me to *Dionne v. Treasury Board (Solicitor General of Canada - Correctional Service)*, 2003 PSSRB 69, which upheld the termination of a correctional officer for possessing 0.2 grams of cocaine. The employer pointed out that a much larger quantity of drugs was seized in the grievor's home than was in *Dionne*. The employer also emphasized that Officer Mainville seized such a large amount of drugs in the grievor's home that he believed that it was for purposes of trafficking. The employer added that, in *Dionne*, the employee admitted to using drugs only once because of a difficult period in his marriage, but that the adjudicator disregarded that fact.

[91] With respect to the allegation that the grievor tarnished the CSC's image, the employer referred to the passage from the *Values and Ethics Code for the Public Service* quoted earlier, which states that employees must conduct themselves in an upright manner. It also mentions that the public expects employees to act within the law. In the employer's opinion, that becomes even more important when a grievor is responsible for enforcing the law as a peace officer. In this regard, the employer referred me to *Tobin v. Attorney General of Canada*, 2009 FCA 254. It also referred me

to Mr. Courtemanche's testimony, in which he stated that the company kept by correctional officers must be exemplary.

[92] The employer claimed that the grievor's actions were incompatible with its mission and with the nature of a CSC peace officer's duties. The employer pointed out that the grievor lacked judgment when he bought drugs from strangers and provided his personal contact information to guarantee payment, which rendered him vulnerable.

[93] The employer claimed that the grievor lied. It referred to his testimony, in which he said that he kept the drugs locked in a bedside table, but his first partner testified that she found the cocaine in an unlocked dresser drawer. The employer stated that the grievor did not admit at the hearing in December 2010 that he had taken GHB or that he had taken speed and LSD. Therefore, the employer claimed that he lied to the investigators about his drug use during fall 2007.

[94] In addition to the above-mentioned decisions, the employer cited the following:

- *Flewelling v. Treasury Board (Fisheries and Oceans)*, PSSRB File No. 166-02-14236 (19840328) (upheld in *Flewelling v. Canada (Deputy Attorney General)* (1985), 24 D.L.R. (4th) 274 (C.A.)): the dismissal of an international law enforcement and peace officer after being accused of drug possession (cannabis and cannabis resin) while off-duty;
- *Laplane v. Treasury Board (Canada Border Services Agency)*, 2007 PSLRB 104: customs inspector dismissed for his involvement in a plot to traffic cocaine in Canada (application for judicial review dismissed in 2008 FC 1036);
- *Simoneau v. Treasury Board (Solicitor General of Canada - Correctional Service)*, 2003 PSSRB 57: correctional officer dismissed for drug possession (GHB and ketamine) while off-duty and for driving under the influence;
- *Renaud v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2002 PSSRB 42: correctional officer dismissed for selling cocaine to a co-worker;
- *Tobin*: appropriate standard for an employee's off-duty conduct;
- *Casey v. Treasury Board (Public Works and Government Services Canada)*, 2005

PSLRB 46: an employee's rehabilitation does not render a dismissal decision inappropriate;

- *Batiot v. Treasury Board (Justice Canada)*, PSSRB File No. 166-02-28540 (19990527): dismissal for the misappropriation of public funds (petty cash fund and departmental credit card); an employee's rehabilitation is not a sufficient reason to reduce a disciplinary action; and
- *Courchesne v. Treasury Board (Solicitor General)*, PSSRB File No. 166-02-12299 (19820719): dismissal for attempting to bring drugs into a penitentiary and for failure to comply with escort duty directives.

[95] The employer stated that the possession of drugs — even in small quantities — is incompatible with a correctional officer's duties. The employer argued that the bond of trust between the grievor and the employer has been breached. The fact that the grievor was caught red-handed and obtained a conditional discharge from the Court was not sufficient to overrule the dismissal. The employer requested that I dismiss the grievance.

B. For the grievor

[96] The grievor's representative stated that the grievor did not deny the quantity and variety of substances seized in his home and that he admitted that his actions were a serious mistake.

[97] With respect to the anonymous notes about the grievor's drug use, he said that they were simply rumours. In his opinion, the employer was obligated to check with his second partner to see if she was the source of the rumours.

[98] The grievor said that he did not accept the EAP assistance offered by Mr. Brunet first, because he had already contacted a psychologist, and second, because he believed that his problem was under control. Therefore, it cannot be said that he refused assistance. The grievor also said that the employer was aware that he had problems and that he had requested assistance. He said that he postponed the first appointment with the psychologist for personal reasons.

[99] The grievor pointed out that he began taking steps before the January 15, 2008 incident, that he had admitted to making a mistake and that he was in rehabilitation at

the time of the investigation. He said that the employer could have suspended him during his rehabilitation.

[100] With respect to the testimony of the grievor's first partner, who claimed that she found drugs in his dresser, the grievor said that he unlocked the drawer before taking his bath.

[101] The grievor argued that the investigation report was flawed because the bargaining agent did not have access to the documents from the Terrebonne police, and he did not agree with all of the investigation report's contents. When I raised *Tipple v. Canada (Treasury Board)*, [1985] F.C.J. No. 818 (C.A.) (QL), which held that such flaws were remedied by the hearing *de novo* before an adjudicator, the grievor's representative replied that, although she was aware of that decision, she nevertheless held to her argument on this point.

[102] The grievor referred me to the *Millhaven* criteria about employee off-duty conduct (see *Millhaven Fibres Limited, Millhaven Works v. Oil, Chemical and Atomic Workers International Union, Local 9-670* (1967), 1(A) Union-Management Arbitration Cases 328) and applied them to his situation. He claimed that there was no proof that the employer's image had been tarnished. To support his position, he referred to Ms. Paquette's testimony. She stated that the grievor's dismissal was not disclosed to the institution's staff or inmates and that, to her knowledge, the incident was not reported in the media. Furthermore, the grievor pointed out that only Mr. Brunet provided evidence of a refusal to work with him. Mr. Brunet testified that, were the grievor reinstated in his position, his level of trust in him would be reduced.

[103] The grievor referred to Mr. Gagnon's testimony, in which he stated that the grievor's drug problem was due to his psychological state (Exhibit S-10). He pointed to Mr. Gagnon's conclusion that there was little to no risk of the grievor taking drugs again. He argued further that he had not begun rehabilitation solely to be reinstated in his position, since Exhibit S-10-9 shows that the grievor's job ranked third on the list of motivating factors.

[104] The grievor stated that, according to the evidence, the only criterion from *Millhaven* that the employer could use is a violation of the *Criminal Code*. He argued that he complied with the conditions of his probation order. Since one aspect of the employer's mission is to rehabilitate inmates, the grievor should be entitled to the

same possibility.

[105] The grievor submitted that he understood the seriousness of his actions and that he knew that he needed to cease his misconduct. The remedy requested by the grievor is that a suspension be substituted for the termination.

[106] The grievor referred me to the following decisions:

- *Fraternité des Policiers (C.U.M.) v. C.U.M.*, [1985] 2 S.C.R. 74: the arbitrator did not exceed his jurisdiction when he substituted a 13-month suspension without compensation for a dismissal imposed on a police officer for shoplifting, which was a penalty that the police department's disciplinary committee did not have the authority to impose;
- *Cape Breton County Correctional Centre v. Canadian Union of Public Employees, Local 1146* (1978), 19 L.A.C. (2nd) 325: a correctional officer from a provincial correctional facility was dismissed for interfering with the duties of a police officer while off-duty, and a four-month suspension was substituted for the dismissal;
- *Abitibi-Price Inc. v. Canadian Paperworkers Union C.L.C., Local No. 1093* (1994), 31 L.A.C. (4th) 364: a caregiver was dismissed for off-duty conduct after he was found guilty of assault and drug trafficking, and a four-month suspension was substituted for the dismissal;
- *Delta School District No. 37 v. Canadian Union of Public Employees, Local 1091* (1993), 36 L.A.C. (4th) 93: a school janitor was dismissed after being convicted of trafficking cocaine while off-duty, and an 11-month suspension without compensation was substituted for the dismissal;
- *Manitoba v. M.G.E.U.* (1994), 39 L.A.C. (4th) 409: a young offender counsellor was dismissed after pleading guilty to assault charges against his wife and daughter, and a six-month suspension without compensation was substituted for the dismissal; and
- *Jalal v. Treasury Board (Solicitor General - Correctional Service Canada)*, PSSRB File No. 166-02-27992 (19990421): a 20-month suspension was substituted for a correctional officer's dismissal for shoplifting.

C. Employer's rebuttal

[107] In response to the grievor's allegations that the employer should have verified the rumours with his second partner, the employer pointed out that the grievor was not dismissed for using drugs in the workplace. The employer maintained that Mr. Brunet was not aware that the grievor was using drugs.

[108] As for the grievor's testimony that he kept his drugs locked up, the employer pointed out that, in cross-examination, his first partner stated that she found a needle and a bag of powder in an unlocked drawer in his dresser.

[109] The employer pointed out that the grievor agreed with the facts described in the investigation report.

IV. Reasons

[110] In paragraph 45 of *Tobin*, the Federal Court of Appeal stated the following about an adjudicator's role in a matter alleging a violation the *Code of Discipline* and the *Standards of Professional Conduct of the Correctional Service of Canada*:

[45] . . . The function of an adjudicator is to determine if the facts relied upon by the employer in sanctioning an employee have been established and, if they have, to assess whether the penalty imposed by the employer is appropriate.

A. Did the employer support the facts behind its disciplinary action?

[111] As indicated in the investigation report, the grievor acknowledged buying illegal substances from a couple that he met at a campground. The investigation report also indicated that he acknowledged using cocaine three times and Ecstasy twice in the fall of 2007. The grievor confirmed as much in his testimony.

[112] The grievor's representative stated that the employer's investigation report was flawed because the employer possessed documents from the Terrebonne police about the January 15, 2008 incident. It refused to give copies of the documents to the grievor or his bargaining agent at meetings with the investigators. Evidence of that fact is primarily in the testimonies of Mr. Courtemanche and the grievor. Mr. Courtemanche testified that, at the first meeting, when Ms. Pelletier asked for copies of the documents, he told her to contact the police. In cross-examination, Mr. Courtemanche confirmed that the investigators used the police documents to prepare their questions

for the grievor. However, he also stated that the investigators used only the grievor's testimony when they analyzed the facts and drafted the report. On the other hand, the grievor said that he disagreed with Section V of the report, entitled "[translation] Conclusions and Recommendations," which states that he did not object to the accuracy of the facts reported by the police. The grievor said that he could not have objected to the facts because he did not have access to the police documents.

[113] As mentioned earlier, the employer's first witness, Officer Mainville, adduced the Terrebonne police documents in evidence at the hearing. The grievor exercised his right to cross-examine the witness. As the Federal Court of Appeal ruled in *Tipple*, procedural defects that occur during and after an investigation process are rectified by holding a hearing before an adjudicator. Furthermore, paragraph 93 of *Mohan v. Canada Customs and Revenue Agency*, 2005 PSLRB 172, reads as follows:

[93] . . . it has long-been [sic] held in the Board's jurisprudence that the adjudication hearing is a de novo hearing to determine whether the employer had just cause to impose discipline, and the hearing is not designed to determine whether the proper process was followed (see Tipple (supra)). . . .

Consequently, the grievor's argument is dismissed.

[114] Furthermore, Mr. Gagnon testified that the bio-psycho-social assessment (Exhibit S-10-8) and the ASI questionnaire (Exhibit S-10-11) both noted that, according to the grievor, between September and November 2007, he used cocaine three or four times per month, Ecstasy once per month and GHB four times, including January 15, 2008.

[115] The grievor neither challenged nor contradicted the documents adduced by Officer Mainville when he testified, which described the quantity and nature of the substances that he seized in the grievor's home. Mr. Courtemanche testified that the results of Health Canada's analysis of the seized drugs were not available when the investigation report was submitted on May 1, 2008. According to the evidence, analyses were conducted between April 18 and May 21, 2008 (Exhibit E-8, submitted as a bundle), more than a month before the employer decided to dismiss the grievor. On the other hand, at the outset of her argument, the grievor's representative conceded that he did not deny the quantity and variety of the substances seized in his home and that he admitted that his actions had been a serious mistake.

[116] In my opinion, the employer clearly proved that the grievor was found in possession of a large quantity of illegal substances, which were seized by the police in his home. I find that the employer was justified in taking disciplinary action against the grievor based on that conduct.

[117] The employer decided to dismiss the grievor for the following reasons: in the termination letter, it referred to the January 15, 2008 events and claimed that they were incompatible with the nature of the grievor's activities and status as a peace officer. The employer accused him of tarnishing the CSC's image and of irreparably breaching the bond of trust between him and his employer. The employer maintained that the grievor violated the *Values and Ethics Code for the Public Service* as well as the *Standards of Professional Conduct of the Correctional Service* and the *Code of Discipline*.

[118] The facts on which the employer based the grievor's dismissal do not involve the five criminal charges laid against him or his guilty plea to all counts. Although the evidence shows that the employer might have had a justifiable reason to believe that criminal proceedings would be initiated against the grievor, that reason was not given in the termination letter dated June 25, 2008. When the employer decided to dismiss the grievor, it was not aware that the effective dismissal date, June 27, 2008, was also the date on which the summons stating the charges would be issued (Exhibit E-7).

[119] Among the reasons set out in the termination letter was the allegation that the grievor's conduct was inconsistent with CSC operations and his status as a peace officer. The *Standards of Professional Conduct of the Correctional Service* require that CSC employees serve as role models for offenders and that they adhere to high standards of conduct. The grievor worked in a prison environment that, according to the evidence, contained a large number of offenders convicted for drug-related crimes. I agree with the employer that the grievor's drug possession and use could have rendered him vulnerable to offenders. Furthermore, as a peace officer, he was responsible for enforcing the law. The evidence demonstrated that the grievor appeared to not understand that possessing and using illegal substances could affect his duties as a correctional officer. In his opinion, his off-duty activities had nothing to do with his employment. However, Mr. Brunet warned him that drug use could have serious consequences on his employment. Only when he testified at the hearing did he state that he understood that his conduct might have affected his job.

[120] In *Flewwelling* (C.A.), the Federal Court of Appeal upheld the dismissal of a grievor with peace officer status, accused of drug possession while off-duty, and made the following comments about such misconduct:

. . .

It appears to me that there are forms of misconduct which, whether they are prohibited by regulations or by the Criminal Code or by any other statute, are of such a character that they are readily recognizable by any reasonable person as incompatible and inconsistent with the holding by one involved in such conduct of a public office and in particular of an office the duties of which are to enforce the law. . . .

. . .

As a peace officer, the grievor was responsible for enforcing the law. Therefore, I find that the employer proved that his conduct was incompatible with his peace officer status.

[121] One of the reasons alleged by the employer in the termination letter was that the grievor had tarnished the CSC's image. In *Tobin*, the Federal Court of Appeal identified as follows the type of evidence required to prove that the employer's reputation was damaged:

. . .

[60] . . . There may be a role for direct evidence of loss of reputation in some circumstances but it was clearly unreasonable for the adjudicator to set a standard which, for all practical purposes, could never be met. The reputation of a national institution cannot be measured or assessed in the same way as the reputation of a person in a community. How did the adjudicator conceive such evidence might be put before him? Would it be by way of public opinion surveys? Quite apart from the issue of cost and the judicious use of public funds, it seems to me that the design of such surveys would be fraught with difficulties. For example, how would the employer know to begin the process of collecting evidence of its reputation before the incidents in question? The idea that the state of the CSC's reputation can be gauged with arithmetical precision and that changes in that reputation can be attributed with certainty to one factor or another is simply unreasonable.

[61] The passage which the applications judge cited from Fraser v. Canada (Public Service Staff Relations Board), [1985] 2 S.C.R. 455 [Fraser] at paragraph 50 of his Reasons is

particularly apposite in this regard. The issue in Fraser was whether a public servant's criticism of government policy resulted in a perception of an impairment of his ability to discharge his duties as a public servant. The concept of impairment, like the concept of discredit, is rather elastic. This is what the Supreme Court said:

Turning to impairment in the wider sense, I am of the opinion that direct evidence is not necessarily required. The traditions and contemporary standards of public service can be matters of direct evidence. But they can also be matters of study, or written and oral argument, of general knowledge on the part of experience [sic] public sector adjudicators, and ultimately of reasonable inference by those adjudicators.

Fraser, supra at paragraph 48

[62] The same is true of the question of whether certain conduct brings the CSC into discredit. The question is one which calls for the application of common sense and measured judgment. The adjudicator erred when he reduced it to a question of empirical evidence.

. . .

[122] Ms. Paquette testified that the public expects CSC employees to act within the law and that it relies on CSC employees to ensure its safety. She referred to the *Values and Ethics Code for the Public Service*, in particular to the provision that public servants shall act at all times in a manner that will “bear the closest public scrutiny.” In her opinion, the grievor’s conduct did not meet that criterion.

[123] In cross-examination, the grievor’s representative asked Ms. Paquette if she agreed that the grievor’s conduct did not tarnish the employer’s image since the incident was not reported in the media. While admitting that, to her knowledge, the incident was not reported in the media, Ms. Paquette also stated that, as the institution’s warden, she did not have to wait for such an incident to be disclosed to the public through the media to conclude that the CSC’s image had been tarnished. Ms. Paquette’s position strikes me as reasonable. She could rely on the experience she gained in the prison environment during her 27 years of service with the employer to conclude that the grievor acted in a manner that was “likely to discredit the Service,” as set out in the *Code of Discipline*.

[124] The employer’s final reason for dismissing the grievor was that, through his

actions, he irreparably breached the bond of trust between him and the employer. Ms. Paquette provided several reasons for this conclusion. She said that the employer must be able to trust an employee, like the grievor, who has safety-related duties. According to her testimony, the fact that the grievor bought illegal substances from strangers and that he gave them his coordinates to guarantee the payment of the balance owing on the drug purchase was cause for concern. In addition, during the grievor's two meetings with Mr. Brunet, he had opportunities to tell the truth about his use of illegal substances, and he was warned that using illegal substances was incompatible with his duties. Still, the grievor chose to ignore the facts. In cross-examination, Ms. Paquette said that the employer had believed the grievor and had given him the benefit of the doubt.

[125] In his testimony, Mr. Courtemanche referred to the fact that an employee using "hard" drugs could pose a threat to the security of the institution and co-workers, particularly in a case like the grievor's, in which firearms are accessible. It is true that Mr. Courtemanche admitted in cross-examination that the grievor did not interfere with the institution's operations. However, I do not believe that the employer must wait for such an incident to occur. In my opinion, it is reasonable to deduce that a correctional officer using drugs can be a risk to the workplace.

[126] Given those facts, I find that the employer proved, on a balance of probabilities, the facts on which it based the disciplinary action imposed on the grievor.

B. Was the employer's disciplinary action appropriate?

[127] As mentioned, I accept that the employer proved, on a balance of probabilities, the reasons given in the termination letter. Furthermore, the grievor admitted that he possessed the quantity and variety of drugs seized by the Terrebonne police in his home on January 15, 2008.

[128] When he was dismissed, the grievor had two and one-half years of service with the employer and no disciplinary record. He was considered a good employee. The termination letter mentions that Ms. Paquette considered mitigating and aggravating factors applicable to his situation. She testified that the mitigating factors included the death of his parents, his difficult separation from his second partner and his psychological distress. The aggravating factors included the purchase of a large and varied quantity of drugs from strangers and the fact that he gave them his personal

information. She also considered the fact that Mr. Brunet twice warned him that drug use was incompatible with his duties as a correctional officer. She said that, by denying his drug use, the grievor lacked candour.

[129] The grievor testified that, in his meetings with Mr. Brunet, he said that the rumours about his drug use came from his second partner. The grievor claimed that the employer should have contacted her to verify whether she had spread the rumours and had written the anonymous note. In my view, that was not necessary. According to the testimonies of Mr. Brunet and Ms. Paquette, when the grievor denied using drugs, he was given the benefit of the doubt, and the employer considered the matter settled. Furthermore, the second meeting with Mr. Brunet took place on January 14, 2008, just before the events that occurred in the early morning of January 15, 2008. In my opinion, the grievor could not shrug off his responsibilities and obligations as a correctional officer by trying to place the burden of identifying the source of the rumours on the employer.

[130] I was troubled by certain inconsistencies in the grievor's testimony, depending on whether he was addressing the investigators or Mr. Gagnon. There were differences in the quantity and the nature of the drugs that he admitted taking. Furthermore, in his first meeting with Mr. Brunet, he told him that he had taken drugs but failed to mention that it had been recently. There were also different versions as to how often he used drugs. In my opinion, those inconsistencies point to, at the very least, the grievor's lack of transparency.

[131] The grievor admitted to being aware of the employer's rules that applied to him. In spite of this, he stated that he did not see the connection between drug possession and use and his duties as a correctional officer. However, according to his testimony, the fact that he was in a state of distress due to his separation and the fact that he did not want any further problems with his employer led him to conceal his drug use from Mr. Brunet at their first meeting. He knew that he might have to face more or less severe repercussions. In my opinion, that clearly indicates that he was aware that drug possession and use were incompatible with his duties as a correctional officer.

[132] The grievor successfully underwent rehabilitation from February to October 2008 with the support of Ms. Cardinal. Mr. Gagnon stated that the grievor's drug dependence was due to his psychological state and that he had very little risk of relapsing. I must reiterate that Mr. Brunet offered the grievor assistance at both

meetings, but only after the January 15, 2008 events and his suspension did he decide to get clean. In my opinion, the grievor's rehabilitation is not a sufficient reason to alter my conclusion.

[133] The grievor's representative submitted that I should substitute a suspension for the dismissal. If I agreed, then reinstating the grievor would give the impression that drug possession is not incompatible with a correctional officer's duties. On the contrary, I find that drug possession is fundamentally incompatible with the grievor's duties. In *Dionne*, the adjudicator concluded as follows:

...

[40] In my view, drug (cocaine) possession, even in small quantities, is a form of misconduct that is readily recognizable by any reasonable person as incompatible and inconsistent with the duties of a correctional officer. . . .

...

[134] The grievor had peace officer status. In his work environment, he was expected to act within the law and to serve as a role model for offenders to help them reintegrate into society. Through his actions, he lost the employer's trust, which considered him a risk to the institution's security. The adjudicator in *Courchesne* stated the following:

...

I would concur in the following comments made by Arbitrator Smith who writes as follows at page 4 and 5 of Kikilidis:

"The Employer considers the Grievor to be a security risk. The Employer has the responsibility for the safety of the personnel and inmates and the security of the institution. An adjudicator should not attempt to second guess the Employer in this regard. Correctional Officers and the Penitentiary Service has [sic] responsibilities and tasks quite different than those in most other areas of the Public Service. An Adjudicator must not only weigh the interests of the Employer and those of the Employee, but the interests of other employees, inmates, and the public at large must also be taken into account."

. . .

That passage was quoted with approval at paragraph 43 of *Dionne*. I am of the opinion that it applies to this case.

[135] After considering all the circumstances, I conclude that the employer's disciplinary action was appropriate and that it should not be modified.

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

(The Order appears on the next page)

V. Order

[137] The grievance is dismissed.

January 26, 2012.

PSLRB Translation

**Steven B. Katkin,
adjudicator**