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Public Service  
Labour Relations Act

Before an adjudicator

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BETWEEN

LORRAIN DESJARLAIS

Grievor

and

DEPUTY HEAD  
(Correctional Service of Canada)

Respondent

Indexed as

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

In the matter of an individual grievance referred to adjudication

**REASONS FOR DECISION**

**Before:** Paul Love, adjudicator

**For the Grievor:** Corrine Blanchette, Union of Canadian Correctional  
Officers - Syndicat des agents correctionnels du Canada - CSN  
(UCCO-SACC-CSN)

**For the Respondent:** Pierre-Marc Champagne, counsel

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Heard at Abbotsford, British Columbia,  
July 8 to 10, 2014.

## REASONS FOR DECISION

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### I. Individual grievance referred to adjudication

[1] Lorrain Desjarlais (“the grievor”) grieved a one day’s pay financial penalty imposed on her by the deputy head of the Correctional Service of Canada (“the respondent”) on April 10, 2013, for propping open a door to the main communications and control post (“MCCP”) at the Correctional Service of Canada’s (CSC) Pacific Institution (“the institution”) in Abbotsford, British Columbia. This grievance was referred to adjudication under paragraph 209(1)(b) of the Public Service Labour Relations Act, S.C. 2003, c. 22 (the “Act”).

[2] The discipline letter issued by Ian Clark, Correctional Manager (Exhibit E-1), reads in part as follows:

...

*... it came to my attention that the door to MCCP was not fully closed. I secured the door and then asked you if you had propped it open when you left MCCP - where you and CX2 Mott were posted. You said “no” and elaborated that “it sometimes does that.”*

*A review of the cameras was completed in order to address this security concern and it was determined that you did prop the door on the pin and it remained un-secure for at last five minutes until I secured it.*

...

*I have reviewed the circumstances surrounding your failure to ensure that the door to the MCCP was properly secured and find that you have committed an infraction of:*

#### *1. STANDARD ONE RESPONSIBLE DISCHARGE OF DUTIES*

##### *Infractions*

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

- fails to take action or otherwise neglects his or her duty as peace officer;*
- fails to confirm to, or to apply, a relevant legislation, Commissioner’s Directive, Standing order, or other directive as it relates to his or her duty;*
- wilfully or through negligence, makes or signs a false statement in relation to the performance of duty;*

*MCCP is a mission critical, high security area that is to only be accessed by staff posted to it. I find that as an experienced*

*and fully trained Correctional Officer, it is more than reasonable to expect that you understand that securing of doors at all times is a fundamental and basic security procedure.*

...

[Sic throughout]

[3] In her grievance, the grievor requested that she be reimbursed with interest the sum of \$160 and that mention of the discipline be purged from her file.

## **II. Hearing**

[4] After hearing the opening statements of the parties, I met briefly with each party to determine whether a settlement could be reached. It was apparent that none could be reached, so I proceeded to hear evidence.

[5] On behalf of the respondent, I heard testimony from Mr. Clark. The grievor testified on her behalf, as did Susan Mott, a correctional officer classified CX-02.

[6] During the course of Mr. Clark's evidence, the representative of the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN ("the bargaining agent") objected to the admissibility of a video recording, which the respondent said depicted the alleged misconduct. I held a *voir dire*, (a hearing within the hearing to determine the admissibility of evidence) and I heard oral testimony from both parties. The bargaining agent called Wayne Unger, First Vice-President of its local and a member of the regional transfer team, and Mr. Clark on its evidentiary objection. The respondent called Claude Demers, Assistant Warden at the institution. I note that the grievor initially raised an issue about the authenticity of the video as the time shown on it is about three hours after the alleged incident took place. It appears simply that the video clock shows Eastern Time rather than Pacific Time.

[7] After hearing evidence in the *voir dire*, I issued an oral ruling determining that the video footage was admissible. The parties consented to evidence from the *voir dire* being considered as evidence in the main hearing. I wish to confirm the material findings and the reasons for admitting this evidence.

### **A. Evidence on the objection to the admissibility of the video footage**

[8] Mr. Unger testified that a security camera ("the camera") was installed near the

front gate of the institution. It is a fisheye camera and is usually trained on the front entrance, but it is movable and is in plain view. Notices are posted in the institution stating that a person in the vicinity may be subject to recording.

[9] The camera was installed as part of the “Employer’s Drug Interdiction Strategy” (Exhibit G-3, memo of April 24, 2006). The salient part of the memo reads as follows:

...

*The installation of the principal entrance cameras is for evidentiary purposes only and the cameras will not be linked to a monitor for the purpose of continuous viewing. Institutions are to ensure that physical access to the Principal Entrance Camera recording system is controlled and limited to staff on a need-to-know.*

...

[10] Mr. Unger testified that when the camera was installed, there was no video feed into a monitor in the correctional managers’ office. The monitor with the video feed was installed in March of 2013. He is in this office a number of times each day; the monitor is in plain view, and the camera is generally trained on the institution’s principal entrance.

[11] Mr. Unger stated that initially, when the camera was installed, the institution’s staff were concerned that it could be used to watch them. He said that the bargaining agent presented this concern to the respondent at a national labour-management meeting. He said that the intent of the respondent’s national headquarters was that the cameras would not be used to watch staff, which is reflected in the bargaining agent’s “Union Information” notes of July 27, 2007 (Exhibit G-4), which are notes of a national union-management meeting held on June 21, 2007. They read in part as follows:

...

*Surveillance Cameras and their use in the institutions*

*We indicated to the Commissioner that the directives regarding surveillance cameras do not cover correctional officers and thus cannot be used to monitor them when they leave or enter the institution, or for any other reason as related to discipline. The CSC agrees that an update should be done in this regard and several items should be reviewed in the “camera” dossier.*

...

[12] Mr. Unger also referred to *Commissioner's Directive 568-8 - Authority for and Use of Surveillance Equipment* (Exhibit G-5; "the commissioner's directive"). He indicated that that directive is the authority for using surveillance equipment within the institution. He testified that employees have a reasonable expectation of privacy, which the directive mentions. Several portions of the directive were referred to in testimony and argument, as follows:

*6. The Institutional Head/District Director will:*

*a. ensure that signage is posted, where applicable, stating that an area may be subject to surveillance . . . .*

. . .

*7. Surveillance through video recording must not be used where individuals have a reasonable expectation of privacy (e.g. a private office, a change room or a single office in an open office environment).*

. . .

*13. The video recording is not to be used as a means for monitoring employee performance.*

[13] Mr. Unger stated that on numerous occasions, he raised with Mr. Clark that video surveillance should not be used to monitor staff. He also raised it with the warden and in local and regional labour-management meetings. He said that the warden affirmed it and said that he would instruct management staff that video surveillance was not supposed to be used to watch staff.

[14] In cross-examination, Mr. Unger confirmed that he was not personally involved in the discussions at the national level but that he would have received an email. Mr. Unger gave his interpretation of the phrase, "It should be used for evidence only." He said that if there was an inmate fight or incident, the video recording could be used in criminal charges. A video recording could also be useful in the case of a visitor who became belligerent and who refused to leave the principal entrance.

[15] In cross-examination, Mr. Unger conceded that the bargaining agent's notes of the national union-management meeting held on June 21, 2007 (Exhibit G-4), were the bargaining agent's record of the meeting and not jointly issued minutes. In cross-examination, Mr. Unger stated that he is in the correctional manager's office every day to check in and out of the institution and to do his paperwork. The monitor

is in plain view and usually depicts the principal entrance.

[16] In re-examination, Mr. Unger stated it is possible that concerns at the national level could be reflected in the commissioner's directives.

[17] Mr. Unger stated that he is often in the correctional manager's office several times a day for various reasons.

[18] Mr. Clark testified on the *voir dire*. He stated that he was uncertain when a monitor was installed in the correctional manager's office for the video feed. He was questioned about the evidence that he gave at an adjudication hearing involving another grievor, which was that correctional managers were monitoring employees and that the respondent told them to turn the monitor off.

[19] Mr. Clark confirmed that the video camera was installed as a part of the drug interdiction strategy.

[20] Mr. Clark confirmed that he has a duty to follow the commissioner's directive (Exhibit G-5).

[21] In cross-examination, Mr. Clark testified that he was not monitoring the camera when the grievor exited the MCCP on March 10, 2013. He looked at the recording because Ms. Desjarlais told him there was a mechanical issue with the MCCP door ("the door").

[22] In re-examination, Mr. Clark stated that he did not follow up with other staff or the institution's security officer as he determined there was no need. He observed the monitor for a few seconds before he went to check the door.

[23] Mr. Demers testified that he has been the assistant warden at the institution since June 18, 2013. He has been a manager with the CSC since 1994. Mr. Demers testified that the institution's camera was installed quite a few years ago.

[24] Mr. Demers stated that he understood that the camera at the institution's principal entrance was introduced after much consultation with the bargaining agent. He stated that the camera is difficult to operate technically and that a special program is required to access it.

[25] Mr. Demers gave his view that the commissioner's directive (Exhibit G-5) does

not apply because the camera is not used for surveillance in the strictest of terms. It is installed permanently, out in the open, and there are signs at the institution's entrance stating that persons may be subject to being viewed. He said that the institution attempts to make people aware that they are going to be watched.

[26] Mr. Demers was cross-examined about the commissioner's directive (Exhibit G-5). He conceded that some of the commissioner's directives could be construed as applying to all surveillance but that this one is mainly used for covert surveillance, in response to intelligence. Mr. Demers also expressed his concern that he did not feel comfortable answering some of the questions in cross-examination, as he was not involved in drafting the directive. He was referred to the following parts of the directive:

**POLICY OBJECTIVES**

*1. To establish and define the requirements and procedures for the installation and use of surveillance equipment to safeguard the safety and security of all individuals and government assets.*

...

*6. The Institutional Head/District Director will:*

*a. ensure that signage is posted, where applicable, stating that an area may be subject to surveillance; and*

*b. ensure that the principle of reasonable cause to suspect a serious misconduct, which may include a criminal act, is respected prior to supporting covert surveillance.*

*7. Surveillance through video recording must not be used where individuals have a reasonable expectation of privacy (e.g. a private office, a change room or a single office in an open office environment).*

...

*10. The surveillance must not continue longer than is reasonably necessary to conduct the investigation.*

...

*12. Access to the video recording and any information generated by the recording is to be strictly limited to those with a need to know. The list of persons will be defined in each situation.*

13. *The video recording is not to be used as a means for monitoring employee performance.*

14. *Only those portions of a video recording believed to contain evidence pertinent to serious misconduct are to be viewed. Every effort will be made to respect the privacy of, and minimize the impact on, persons not specifically involved in the investigation.*

...

17. *Overt video recordings are to be retained for a minimum of 144 hours (6 days). The Institutional Head has the authority to order their retention for an extended period in case the recordings are required:*

*a. as evidence in a potential criminal investigation;*

*b. as evidence in a potential CSC investigation at the national, regional or local levels;*

*c. for reasons other than an investigation.*

[27] Mr. Demers testified that the program for the video camera retains information for six days and starts to overwrite it on the seventh day, starting with the first recorded day. The retention period at the institution is in line with paragraph 17 of the commissioner's directive.

[28] Mr. Demers was employed at Mountain Institution when the principal entrance camera was installed at the institution. He stated that the purpose of the camera was to support staff working at the principal entrance post. Allegations had been made of inappropriate conduct or performance by staff using the ion scanner, which is a device used to detect drugs. Mr. Demers stated that there was a need to help staff review or counter allegations if some were made.

[29] Mr. Demers was familiar with communications similar to the memo from Ross Toller, Assistant Commissioner COP (Exhibit G-3), which relates to the introduction of cameras.

[30] Mr. Demers stated that the camera's angle of view can be changed with a joystick and that it can be used to follow someone.

[31] Mr. Demers understood that there were two monitors for the camera, one in the correctional manager's office, and one in the coordinator of correctional operations



office, but the latter position does not exist.

[32] As a matter of ethics, Mr. Demers stated that he is bound by the commissioner's directive, unless he has special permission otherwise.

[33] In re-examination, Mr. Demers was referred to paragraph 13 of the commissioner's directive. He stated that correctional managers should not use cameras to observe whether an officer is performing his or her duties; for example, for watching to determine whether an officer is making a patrol. Correctional managers are supposed to be out and about with their staff. If issues arise or are brought forward, managers can view the video recordings to ensure that normal operating procedures were followed.

## **B. Arguments of the parties on the admissibility of the video evidence**

### **1. Grievor's argument**

[34] The grievor argued that under paragraph 226(1)(d) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s.2; "PSLRA"), an adjudicator has the power to accept evidence, whether it is admissible in a court of law or not. This means that he or she has the power to not accept evidence.

[35] Correctional officers are entitled to privacy in the workplace. The camera was installed as part of the drug interdiction strategy. The question is whether Mr. Clark's use of it was reasonable in the circumstances, given that the camera is not to be used to monitor staff performance. Despite the clear direction in the commissioner's directive (Exhibit G-5) and discussions in the labour-management committee (Exhibit G-4) that the video should not be used to discipline staff, it was in fact used for discipline. The camera had a feed to the correctional manager's office, which is in clear violation of the memo from Mr. Toller (Exhibit G-3).

[36] The issue is whether Mr. Clark's use of the video was reasonable. The camera was installed for dealing with drugs at the institution's principal entrance. The *Privacy Act* (R.S.C., 1985, c. P-21) protects employees and requires their consent when personal information is accessed. The Privacy Commissioner investigated a similar case, involving an owner of a meat packing plant installing a video camera with a pan and zoom capability, which also viewed veterinarians working in the plant testing meat quality. Even though this camera was not monitored, it was found to be a breach of

privacy; see *PIPEDA Case Summary #2005-290*.

[37] The respondent did not lead any evidence to challenge the testimony that the parties had an agreement that the camera could not be used to monitor employees entering or leaving the premises or for monitoring employees in general. Mr. Demers' evidence was not credible, but he admitted that he would not do anything that is not in the commissioner's directive.

[38] The bargaining agent referred to sections 4, 5, 7 and 8 of the *Privacy Act*, which read in part as follows:

*4. No personal information shall be collected by a government institution unless it relates directly to an operating program or activity of the institution.*

...

*5. (2) A government institution shall inform any individual from whom the institution collects personal information about the individual of the purpose for which the information is being collected.*

...

*7. Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be used by the institution except*

*(a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose; or*

*(b) for a purpose for which the information may be disclosed to the institution under subsection 8(2)*

*8. (1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.*

[39] In *Sabourin v. House of Commons*, 2006 PSLRB 15, at para 86, the adjudicator held as follows:

*An adjudicator appointed pursuant to the PESRA has the discretion to admit evidence or not (section 15). Relevance is the general rule for admissibility. Although I have not seen the video or the report that is based on that video, the*

*evidence is arguably relevant. However, relevant evidence can be excluded when its admission is contrary to legislation, sound labour relations policy or would be harmful to the ongoing relationship of the parties. Whether or not the evidence is admissible in a court is not determinative. In other words, just as adjudicators can admit evidence that would not be admissible in a court, they can also exclude evidence that would be admissible in a court.*

[40] The grievor submitted that the video should not be admissible. Employees have a reasonable expectation of privacy. It was not reasonable to use the video surveillance tape to discipline her.

## **2. Respondent's argument**

[41] The respondent relied on extracts from Brown & Beatty, *Canadian Labour Arbitration*, at para 3:4203; "Videotapes." The respondent argued that there is a difference between employers constantly using video to catch staff doing something wrong — monitoring performance — and consulting videotape on a need-to-know basis and then correcting behaviour. Furthermore, the camera is not hidden; the employees know it is there. The respondent consulted the video footage about a security issue. It was a reasonable use of the tools available to it as a management right.

[42] The facts of this case have to be distinguished from spying on employees, as was the case in *Sabourin*, which involved covert surveillance of the off-duty activities of the grievor in that case. The respondent argued that *PIPEDA Case Summary #2005-290* can be distinguished on the basis that the employer in that case was unable to satisfy the decision maker that it had a legitimate security reason for the camera to be where it was.

[43] The respondent argued that the adjudicative task is not to deal with the validity of the whole video system but instead to determine whether on the specific night at issue Mr. Clark used the video footage in an acceptable matter and whether that evidence should be admitted.

[44] The respondent relied on *Health Employer's Association of British Columbia (Vancouver General Hospital) v. Hospital Employee's Union* (2002) 107 L.A.C. (4th) 392 ("*Vancouver General Hospital*"). The union in that case objected to the use of video footage ". . . generated routinely in security cameras placed at strategic locations throughout the facility . . ." and ". . . reviewed in retrospect in response to a concern

about the validity of the Grievor's denial that he had engaged in the improper conducted alleged against him"; see page 7. There is a distinction between the covert and the overt collection of information. The arbitrator in that case admitted the footage, as nothing in the collective agreement in issue restricted using it.

[45] The respondent submitted that one should be careful when interpreting the commissioner's directive (Exhibit G-5) as the recording at issue was made overtly rather than covertly. Mr. Clark did not violate paragraph 13 of the commissioner's directive as he was not watching or monitoring employee performance.

[46] Using video footage in disciplinary hearings is not new in the correctional setting. The respondent referred to *Buchanan v. Treasury Board (Solicitor General Canada - Correctional Services)*, 2002 PSSRB 91, in which video was used in disciplining a grievor for misconduct involving doors being left open.

### **3. Grievor's reply**

[47] The case law submitted by the respondent predates *Sabourin*.

[48] The camera at the institution's principal entrance was not to be used to discipline employees. It had a feed into an office, which contravened a policy, and the related evidence should not be admissible.

### **C. Ruling on the admissibility of the video evidence**

[49] I note that the issue concerning the admissibility of the video recording was raised at the hearing. It was part of the pre-hearing disclosure that I ordered on July 2, 2014, made by the bargaining agent's representative after the close of business on June 26, 2014. The parties argued the admissibility and it was important to make a ruling, prior to continuing the merits of the hearing. I raised a concern with the parties that I was not sure I had been provided with all applicable authorities, not as a criticism, but given the recency of the issue arising and the importance of making a decision to permit the parties to conclude case presentation without a lengthy adjournment. I made an oral ruling which I am now affirming in this decision.

[50] I make this ruling in the context of a disciplinary grievance, and not in the context of a grievance challenging the introduction of video monitoring to the institution, as the camera has been in place since 2006. It appears that the monitor in

the corrections managers' office was installed in March of 2013.

[51] The question is not the reasonableness of the recording system, but whether the recording can be admitted into evidence.

[52] In assessing the admissibility of the video evidence, I must first determine whether it is relevant, and if so, whether there is any reason that despite its relevance, it ought to be excluded. There is no doubt that the video evidence is relevant or potentially relevant to the issue of what occurred and whether the grievor committed an employment-related offence worthy of some discipline. Adjudicators have power under paragraph 226(1)(d) of the *PSLRA* to accept evidence whether or not it is admissible in a court. I accept from the reasoning in *Sabourin* that an adjudicator has a discretion to admit evidence or not. I agree that that the applicable principles as expressed in *Sabourin* are:

...

*However, relevant evidence can be excluded when its admission is contrary to legislation, sound labour relations policy or would be harmful to the ongoing relationship of the parties. Whether or not the evidence is admissible in a court is not determinative. In other words, just as adjudicators can admit evidence that would not be admissible in a court, they can also exclude evidence that would be admissible in a court.*

...

[53] I note that *Sabourin* involved a targeted surveillance of the grievor's off duty activities, and this case is factually distinct. The grievance before me is a disciplinary grievance and not a policy challenge to the introduction of surveillance cameras. The question is whether in the circumstances of this case, the recording can be introduced as evidence. This is not a case of a targeted investigation, as it was in *Sabourin*; nor is it a case of after-the-fact viewing a recording that was made in ordinary course overtly for security purposes, as in *Vancouver General Hospital*. In this situation, Mr. Clark saw a security concern on a monitor and investigated it.

[54] The question is whether it should be excluded from evidence, in spite of its relevance. In analyzing this issue, I have re-framed the evidentiary questions referred to in *Sabourin* to the context of this case and considered the following three questions:

- Was the *Privacy Act* breached?
- Would admitting the video evidence be contrary to sound labour relations policy?
- Would admitting it harm the parties' ongoing relationship?

[55] It appears that the camera was installed for security reasons and not for monitoring employees or watching them perform their duties. Furthermore, notices were posted in its vicinity, indicating that the area was subject to video surveillance. In my view, there is no reasonable expectation to privacy in the area around the institution's principal entrance and the MCCP outer door, where the camera is obvious and the notices are posted. This area can be seen as one approaches the security post for the principal entrance, where the metal detector and ion scanning equipment are located. Essentially, the MCCP outer door is in plain view of staff at the principal entrance and of any visitor approaching the principal entrance post. It is not like a washroom, change room or private office, where an employee can reasonably expect privacy.

[56] At paragraph 37, of this decision I have noted the bargaining agent's argument that Mr. Demers' evidence was not credible. Mr. Demers' evidence is limited by the fact that he was employed at Mountain Institution and not at the institution at the time when the cameras were installed. He provided his perspective on the commissioner's directive in response to the questions of the bargaining agent. It is clear on his evidence, however, that the camera is permanently installed, it is out in the open and there are signs at the institution's entrance stating that persons may be subject to review. The facts of this case relate to a significant security lapse, that any manager would be required to verify. I believe the evidence of Mr. Clark that he was not monitoring the grievor. I note further that there would not have been any reasonable expectation of privacy in the vicinity of the MCCP door, as this is a hallway area, proximate to the principal entrance to the institution and not proximate to an office or change room where an employee would have a reasonable expectation of privacy.

[57] The grievor argued that collecting the video information is limited to the drug interdiction policy. Since that information was not used for a purpose consistent with

the drug interdiction policy, the *Privacy Act* was breached. I take a wider view of the video's purpose than does the bargaining agent. It is clear from the commissioner's directive (Exhibit G-5) that the cameras were introduced for security and as a method of gathering evidence for use in a proceeding, if necessary. Therefore, I am satisfied that the *Privacy Act* was not breached, as the video information was used for a purpose consistent with why it was collected.

[58] I am not satisfied on balance that labour relations policy was violated. I am satisfied that the only agreement reached by the parties was that video surveillance would not be used to monitor employees' performance, which is consistent with the oral testimony and the following documents:

- Union Information from July 2007 (Exhibit G-4):

*We indicated to the Commissioner that the directives regarding surveillance cameras do not cover correctional officers and thus cannot be used to monitor them when they enter or leave the institution, or for any other reasons related to discipline. The CSC agrees that an update should be done in this regard and several items should be reviewed in the "camera" dossier.*

- Commissioner's directive, paragraph 13 (Exhibit G-5): "The video recording is not to be used as a means for monitoring employee performance."

[59] It was clear that video footage could be used for security purposes and as evidence. In reading the commissioner's directive (Exhibit G-5), I am unable to come to the conclusion that video footage can never be used as evidence in an adjudicative proceeding for labour relations reasons. A number of paragraphs in the commissioner's directive refer to the use of the recording as evidence; see paragraphs 13, 14 and 17, which read as follows:

*13. The video recording is not to be used as a means for monitoring employee performance.*

*14. Only those portions of a video recording believed to contain evidence pertinent to serious misconduct are to be viewed. Every effort will be made to respect the privacy of, and minimize the impact on, persons not specifically involved in the investigation.*

...

17. *Overt video recordings are to be retained for a minimum of 144 hours (6 days). The Institutional Head has the authority to order their retention for an extended period in case the recordings are required:*

- a. as evidence in a potential criminal investigation;*
- b. as evidence in a potential CSC investigation at the national, regional or local levels;*
- c. for reasons other than an investigation.*

[60] Overt video surveillance is defined in the commissioner's directive as "the unconcealed use of video for monitoring purposes or to record activities for historical review." One of the policy objectives of the commissioner's directive is, "2. Ensure that surveillance respects the rights of individuals to a reasonable expectation of privacy as guaranteed in the *Canadian Charter of Rights and Freedoms* and the *Privacy Act*." The directive applies to the installation and use of surveillance equipment, and I find that this includes the fisheye camera near the institution's principal entrance.

[61] In my view, there is no violation of a labour relations policy in using the footage as evidence of misconduct, as long as it is evidence obtained for the purpose of institutional security and as long as the respondent was not watching employees' performance with the camera. On the whole of the evidence before me, I am satisfied that on the night of March 10, 2013, Mr. Clark was not using the camera to watch the grievor's performance. I appreciate that there was a continuous video feed and that a monitor was placed in the correctional manager's office. At any given time, it would be open for a manager to watch the monitor. Mr. Clark was not watching the monitor or the grievor. He was alerted to a security issue as a result of looking at the monitor for a few seconds, and he then took further investigative steps, which included physically inspecting and securing the door, talking to the grievor and Ms. Mott, and viewing the video footage after the grievor alleged that the door had a mechanical issue and that she was not responsible for leaving it in an unsecure state. Given, Mr. Clark's evidence, which I accept, that he was not watching the monitor, I find that his actions do not violate the literal wording of Mr. Toller's memo (Exhibit G-3) or the more general concerns raised in the bargaining agent's notes of the national labour management meeting (Exhibit G-4).

[62] I am not satisfied that admitting the video recording would harm the parties' relationship. The grievor was obviously upset about the use of the recording, but the



focus has to be on whether or not it is appropriate, in the circumstances of the case, to admit the recording as evidence. In certain cases, video footage might be helpful in exonerating an employee. Admitting it would at least assist me in clarifying what happened on the night in question. Clarifying facts in a grievance hearing cannot be harmful to the parties' relationship.

[63] For all of the above reasons, I admitted the recording.

### **III. Background**

[64] The institution is a medium-security institution. Officer Desjarlais was employed as a correctional officer, classified CX-01. She and Officer Mott were stationed in the MCCP on the evening of March 10, 2013.

[65] When the camera is trained on the institution's front entrance, it also depicts the outer door of the MCCP and shows any persons travelling into or out of the outer door towards the principal entrance and towards the correctional manager's office.

[66] The incident occurred at around 21:00, after visiting hours and after all administrative and support staff had left for the day. Only security staff were present in the institution. Officer Desjarlais walked through the double doors between the MCCP leading to the hallway near the institution's front entrance. It is a double-door system, with a vestibule between the two doors. The inner door is opened using a key, and the outer door is opened by a button controlled by an officer in the MCCP.

[67] An officer approaching the outer door knocks so that the officer inside the MCCP can "buzz" him or her through. After a button is pushed, when the lock cycles, on the third count, the officer can pull the door open. The outer door has a lock, known as a "slam lock," which automatically locks the door when it is released and slammed shut.

[68] The MCCP contains weapons, radio communications, emergency systems and video recording equipment. Mr. Clark referred to it as the "brain" of the institution. At all times, the door to the MCCP is to remain secure.

#### **IV. Summary of the evidence**

##### **A. Mr. Clark**

###### **1. Examination-in-chief**

[69] On March 10, 2013, Mr. Clark, a correctional manager (classified CX-04), was on duty at the institution. He was working in the correctional manager's office. He noticed on a video monitor feed that the outer door to the MCCP was not in its normal alignment. He was unable to see the frame of the outer door, and he said that it was propped open. He went to the outer door to verify what was on the video. He noticed that the door was not closed. He secured it.

[70] Officer Desjarlais was in the correctional manager's office talking to Mr. Clark's partner, and Mr. Clark asked Officer Desjarlais if she had secured the door behind her when she left the MCCP. Mr. Clark said that Officer Desjarlais confirmed that she secured the door and that she did not leave it ajar. He told her that he found that it was insecure, and she said that that sometimes happens.

[71] Believing that a bigger issue had to be dealt with, Mr. Clark said that he viewed the footage from the video camera to determine if the door was allowed to fully slam shut. He wanted to see if the last person using the door allowed it to slam shut. On the camera footage, the last person to come through the door was Officer Desjarlais. He said that it appeared that she did not let the door slam shut and that she held it and propped it on the pin.

[72] Mr. Clark went to the MCCP and spoke with Officer Mott, classified CX-02, who was also working in that post that evening. He discussed what he had seen on the video with her and the importance of having the door secured. She confirmed that this was important and said that for her part, she would ensure that the door was locked.

[73] Later that evening, Mr. Clark addressed not locking the door with the grievor, and she said that she had not done it. She became upset when she found out that Mr. Clark had looked at the camera footage. He offered to have a private conversation with her, but she did not respond. She was not willing to discuss the incident. He issued her a notice for a disciplinary hearing in two days' time.

[74] Mr. Clark stated that at the disciplinary hearing, Officer Desjarlais continued to

say that he was not allowed to use the camera and that he was harassing her. She offered no reason for him to believe that she understood the importance of securing the post, and he said that she continued to lie to him about what he had seen on the camera footage and that she was not receptive to any discussions that would correct the behaviour.

[75] After the disciplinary investigation, Mr. Clark consulted and obtained advice from the respondent's labour relations advisor. As a result, he imposed a financial penalty on the grievor of one day's pay. He stated that this was progressive discipline as the grievor had a previous record about not following directions and not working well with a supervisor. A copy of the discipline letter was filed as an exhibit (Exhibit E-1).

[76] At that point, I called the *voir dire* about the video's admissibility. After my ruling, we watched the video once completely and then again. It was stopped at certain points, and Mr. Clark explained its contents by referring to time stamps.

[77] At 12:03:15, the video depicts Ms. Desjarlais leaving the MCCP; her fingers are on the door handle. She guides the door gently and props it on the hinge pins. The door has a mechanical closing device and is meant to slam shut. By allowing it to slam shut, the door is always kept in a locked position, from which it pops back. Mr. Clark said that if the door is prevented from slamming, then there is not enough force to push the locking mechanism inside the doorframe and clear the jamb.

[78] Mr. Clark said that Officer Desjarlais reduced the speed of the door closing, defeating the locking mechanism. Mr. Clark said that at that point in the video footage, a portion of the door can be seen obstructing the view of the concrete wall. At that moment, the door is not secure.

[79] The MCCP doors have to be secure at all times, and all doors must be secure in the institution in general.

[80] Mr. Clark could see that the outer door to the MCCP was not shut by looking at the monitor for just a few seconds. He went directly to the outer door to inspect it, and he secured it by slamming it shut.

[81] Mr. Clark said that he then spoke to Officer Desjarlais, asking her if she had propped the door. She replied that she had not and that it does that sometimes. He

was concerned that the door had a mechanical issue or that something else had happened.

[82] At 12:08:10 to 12:08:15, the recording shows Officer Desjarlais entering the area near the door and pushing on it. The door was apparently secure. This was after Mr. Clark had discussed the door issue with her.

[83] When the grievor returned, she stated that she had not propped the door and that it did that sometimes. Mr. Clark reviewed the footage to see if there were any other security concerns.

[84] At 12:09:30 to 12:09:47, according to Mr. Clark, the video depicts an officer approaching the door and knocking so that the officer inside the MCCP could buzz him through. When the lock cycles, the door can be pulled open on the third count. In the video, the officer holds the door open for the grievor, and both pass through into the vestibule. The door can then be seen slamming shut into a locked position.

[85] At 12:10:05 to 12:10:24, the video depicts Mr. Clark approaching the door and rattling it. He then waits for the third count, opens the door, lets another officer walk through, walks through himself and allows the door to slam shut. When it slams shut, it makes an audible click as it bumps into position against the doorjamb, and one can determine from the click that the door is locked. Mr. Clark said that he makes it a point to listen for the click. He said that this part of the video demonstrates that the lock was functioning properly.

[86] Mr. Clark explained that the officer occupying that post pushes a button inside the MCCP to permit unlocking the door. Mr. Clark said that the CX-02 is required to stay in the post.

[87] Mr. Clark stated that he talked to Officer Mott first. She acknowledged fully that the door needed to be locked at all times and said that she would attend to that. Mr. Clark described that Officer Desjarlais was upset, that she told him he could not use the camera to check security concerns, that she was not receptive to a discussion and that she did not take accountability for her actions, which he had viewed on the camera footage.

[88] A disciplinary hearing took place on April 2, 2013. The grievor was present and was accompanied by a bargaining agent representative. Mr. Clark said that he

discussed the incident. She continued to say that she did not prop the door open. She referred to the definition of insubordination. She said that she had been doing all the right things since her discussion with Mr. Clark. He said that she did not give her assurance that the door propping would not happen again. The bargaining agent referred to the meeting as a kangaroo court.

[89] Mr. Clark contacted the CSC's labour relations branch following this meeting. As a result, he imposed a financial penalty of one day's pay on the grievor and provided her with the discipline letter on April 10, 2013. Mr. Clark referred in his letter and at the hearing to the CSC's *Code of Discipline* ("the *Code*"), to an electronic version of the *Code* (Exhibit E-2), and to *Commissioner's Directive 060 - Code of Discipline* (Exhibit E-3). These documents outline disciplinary action and the reasons it might be imposed.

[90] In his letter (Exhibit E-1) Mr. Clark stated a number of disciplinary infractions that were supported by the *Code*, including the following:

...

### ***Infractions***

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

- *fails to take action or otherwise neglects his or her duty as a peace officer;*
- *fails to conform to, or to apply a relevant legislation, Commissioner's Directive, Standing Order, or other directive as it relates to his or her duty;*

*wilfully or through negligence, makes or signs a false statement in relation to the performance of duty.*

...

[91] Mr. Clark said that a penalty of one day's pay was necessary to prevent the reoccurrence of the door propping as he had a staff member who was not taking responsibility for her actions, who lied to him about what she did, and who was not following directions or taking appropriate action. He said that unlike Officer Mott, the grievor was argumentative, did not take accountability and lied about the occurrence with the door.

[92] In cross-examination, Mr. Clark admitted that the MCCP has two entrance doors.

The institution's principal entrance has the same locking mechanism. He is aware that there have been mechanical problems with the locks at the principal entrance.

[93] Mr. Clark confirmed that the incident occurred at around 21:00, which was after visiting hours and after all administrative and support staff had left for the day. Only security staff were present in the institution.

[94] The inner door to the M CCP, closest to the post, has a Folger Adams key lock, which is a very large lock with a large key. It is not slammed to lock it; it needs a key. The outer door can be pushed, forced by hand or slammed shut.

[95] Mr. Clark did not recall speaking to Officer Mott about what happened during the meeting with her on March 10, 2013.

[96] Mr. Clark recalled that the disciplinary hearing was recorded. He believes that he consulted with the CSC's human resources branch after and not before the disciplinary hearing, which took place at the back office of the correctional manager's office. He chose this location for accessibility and convenience. He said that a blind covers its door.

[97] Mr. Clark confirmed that he had a conversation with the grievor in the correctional manager's office after he checked the M CCP door.

[98] Mr. Clark confirmed that the grievor had previously told him she felt more comfortable discussing sick leave issues with a female correctional manager, which did not change his plans on March 10, 2013.

[99] Mr. Clark was asked if he offered a bargaining agent representative to Ms. Desjarlais when he suggested a private discussion with her while he spoke to her in the M CCP. Mr. Clark did not offer the grievor a bargaining agent representative that evening as he was engaged in an informal performance discussion and not a disciplinary meeting.

[100] At the hearing, the bargaining agent representative played a recording of the disciplinary meeting (Exhibit G-6) of April 2, 2013. The respondent did not raise any issues about the recording's authenticity.

[101] Mr. Clark confirmed that he did not raise the issue of insubordination during

the disciplinary meeting; his concern was with what he viewed as the grievor's deliberate action of propping the door and then lying about it.

[102] In re-examination, Mr. Clark expressed his views about the fact that the incident occurred at about 21:00 on a Sunday. He saw this as an attempt by the grievor to minimize her actions. The MCCP doors are to be kept secured, regardless of the time of day. For the MCCP to be secure, both doors need to be locked. That night, there was a clear entry into the MCCP because both doors were unlocked.

[103] This issue has arisen with 8 to 10 other employees. The grievor was the only one disciplined because she was the only one who did not promptly admit her mistake and acknowledge the importance of maintaining MCCP security. She was the only one who resisted, and Mr. Clark believed that she was lying about her conduct.

#### **B. Ms. Mott**

[104] Officer Mott, classified CX-02, has 18 years of experience as a correctional officer. She has spent the last 10 years at the institution. She has worked at the MCCP for about 2 years.

[105] Officer Mott recalled that Mr. Clark talked to her on March 10, 2013. He told her that the outer MCCP door was on its pins and that the inner door was not closed as it should have been. She said that at that point, she agreed and apologized. Mr. Clark confirmed his informal discussion with Officer Mott by email (Exhibit G-7) and confirmed that he would not take further action involving her.

[106] Officer Mott was present when Mr. Clark spoke to the grievor. She said that the grievor denied leaving the door on its pins, but she also apologized for her actions if she had done so. Officer Desjarlais was calm but defensive and nervous in her dealings with Mr. Clark. He was in the MCCP for about 10 minutes.

[107] Officer Mott said it was busy in the MCCP that evening. An emergency medical escort arrived, and its ambulance needed to be searched when it came in and when it left, which caused extra urgency, as the paperwork had to be ensured as correct. Sometimes, escorts are armed, which requires additional work.

[108] Officer Mott was not cross-examined on her testimony.

**C. The grievor**

[109] The grievor is a long-term CSC employee, and she has been a correctional officer since 1995. She had experience in provincial corrections before joining the CSC.

[110] The grievor testified that at the time she closed the door, she was very tired and was on a 16-hour shift. She was focused on a question that she had for the correctional manager about training that she might take the following day.

[111] In many respects, her testimony confirmed Mr. Clark's description of the events of the evening at issue. She testified that after Mr. Clark told her the door had been left unlocked, she checked it and found that it was locked. She was not aware that he had secured the door when she checked it. She returned to the correctional manager's office, hoping to speak to Corrections Manager Brennan about her questions. At that point, she heard a call from the nursing station in C unit about an inmate with chest pain. She went back to the MCCP, and her partner, Officer Mott, let her in. Officer Mott turned the key in the inner door, and the grievor believed it was locked. She went into the MCCP to get prepared for the escort of the sick inmate to the hospital.

[112] The grievor said that at that time, Mr. Clark talked to her about leaving the door on the pin. He did not offer her a right to exercise her access to a bargaining agent representative, and he continued to talk about the incident in front of another staff member. She was upset, embarrassed and intimidated. After the discussion of the door on the pin ended, she said that she apologized if she had left it open. She believes that she apologized more than once; she believes that she did so twice.

[113] The grievor said that she apologized as Mr. Clark was telling her that she left the door on the pin. Since then, she has been making a concerted effort to make sure the door is secured.

[114] The grievor testified that there have been problems with the door, that it sticks intermittently and that sometimes, it has to be forced shut.

[115] The grievor disagreed with Mr. Clark's allegation that she lied to him. At the time at issue, she was working a 16-hour shift, and her thoughts were focused on her questions for Corrections Manager Brennan and not on the door. When she closed the door, she did not believe that it was insecure.



[116] The grievor said that that was the only day on which she closed the door in the way she did.

[117] In response to questions about why she did not take the offer for a private discussion with Mr. Clark, the grievor said that there was an emergency escort, that she was focused on getting her job done and that she was not provided with a bargaining agent representative.

[118] The grievor said that she understands the importance of securing the door to the MCCP. She confirmed the authenticity of the disciplinary hearing recording.

## **V. Summary of the arguments**

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

[119] The respondent stated that this is a simple, straightforward discipline case and that I must consider the following:

- Was there misconduct?
- If so, did it warrant discipline?
- If so, was the discipline reasonable in the circumstances?

[120] The disciplinary letter (Exhibit E-1) was carefully crafted, and the facts are straightforward. I must decide whether it was reasonable to hold the door open. The grievor closed the door differently than others, who slammed it closed in the video. It is a slam door, so there is no reason anyone would close it gently. It is reasonable for an employee, in the circumstances of a double-locked door, to take steps to ensure that the door is locked.

[121] The grievor created the situation in which the door did not lock properly. She wilfully or negligently prevented the door from closing. It does not matter whether she was wilful or negligent because she created a risky situation, which the correctional manager observed. Regardless of what excuses she offered, it was her responsibility to close the door, which was critical to her mission. The aggravating factors are that she expressed no remorse or acknowledgement.

[122] Mr. Clark saw the monitor, pushed the door closed and questioned the grievor about the incident, which she denied, stating that the door does that sometimes. He

viewed the video footage. He discussed the incident with Officer Mott, who accepted responsibility. The grievor continued to deny responsibility and argued with him. It came down to her telling him he could not use the camera and stating that maybe she did prop the door but still that he could not use the camera. The grievor was not cooperative, which is why Mr. Clark decided to hold a disciplinary hearing.

[123] Mr. Clark was able to obtain an understanding from 8 or 10 other employees about the importance of securing the door. When he spoke with the grievor, he did not obtain her understanding of the importance of securing the door or any recognition that what she did was wrong. He decided to discipline her and applied the progressive discipline of a financial penalty of one day's pay, which was appropriate, given the grievor's conduct, which was to avoid and deflect responsibility.

[124] The respondent stated that discipline cases are fact driven. It referred to *Buchanan v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2002 PSSRB 91, in which one of the issues was an unlocked door. The grievor in that case received a 20-day suspension. The infraction was worded in the same way as in this case. The respondent also referred to *Reid-Moncrieffe v. Deputy Head (Department of Citizenship and Immigration)*, 2014 PSLRB 25, and stated that a true apology requires an understanding of what occurred.

[125] The grievor was not disciplined for insubordination, and the respondent stated that I have to decide whether the allegations were proven and if so that the appropriate penalty was one day's pay.

## **B. For the grievor**

[126] The grievor argued that my task is to determine the merits of the case independent of the respondent's conclusion and that the respondent bore the burden of establishing the facts on the basis of cogent evidence.

[127] The allegation of making a false statement is serious. Lying requires intent to mislead and to knowingly provide false information. The grievor sincerely believed the door was secured, and she did not know that Mr. Clark had left the office and had secured the door. He did not rebut this statement during the hearing. There is no evidence to prove that she lied; she was under the belief that the door was secure.

[128] About the allegation concerning a breach of the grievor's duty as a peace officer,

there is no evidence concerning a breach of a commissioner's directive and no evidence of a breach of a post order. There is no cogent evidence that she wilfully left the door on its pins.

[129] The video footage depicts two corrections officers walking past the door and not noticing that it was open. It was not plain or obvious.

[130] The bargaining agent conceded that Officer Desjarlais made a mistake, but the standard imposed on her was higher than what Mr. Clark imposed when he did not discipline 8 to 10 other employees who had engaged in similar action. The respondent cannot expect a standard of perfection. An employee should not be disciplined for conduct amounting to nothing more than inadvertence when the employee is required to work under haste and pressure; see *Air Canada v. National Automobile, Aerospace and Agriculture Implement Workers Union of Canada*, Local 2213 (19910801), unreported.

[131] It was a lapse by the grievor, but it is non-culpable.

[132] The grievor is a long-term employee, and her seniority should have been considered in assessing the penalty. She expressed her knowledge and willingness on the safety issue. She had legitimate questions about using the camera to monitor employee performance as it was not supposed to be linked to a monitor. This was an isolated incident. Mr. Clark suffered from selective memory as it was clear from the disciplinary hearing recording that the grievor apologized (Exhibit G-6, at 16:28). She said that she would not let it happen again (Exhibit G-6, at 13:13 and at 17:43).

[133] The only possibility that Mr. Clark considered was that the door was left open, and he did not consider whether it could have been a mistake. He made a foregone conclusion, and he did not interview any other witnesses.

[134] Discipline should not be subjective or emotional. Mr. Clark's investigation lacked objectivity. The grievor did not wilfully leave the door open.

[135] The grievor stated that I am required to assess the seriousness of the violation; see *Engineered Wood Products, Louisiana-Pacific Canada Ltd v. IWA Canada, Local 1-405* (2004) L.A.C. (4<sup>th</sup>) 129 . It was a low-risk situation because it occurred on a Sunday at around 21:00.

[136] Locking doors was a practice that was not documented in any policies.

[137] The respondent did not have just cause to discipline the grievor, and a penalty equivalent to one day's pay was excessive in the circumstances.

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

[138] Much of the evidence is in dispute. The fact that the respondent did not cross-examine certain witnesses does not lead to a presumption of truth about the evidence; see *McNeil v. Treasury Board (Department of National Defence)*, 2014 PSLRB 48.

[139] The respondent submitted that there was no need to prove that the grievor's conduct was premeditated. Security is at the heart of a correctional officer's work. The concept of momentary lapse does not apply in the high security of a correctional institution. The employees are paid to be vigilant at all times.

[140] The grievor was disciplined and other employees were not because she acted differently than they did when Mr. Clark confronted her about securing the door.

[141] The respondent has proven the elements of its allegations.

## **VI. Reasons**

### **A. Just cause for the discipline**

[142] I note that a decision not provided by the parties but often relied upon by adjudicators is *Wm. Scott & Company Ltd. v. Canadian Food and Allied Workers Union, Local P-162*, [1977] 1 Can. L.R.B.R. 1 and I analyze this case in accordance with that framework:

- Was there conduct that gave rise to discipline?
- If so, was a fine of one day's pay an excessive response in the circumstances?
- If so, what alternative remedy should be substituted?

[143] The respondent had the burden of proof of establishing the facts on a balance of probabilities.

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**1. Was there conduct that gave rise to discipline?**

[144] In its discipline letter, the respondent raised the following three grounds for finding misconduct:

...

***Infractions***

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

- *fails to take action or otherwise neglects his or her duty as a peace officer;*
- *fails to conform to, or to apply a relevant legislation, Commissioner's Directive, Standing Order, or other directive as it relates to his or her duty;*

*wilfully or through negligence, makes or signs a false statement in relation to the performance of duty.*

...

[145] The allegation of making a false statement is a very serious matter. Officer Desjarlais had a basis for believing that she had left the door secure. She did not recall leaving it in an unsecured state. Immediately after Mr. Clark raised this issue with her, she went to the door, checked it and determined that it was locked, which the video footage verifies. Unknown to her was the fact that Mr. Clark had gone to the door, inspected it and locked it. I find that she had an honest belief — from her own memory and her verification — that she had locked the door. I am not satisfied that she wilfully or negligently made a false statement concerning the performance of her duty. I am satisfied that until Mr. Clark pressed the issue, she honestly believed that she had left the door in a secure state.

[146] It is clear that based on the video footage, Officer Desjarlais left the door in an unsecured state. Viewing the footage shows that she did not slam it shut or permits it to slam shut by releasing it some distance from the doorframe. She did not use any force to push the door closed. The video evidence appears to depict her turning around and gently releasing the door. Therefore, Officer Desjarlais is responsible for leaving the door in an unlocked position.

[147] I am satisfied that based on the testimony and what I saw from the video

footage, the slam lock on the outer MCCP door was in working condition at the relevant time.

[148] I note that the grievor could have closed the door properly, could have listened for a click or could have rattled the door handle to determine if was closed. She did not do any of these things. In my view, it is clear that she had a duty to ensure that the door was locked.

[149] The grievor claimed that she was distracted by a conversation that she was hoping to have with a correctional manager. I accept her testimony that she was distracted.

[150] The bargaining agent provided case law about momentary lapses. I note that this emerged in the airline industry, which is also a safety-sensitive industry. However, a customer sales and service agent is not a designated peace officer and is not charged with the security of a correctional institution. I find that the excuse of a momentary lapse does not apply in a case in which an employee is charged with ensuring that doors in a correctional institution remain secure.

[151] I can easily see that one could be distracted and not close a door properly. It is easy to make workplace errors. Nevertheless, this is a culpable or blameworthy error. The MCCP is a post that must remain secure at all times. It contains weapons, communications equipment and computer hardware. As a person working there, the grievor knew these facts. She should have taken extra care. She is an officer; her job involves maintaining the institution's security, and she should be held to a higher standard. She is paid to take care, and her attention was distracted. While the respondent did not file post instructions for the MCCP as an exhibit, which would have assisted in fully ascertaining the scope of duties of persons working in the MCCP, I accept Mr. Clark's oral testimony that it is a sensitive post and that it must remain secure at all times.

[152] Therefore, I am satisfied that the respondent has proven that there was some cause to discipline the grievor.

[153] I note that Mr. Clark has spoken to a number of other employees who left the door to the MCCP in an unlocked state. In each of those cases he was satisfied that the individual understood the importance of the locking of the MCCP door and conceded

responsibility. I accept the respondent's argument that the grievor has not been singled out for special treatment, rather she is being disciplined because she behaved differently than other employees.

**2. Was a penalty of one day's pay an excessive response in the circumstances?**

[154] In my view, one day's pay is an inordinate penalty for this disciplinary infraction. I accept that the grievor apologized for the misconduct, that she understands the importance of securing the MCCP doors and that she has taken steps to ensure that there will be no repeat of the behaviour.

[155] In my view, the grievor should not be faulted for raising the issue of using video footage during the course of this matter. Mr. Clark has characterized this as an attempt to evade responsibility. Given that there was a live feed and monitor into the correctional manager's office and that Mr. Clark viewed the video post-incident, I fully understand that the grievor was upset with the use she believed Mr. Clark made of the video. Furthermore, the grievor is a very long-term CSC employee. It is clear from its disciplinary letter that the respondent did not consider the grievor's seniority when it imposed the discipline.

[156] I do not accept Mr. Clark's characterization of the grievor as lying about her conduct. I accept that he honestly holds that view, but I do not think the grievor was dishonest about the door. She believed she had closed it. There had been problems with it in the past. After Mr. Clark secured the door, she checked it and found it secure. She did not know that Mr. Clark had secured it.

[157] In my view, the penalty imposed by the respondent was overkill in the circumstances of this case because of the following:

- The grievor has demonstrated an appreciation of the seriousness of her error and has been taking steps to address it.
- She was not dishonest about her conduct.
- The respondent made too much of her unhappiness with the use of the surveillance video and characterized it as not accepting responsibility or deflecting responsibility, but she had a legitimate concern about whether it had been used to watch her performance.

- The respondent failed to consider her seniority in assessing the penalty.

### **3. What alternative disciplinary sanction should be imposed?**

[158] Under the Code of Discipline in the Correctional Service of Canada published electronically on respondent's InfoNet (Exhibit E-2) disciplinary infractions may result in the following penalties:

- Oral reprimand;
- Written reprimand;
- Suspension (or financial penalty)
- Discharge
- Termination of employment or demotion for cause.

[159] As an alternative, I substitute a written reprimand. I appreciate that the grievor has one previous written reprimand for a disciplinary matter on her record, which is unrelated to the incident at issue. She is a long-term employee. She has taken steps to deal with the issue raised by Mr. Clark and is being more careful to ensure that the MCCP door is locked. I am not satisfied that a financial penalty was necessary to bring home to Officer Desjarlais the importance of securing the MCCP door. In my view, the failing to leave the door in a locked state, requires more than an oral reprimand.

[160] Part of the relief sought by the grievor in the grievance was for interest on the penalty. No submissions were made at the hearing concerning interest or the rate of interest. I have discretion to award interest under paragraph 226(1)(i) of the *Act*. I award interest at the pre-judgement rate in the table prescribed under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, which is 1.0 percent, from the date of the first pay period after March 10, 2013, compounded annually until paid.

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

*(The Order appears on the next page)*



**VII. Order**

[162] The grievance is upheld in part. I find that the grievor breached her duty to ensure that the door at the main communications and control at the Correctional Service of Canada's Pacific Institution in Abbotsford was secure on March 10, 2013, at about 21:03 hours. I find that a financial penalty of one day's pay imposed by the respondent was inordinate. I substitute a written reprimand.

[163] The file and the recording of the original and substituted penalty shall be destroyed after April 10, 2015, if Officer Desjarlais incurs no further discipline before April 10, 2015.

[164] Officer Desjarlais shall be issued with payment in the amount of \$160, which is the amount of the penalty wrongfully imposed by the respondent, together with interest at the pre-judgement rate in the table prescribed under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, of 1% compounded annually, until the amount is paid.

September 23, 2014.

**Paul Love,  
adjudicator**