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*Federal Public Sector  
Labour Relations and  
Employment Board Act  
and Federal Public Sector  
Labour Relations Act*



Before a panel of the  
Federal Public Sector  
Labour Relations and  
Employment Board

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BETWEEN

**JOHN WILLIAMS**

Grievor

and

**TREASURY BOARD  
(Correctional Service of Canada)**

Respondent

Indexed as

*Williams v. Treasury Board (Correctional Service of Canada)*

In the matter of individual grievances referred to adjudication

**Before:** Bryan R. Gray, a panel of the Federal Public Sector Labour Relations and  
Employment Board

**For the Grievor:** Dan Fisher, Public Service Alliance of Canada

**For the Respondent:** Allison Sephton, counsel

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Heard at Abbotsford, British Columbia,  
September 15 to 18, 2015, March 7 to 11, 2016,  
and November 29 and 30 and December 1, 2016.

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

[1] John Williams (“the grievor”) referred to adjudication two individual grievances against the Correctional Service of Canada (“the employer” or CSC). They arose from his employment as a correctional program officer (CPO) being terminated due to unsatisfactory performance.

[2] He grieved his termination (“the termination grievance”) and filed an additional grievance alleging that he was discriminated against based upon family status in breach of his collective agreement. The grievor stated at the close of evidence that he would not pursue the discrimination grievance any further and that he wished to withdraw it.

[3] This case will be decided based upon my findings of fact. In my analysis of the evidence, I must determine whether the employer’s opinion, which was that the grievor’s work was unsatisfactory, was reasonable or instead, as the grievor claims, the evaluations that found his work poor were unfair or based upon bad faith.

[4] The grievor claims that he was competent and that he was not given enough time to prove his ability. He also claims that he received inadequate support and training. He also disputes other incidents that the employer cited as exacerbating factors in the decision to terminate his employment.

[5] Mr. Williams presented at the hearing as a sincere person who, despite his efforts and desire to help others, found it challenging to meet the many demands upon his time, including family responsibilities and a job in a strictly regimented correctional workplace.

[6] As shall be set out in detail in this decision, I find that it was reasonable for the employer to conclude that the grievor’s performance was unsatisfactory. He was employed for approximately one-and-a-half years as a CPO. During this time, he experienced constant challenges with delivering his programs to the required national standards. Despite significant efforts to provide feedback, extra training, and mentoring to the grievor, his quality reviews (QRs) showed significant deficiencies in his work. Therefore, his grievances are dismissed.

## **II. The law**

[7] The termination grievance before me was referred to adjudication under s. 209(1)(c)(i) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2), which deals with employees terminated for unsatisfactory performance. Section 230 of the *Act* requires that I determine whether the employer's opinion that the grievor's performance was unsatisfactory was reasonable, given the evidence available at that time, and reads as follows:

*230 In the case of an employee in the core public administration or an employee of a separate agency designated under subsection 209(3), in making a decision in respect of an employee's individual grievance relating to a termination of employment or demotion for unsatisfactory performance, an adjudicator or the Board, as the case may be, must determine the termination or demotion to have been for cause if the opinion of the deputy head that the employee's performance was unsatisfactory is determined by the adjudicator or the Board to have been reasonable.*

[8] The grievances were referred to the former Public Service Labour Relations Board for adjudication in 2013. On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board to replace the former board.

[9] On June 19, 2017, An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures (S.C. 2017, c. 9), received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the title of the *Public Service Labour Relations and Employment Board Act*, (S.C. 2013, c. 40, s. 365), the *Public Service Labour Relations Act*, (S.C. 2003, c. 22, s. 2) and the *Public Service Labour Relations Regulations* (SOR/2005-79) to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), the Federal Public Sector Labour Relations and Employment Board Act, the Federal Public Sector Labour Relations Act ("the Act") and the Federal Public Sector Labour Relations Regulations (the "Regulations").

### **III. Background**

[10] The termination was effective October 14, 2011, and the termination grievance, which is dated November 14, 2011, was referred to adjudication on June 17, 2013. The grievor worked at Mountain Institution in Agassiz, British Columbia, which is a medium-security penitentiary for male inmates.

[11] The employer called Karen Mater to testify. She has several years of experience with the CSC working as a CPO and as a program manager and now serves as a CPO assessor. She described how the CSC provides rehabilitative programming for inmates incarcerated in federal penitentiaries. Those programs are the primary means of intervention to influence inmate behaviour in an effort to reduce recidivism.

[12] She explained that when offenders enter the prison system, their needs are assessed. They are then placed into high- or moderate-intensity program streams, depending on their risk of recidivism. The high-intensity programs designed for high-risk inmates involve groups of 10 to 12 offenders and 2 CPO facilitators for each group.

[13] The work begins by guiding each offender through a primer program to have him self-assess his risk factors. The facilitator writes a report for each offender, which is then relied upon extensively to direct future programming tailored to meet each offender's specific needs. The reports are discussed with offenders so that they gain awareness of their problems and actively plan how they will avoid falling into past habits in which their risk factors led them to commit crimes and led to incarceration.

[14] Based upon that assessment, each inmate is placed into programs that are subject to highly detailed lesson plans with very prescriptive teaching methods, to ensure that each offender is taken through the extremely technical steps of learning and treatment. Ms. Mater testified that CPO facilitators have written manuals that provide highly detailed instructions that must be followed for the delivery of each session of the programs and for the subsequent report writing.

[15] The programs guide inmates to self-identify their errant thinking and teach them how this leads them to crime. They then help the inmates develop strategies to avoid repeating their errors. The goal is to have offenders internalize healthy thought patterns and better lifestyles to avoid future criminal behaviours.

[16] This process of having inmates gain the ability to make better decisions and to adopt better lifestyles is described in a report for each offender. This report captures program work and monitors and documents inmate progress. CPO instructors write these reports, which are relied upon to determine if further programming is required for an offender. The Parole Board also relies on these reports when it considers releasing offenders. After being released from a penitentiary, offenders may also be subject to release conditions that require further program participation, which is determined, in part, by the CPOs' reports.

[17] Ms. Mater stressed the very important role of the CPOs' reports in helping determine Parole Board decisions and in guiding the success of interventions into the criminal behaviours of inmates. She explained that a poorly written report or one containing errors could lead to an inmate receiving ineffective programs and could risk an offender being granted parole who may not have yet fully acknowledged his problems, thus increasing his risk of reoffending and endangering public safety.

[18] Ms. Mater described in great detail how every aspect of life in a penitentiary is planned and controlled for the safety of staff and inmates. The CPOs' facilitation work and the programs are designed to fit precisely into the penitentiary's schedule. The intake of inmates into the primer program and into those programs that follow fits a precise schedule, to allow offenders and program reports to match the cycle of penitentiary life, which includes parole hearings and potential release dates. A penitentiary's daily schedule is controlled to the minute, and inmate movement is choreographed to exact standards to ensure the safety of staff and inmates.

[19] Ms. Mater noted how special care is taken to protect sex offenders, as they can be the target of violence within the inmate population. She testified that for their own safety, care is taken to protect the identities of participants in sex-offender programs.

#### **IV. Issues**

[20] As shall be examined in greater detail later in this decision, it is well established in past Board decisions considering s. 230 of the *Act* that to justify a decision to terminate for unsatisfactory performance, the employer must be able to show the following (from *Raymond v. Treasury Board*, 2010 PSLRB 23 at para. 130):

*- that it has set appropriate standards of performance which were clearly communicated to the employee;*

- that it gave the employee the necessary ... training and mentoring to achieve the set standards in a reasonable period of time;
- that it warned the employee in writing that failure to meet the ... standards by a reasonable set date would lead to termination of his employment ...
- that the employee has failed to meet these standards, and
- that it has acted in good faith in conducting the assessment of performance.

[21] I shall consider the evidence presented on each of those requirements and state my analysis and findings. I shall conclude by considering the grievor's allegation that the employer showed bad faith in how he was treated, which he argues should vitiate the conclusion that his work was unsatisfactory.

**A. Did the employer set appropriate standards of performance, which were clearly communicated to the grievor?**

[22] Ms. Mater testified that the grievor's certification process as a CPO included the national standard practice of two weeks of instruction in CPO work that all new members of program staff receive from national certified instructors. She also stated that he received an additional week of instruction devoted specifically to delivering the high-intensity program for sex offenders. As shall be examined in greater detail later in this decision, she also testified that the grievor was required to take the basic two week CPO training a second time.

[23] Ms. Mater also testified as to how CPO work is highly structured, as each program, teaching method, and resulting report must follow strict national standards, to ensure uniform quality and effectiveness. At the hearing, a copy of the CPO work description was adduced that comprised 12 pages explaining in considerable detail the many responsibilities, tasks, skills, and working conditions of the position. Also adduced was the 15-page "National Correctional Program Standards" document that sets out highly detailed program responsibilities and tasks for all aspects of the work done by a CPO.

[24] Ms. Mater explained how the CPO training rigorously follows the exact details of those national standards. She testified to the details of CPO facilitation materials, which were produced at the hearing as exhibits. They included precise speaking points that tell a CPO what to say at specific points in a lesson and that give the CPO the

specific answers that must be elicited from each offender.

[25] The national facilitators' manual, titled "A Guide to the Integrated Correctional Program Model for Multi-Target and Sex Offender Programs", is 359 pages in length. I find it accessible, and it contains well-organized and easily understood prose. It provides explanations of the theory behind CPO activities and precise direction on what to present to inmates, and it offers resources for additional information and assistance.

[26] The evidence establishes that there is no room in the CSC's programs for CPOs to improvise. They are trained to not deviate from their national program manuals.

[27] The employer called Joanne Jolin to testify. She has served as the regional program manager in the CSC's Pacific Region headquarters since 2001. She also has significant experience delivering programs and in QRs of program reports. She testified that regardless of how many years she has written QR reports, she follows the CSC's user guide as she drafts each one. The guide provides precise details on what is required in a proper QR to comply with established national program standards. She explained that she followed this rigorously regimented process to "give the CPO the best chance to shine."

[28] Ms. Jolin provided the hearing with a lengthy briefing on the high level of detail the employer provides to program facilitators as to how to deliver each of the 50 sessions in the high-intensity program for sex offenders. I was impressed by the high degree of confidence and ease with which Ms. Jolin described page after page of highly detailed instructions that are provided to all CPOs to guide every aspect of their work, both in the classroom and afterward, in their report writing. Her testimony stressed that no detail of the program is left for the CPO to creatively interpret or improvise.

[29] Ms. Jolin explained that the success of the national program for inmates is based upon psychological theories that are the foundation of the treatment. She testified that the highly prescriptive nature of the programs and the facilitator manuals are necessary to ensure that uniform results and reliable reports are produced for each offender, to achieve the best outcomes and fair and uniform reports to the Parole Board.

[30] In argument, the grievor did not contest the adequacy of receiving clearly communicated and appropriate standards of performance. Nor did he adduce evidence that would cast doubt upon the abundant testimony and exhibits I received about his training and understanding of what he was told his duties were and how he was to perform them.

[31] Given the hours of uncontested testimony I received and the detailed training manual that I reviewed and noted, I can easily conclude that the employer set appropriate standards of performance and that it clearly communicated them to the grievor.

**B. Did the employer give the grievor the necessary tools, training, and mentoring to achieve the standards in a reasonable time?**

[32] A written evaluation from the grievor's initial training for CPO facilitation that began on March 1, 2010, was entered into evidence as an exhibit. The grievor pointed out that the evaluation was written by John Eno, who did not testify at the hearing, thus rendering its contents hearsay. However, the Board may accept any evidence, whether admissible in a court of law or not (s. 20(e)) of the *Federal Public Sector Labour Relations and Employment Board Act*). Furthermore, given the testimony detailing the highly regimented manner in which the programs and training are structured, and the lack of evidence and argument from the grievor contesting the accuracy of the contents of this evaluation report, I accept the document as both relevant and reliable.

[33] The evaluation notes that the training began on March 1, 2010, and states the following:

*John is a new facilitator and ... faced a steep learning curve during the training....*

*During his practice delivery sessions, John followed the manual for some sections but at times, strayed from the content or became disorganized. He did not fully meet the objectives of the section....*

...

*At times during John's sessions, the pace was slow and he lost the interest of the group....*

...



*John attended approximately 8 days of the 10 day ... training due to personal issues....*

...

*John attended 5/5 days of the ... Sex Offender Program training. But he was late arriving in the mornings on 4 out of the 5 days ....*

...

[34] Several positive comments also appear about the grievor's performance, with many noting his positive attitude and that he showed empathy to offenders when leading sessions, was very respectful and polite to participants, and demonstrated active listening habits.

[35] In conclusion, the grievor received a score of 42/57, and it was recommended that he start with program delivery, with "specific conditions".

[36] The five-and-a-half-page evaluation provides highly detailed feedback on all aspects of the grievor's work and CPO duties, including the following seven specific and clearly communicated follow-up actions recommended for him to become proficient in delivering corrections programs:

*1. Read the manual (s) carefully and rehearse/complete the exercises yourself before you try them with the offenders.*

*2. Ensure that you know the purpose of each module and session and the exercises they include; participant worksheets, the final report template, the interview package, and pre- and post-program processes.*

*3. Practice new skills before you deliver them to the offenders. Ensure that you follow the steps to teach a skill in the manual closely.*

*4. In order to make his delivery more dynamic, it is suggested that you become familiar with the content of the session so that he can relax and interact with the group, speak at a quicker pace and with varied volume and tone, move around the U, use illustrations, personal examples and examples from the group and utilize visual aids to highlight key points*

*5. Read the reference material in the facilitator's manual to gain more knowledge about the theoretical models, program targets and other information related to the program (s).*

*6. Continue to familiarize yourself with social learning theory*

*and the cognitive behavioural model of intervention, the guided learning technique and how it is used in each session.*

*7. Communicate with your Regional Program Manager should you encounter any obstacles that impede your program delivery.*

...

[Sic throughout]

[37] Karen Schierer, assistant warden at Mountain Institution, testified that upon the grievor's commencement as a CPO facilitator there, he was paired purposely with Alex Switzer as a co-facilitator. This was done due to the concerns noted in the grievor's initial training evaluation. The management team viewed Mr. Switzer as one of the strongest facilitators. It hoped that Mr. Switzer could model competent facilitation skills in the classroom and be a valuable resource and mentor to the grievor.

[38] The employer called Mr. Switzer to testify. He stated that he has nine years of experience working as a CPO with the CSC plus another five years of experience through a contracted service provider.

[39] Mr. Switzer testified that he offered to help the grievor on several occasions. He specifically told the grievor to ask him for help if he had any questions about report writing. However, Mr. Switzer said that the grievor declined every offer other than on one occasion, when he spent a half-day helping the grievor with report formats. Mr. Switzer testified that the grievor told him that he was receiving good assistance from the management team and that he would decline Mr. Switzer's offer of assistance.

[40] Mr. Switzer stated that he quit offering assistance to the grievor halfway through the course that they co-facilitated as the grievor kept declining his offers.

[41] In his cross-examination, the grievor stated that he did seek feedback from Mr. Switzer on draft reports but that Mr. Switzer never helped him. When reminded that Mr. Switzer had testified that he had spent a half-day working with the grievor to help him learn how to choose proper report formats, the grievor replied as follows: "I swear that never happened." Sadly for the grievor, his own email of January 21, 2011, which shall be examined later, contradicts his denial of receiving

help from Mr. Switzer.

[42] Christine Mason served as the acting program manager and the grievor's immediate supervisor from his commencement as a CPO in April 2010 until her retirement at the end of August 2010. In the context of the grievor arriving late for work, Ms. Mason testified that she made it very clear to the grievor that he was required to work from 8:00 a.m. to 4:00 p.m. Perhaps most importantly, she testified that she stressed to him that his prompt arrival in the morning was "critical" to enable him and his co-facilitator to jointly prepare to start their daily lessons at 8:30 a.m.

[43] Ms. Mater testified that she had supervised the grievor from September 2010 to June 2011, when she was the acting program manager. She stated that when she began in that acting position, Ms. Mason warned her that there were some concerns with the grievor arriving late to work. Ms. Mater said that she observed that the grievor "was late most days". She added that he was anywhere from 10 to 120 minutes late arriving for work and that he often said that he had not slept well, that his son was ill, that he had had car or carpool trouble, or that he had been busy dealing with urgent condo corporation business, as he was a director on his condo board.

[44] Ms. Mater also testified that the grievor's co-facilitator had voiced concerns that he sometimes had to prepare alone for classes that would be co-facilitated with the grievor due to the grievor arriving late.

[45] Mr. Switzer testified that the grievor made very limited pre-session preparations as he often arrived late. He explained that while the grievor was sometimes punctual, he would also occasionally arrive for a class 10-15 minutes after it had begun, and that he completely missed a session on some occasions.

[46] Mr. Switzer stated that after noticing the grievor's late arrivals early in the program, he asked the grievor to phone him if he was going to be late, to allow him to prepare to start delivering the session alone as the essence of co-facilitation presumes some collaboration between facilitators. Mr. Switzer stated that these phone calls happened only for a week or two and that no more were made after that. He testified that the grievor's late arrivals continued throughout the program.

[47] On his punctuality, the grievor made the following candid, if not understated, admission: "I'm not saying I was never late." While the issue of his arrival time at work

and attendance generally shall be examined in greater detail later, I am satisfied that he regularly arrived late at his classroom.

[48] The evidence is compelling that the grievor's late arrivals at his classroom significantly impaired his ability to prepare and more importantly reduced the potential mentoring benefit that the management team intended for him to derive from his co-facilitation with Mr. Switzer.

[49] In addition to the initial two-week training course and co-facilitator mentoring for the grievor, the employer provided hours of testimony on its efforts to provide the grievor with feedback on his co-facilitation work and report writing and to find other training opportunities for him.

[50] Ms. Mater testified that in October 2010, shortly after beginning her acting supervisory position, she spoke with the grievor about his report writing. At that time, he was co-facilitating a high-intensity program for high-risk sex offenders. Part of her program manager duties included examining CPO reports from a quality control (QC) perspective. She testified that she noticed that the grievor's reports did not follow proper forms, did not provide proper details of the offenders' risk factors, and provided offender ratings that were overly generous and lacked justification.

[51] Ms. Mater testified that she offered detailed feedback to the grievor about proper report writing, showed him the proper templates for the specific reports he was writing, helped him identify sources for the information missing from his drafts, and asked him to rewrite the reports.

[52] She also discussed with him whom he could ask for peer support in writing his reports and the purpose of the reports and their role in the correctional system to ensure that he understood the context for the many details she had led him through on the technical aspects of writing reports.

[53] At the hearing, an email was adduced that Ms. Mater sent the grievor on November 10, 2010, in which she explained to him the details of how he needed to capture the "crime process" for each offender, which is a 12-month history of the offender's life leading up to his "index offence". She reminded him that information could be found in the crime process worksheet from the primer program and told him that the offender's entire criminal history was not to be included at that point in the

report-writing process. She also suggested that he could find that information from a second source, the offender's workbooks. The grievor replied by email to her the same afternoon with a note of thanks and assured her that her information was helpful and had been well understood.

[54] Ms. Mater added that when she first observed the many deficiencies in the grievor's report writing, she sought a second opinion from Ms. Schierer, who agreed with the concern that the wrong template was being used, that critical information was missing, and that the grievor did not seem to understand what was supposed to be in the report.

[55] On December 2, 2010, Ms. Mater carried out a QC review of the grievor's written work. She testified about the following comments, which she emailed to him on that day:

*I am finding I need to do a complete QC of your second version of [name redacted] report. Many of the same issues are still there, i.e. improper paragraph's [sic] and spacing, grammar, not using examples of skills from the Matrix, no specific examples of how he is using the required skills, adding comments that are not relevant to the risk factor, not stating how his behaviour confirms his commitment. Try to be very specific, stick to the template and use examples of his work in your analysis to substantiate your ratings....*

[56] The grievor replied later that afternoon, assuring Ms. Mater that he had begun to understand more of what was required in a quality report and stating the following: "I'm certain you won't have any issues with the next one I re-do [sic]...".

[57] Ms. Mater testified about a meeting she held the next day, December 3, 2010, with the grievor and Ms. Schierer to discuss areas in which improvement was required in his report writing. He was told that his third attempt at the same offender's program report, which he had worked on that week, had shown little or no improvement.

[58] The meeting reviewed differences that had been noted between what was in the offender's notebook and what the grievor had written about the offender in his report. Ms. Mater noted one particularly important discrepancy — the grievor's report indicated a different emotional response from what the offender's workbook noted about the feelings he had experienced during his crime process. When asked how that

discrepancy had arisen, the grievor replied that he had assumed what the offender must have been feeling during his crime process.

[59] Ms. Mater testified that she then explained to the grievor the importance of that being recorded accurately so that the rest of the program work and treatment programs would successfully reduce the offender's risk of recidivism upon his release.

[60] She stated that the employer budgets that each CPO should require one day of work to fully complete one report capturing the outcomes of each inmate's course work.

[61] Ms. Mater testified that by mid-December 2010, another 2 weeks had passed, and the grievor was still struggling to write reports for 4 of the 10 offenders in his high-intensity program for sex offenders. She explained that given the program cycle, such a delay in report writing could risk offenders missing their next programs or having no report on their program participation available at parole hearings.

[62] Ms. Mater said that while the co-facilitators of a high-intensity program normally share the report writing equally, in this case, due to the grievor's inability to write his reports, his co-facilitator had to write 9 of the 10 reports for their program, which had just concluded. She further testified that in the grievor's second program, his co-facilitator was required to write all 12 final reports due to the grievor's inability.

[63] Ms. Mater testified that she observed what she considered significant deficiencies with the grievor's report writing. She then asked him to participate in a one-day course in December 2010 focused solely on that topic and offered by regional training and QR specialists.

[64] She testified that initially, the grievor was very positive about such training opportunities but that he later became less engaged, as he thought that he had improved, and he questioned why he was being told he needed extra training.

[65] Ms. Schierer testified that the grievor attended the course in mid-December 2010, for which she was one of the instructors. She described an email dated December 22, 2010, which she sent to Ms. Mater, and she explained to Ms. Mater how much the grievor had struggled in the course. She also stated that she approached him during one of the breaks to introduce herself and to offer him assistance should he

ever feel that he would like some extra help.

[66] The grievor was also offered extra assistance from the regional QR specialists. Michelle Doherty, a regional program manager who, in part, taught the one-day report-writing course, testified that she spoke with the grievor at the course and that she offered to follow up with him and to provide further assistance any time he wished. He emailed her on January 4, 2011, requesting further assistance. She replied at 12:17 p.m. and said that she would be pleased to meet with him, to provide assistance. She suggested they meet later that week. They did so, on January 7, and she testified that they spent two hours in a detailed review of a draft report he had written to document the course work of a sex offender.

[67] Based upon the observations Ms. Doherty made at that session, on the next Monday, January 10, she wrote to the grievor's management team and voiced her concerns with what she saw as serious deficiencies in his work. That resulted in an email being sent to the grievor on January 14 instructing him to attend a meeting on January 17 to discuss his performance. He was advised that while no disciplinary action was expected, he might wish to have a support person or union representative accompany him, which means it was an important meeting for him.

[68] Ms. Mater and Ms. Schierer both attended and testified about it. They also adduced Ms. Mater's highly detailed meeting notes as an exhibit. Ms. Mater explained that the meeting had arisen in part from the intensive report-writing instruction given to the grievor in December. The very serious deficiencies in his work were explained to him. Paramount was the management team's opinion that he did not seem to grasp the harm that the inmates had caused the victims of their violent sexual assaults. Ms. Mater testified that she explained to him the deficiencies that the management team had seen in his report writing and how those deficiencies had led them to make that conclusion.

[69] Ms. Mater further testified that the management team asked the grievor several questions about how he prepared to facilitate his lessons and offered him details on how he might better acquaint himself with the background of each inmate in his program, to allow for more successful sessions. They also elaborated on his role as a facilitator and related that to the goals of the program. They explained how his

facilitation provided the information needed for his report writing and discussed examples of inmate files that he had been dealing with.

[70] Ms. Mater testified that the grievor was very receptive to their feedback at the meeting. She said he replied that he thought he was doing a much better job now than when he had started. He told them that he felt competent preparing and conducting his sessions but admitted that he had to improve his report writing.

[71] Ms. Mater explained that they stressed to the grievor that he needed to discuss the core elements of the program that they had just explored, to identify the harmful beliefs and thinking errors of the inmate at issue, and to state how he had challenged that poor thought process in his facilitation.

[72] Ms. Mater also testified that after exploring the concept of the CSC programs and the effort to effect change in inmates, the grievor replied that he understood what they explained to him and that he agreed with the overall program.

[73] At the conclusion of the meeting, the grievor was informed that he would not facilitate the next scheduled program, which was soon to begin. Rather, he would observe other facilitation sessions to learn and would prepare written notes on the areas of development that had just been explained to him and that he would review these notes with the management team. Ms. Mater testified that the grievor seemed surprised but that he agreed to do whatever was required to improve his skills.

[74] The grievor wrote to her on January 21, 2011, to update her on his progress that week following up on the matters they had discussed. The email was adduced as an exhibit and states as follows:

*Just to fill you in on this week's progress... On Wednesday John and Brian weren't running class so I met with Alex [Switzer] and we worked on reports during the morning and afternoon. John and Brian gave me sample reports as well. It's now Friday and I've been working on an On-line module for orientation that Alannah had sent to me to be completed ASAP. It's a requirement of the first year for all Public service workers... Thank you.*

[75] Ms. Mater testified that after the problems noted earlier occurred with the repeat sex offender's report, several weeks then passed, during which the grievor was asked to continue to work on his reports. His managers' discussions then turned to his



need to repeat his two-week CPO training course. In the interim, she stated that he was asked to reread and to work through all 50 lesson plans for the moderate-intensity multi-target treatment program.

[76] In early January 2011, she became increasingly concerned with what she viewed as the grievor's struggle to write reports. She sought Ms. Doherty's help with reviewing a draft report the grievor had written for an inmate who had committed 11 sexual assaults plus 1 sexual assault with a weapon.

[77] Ms. Mater testified that Ms. Doherty's review confirmed her opinion that in that particular report, the grievor missed important facts and included erroneous ones and seemed to guess at the critical matter of whether the offender had shown any remorse for his victims.

[78] She further testified that perhaps more significant than all their concerns was the fact that upon reviewing the report with the grievor and discussing the file with him, it seemed apparent that he did not appreciate the gravity of harm caused to the victim of the sexual assault and that he seemed to, in her words, "explain away" the seriousness of the crime as if he was advocating on behalf of the offender.

[79] Ms. Mater added that she discussed this with the grievor and that he explained to her that he thought that all the participants (in the high-intensity program for sex-offenders) were "good guys". She explained that this statement led her to believe that he was not able to identify criminally oriented statements or issues in his facilitation of group discussions with sex offenders.

[80] Ms. Mater added that any lack of reinforcement of the seriousness of the crime and of the harm caused to the victim of the sexual assault risks the offender not gaining any benefit from his treatment and risks increasing his recidivism upon his release.

[81] Ms. Mater explained that their discussion of the grievor's work led to her formulating the opinion that it might not be appropriate for him to continue to instruct any sex-offender programs. As such, she stated that it was decided in the winter of 2011 to have him not deliver any further programs.

[82] In cross-examination on this point, Ms. Mater acknowledged that this was the last time the grievor delivered a program that required writing a report for each

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*Federal Public Sector Labour Relations and Employment Board Act and  
Federal Public Sector Labour Relations Act*

offender when it ended. She stated that her opinion became that “no amount of help or training” could help him compose a proper program report.

[83] When she was told that the grievor would testify that he felt that she had made up her mind quickly that he should be terminated, she replied that while she did become frustrated with his lack of progress in the spring of 2011, nevertheless, she continued to work to the best of her ability to support his development.

[84] Instead of delivering any more programs, the grievor spent eight weeks in late winter 2011 reviewing course materials and then prepared for and delivered a primer program. As noted, a primer program is designed to identify offender needs and to set a baseline for issues that each offender must identify as problems that he must work to remedy in later program sessions.

[85] In describing the efforts in late 2010 and early 2011 to assist with the grievor’s report writing, Ms. Mater testified that it became apparent to her and the management team that his problems went beyond report writing skills. As a result, preparations were made for him to repeat his two-week introductory CPO training course, which he completed in May 2011.

[86] Ms. Mater was cross-examined on the written evaluation of the grievor’s performance in his repeated training. She acknowledged that he had had no attendance problems, and specifically about those areas that management had highlighted as problems, she confirmed that he had shown progress on establishing proper professional boundaries and on the ability to identify thinking distortions. His overall score was 43/60, and he was again recommended as being able to deliver programs, with specific conditions.

[87] The evaluation was at times flattering, especially with respect to the grievor’s personal attributes, including being polite and courteous, showing respect and empathy for others, modelling proper skills and behaviour, and supporting his co-facilitator and working as a team, and in how he approached his group facilitation. He received a score of 11 out of 12 on the working alliance evaluation and 8 out of 9 on the self-management evaluation.

[88] However, other areas of evaluation continued to show problems with the grievor’s performance. His mark on program delivery technique and skills was

13 out of 21, and his analytical thinking and judgment was 7 out of 12. Specifically, the evaluator (Ms. Doherty) stated that he struggled with being able to identify risk factors and program targets for offenders and that despite improvements with his understanding of program theory, he struggled more significantly with being able to deliver the material in front of a class. She also wrote that he did not always seem mentally prepared to deliver his training sessions and that he often ran out of time before addressing all the key learning points in the course handbook.

[89] In light of the findings of this evaluation that the grievor had shown improvement in some areas, Ms. Mater testified that she remained hopeful that he would show more. It was decided that he would be assigned to facilitate another primer program.

[90] Ms. Jolin testified that in late winter and early spring 2011, she helped the grievor with one-on-one instruction in his group facilitation. She testified about emails she exchanged with him at that time in which she offered him encouragement and assistance, and emails exchanged on March 17 and 18, 2011, were reviewed.

[91] Ms. Jolin also testified about and shared emails that she sent to Ms. Mater on April 5, 2011, describing the instruction she had given the grievor in the areas of preparing worksheets in advance of each session, appropriately modelling skills, and recognizing and connecting with different learning styles in his inmate group. She also stated that she told the grievor to use worksheets in his exercise with inmates and to prepare them himself to use as demonstrations for the inmates. She also stated that she suggested he prepare his teaching materials in advance of his classes.

[92] In concluding her examination-in-chief on helping the grievor improve his skills, Ms. Doherty testified that in her view, nothing more could possibly have been done to train, mentor, and encourage him in his efforts to perform his work to the expected standards.

[93] The grievor's closing argument did not contest that he had been trained or mentored. In fact, he focused more on what he said was evidence of the competent performance of his work and of bad faith the management team showed towards him and the resulting unfair poor evaluations of his work.

[94] However, in his examination-in-chief, the grievor testified that in his view, the training and mentoring that he received from the employer was not what he needed. Unfortunately, he did not elaborate on exactly what kind of training or mentoring he thought that he needed.

[95] I note that Ms. Mater testified about a meeting held on February 4, 2011, to discuss his performance, asking the grievor what assistance he thought would be the most helpful. As confirmed in her notes from that meeting, which were tendered as an exhibit, she stated that the grievor replied that he was not good at discerning which inmate statements were true. He said that it was hard for him to figure out what they were about. She testified that he asked her the following: “How do I know what they did and where do I get that information?” She replied that the file information available for each inmate would give him that information and that he should read each file before interviewing them. She also told him to become familiar with the program criteria and scores.

[96] The other relevant evidence on this point was the grievor’s claim that his co-facilitator never offered to help him. However, he contradicted this statement in an email in which he informed his supervisor that he had spent a full day receiving assistance from Mr. Switzer on learning proper report formats. I prefer the grievor’s email version of his evidence on this point as it is consistent with Mr. Switzer’s testimony, who presented as a very credible witness.

[97] Given the hours of otherwise uncontested evidence from the employer and at times evidence confirmed by the grievor’s own emails, I find that he possessed the tools documented earlier and that he received ample training and mentoring to have every reasonable opportunity to achieve the standards set for him in a reasonable period of nearly 1.5 years.

**C. Did the employer warn the grievor in writing that a failure to meet the set standards by a reasonably set date would lead to the termination of his employment?**

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[98] Ms. Mater testified that when the grievor completed his second two-week introductory training session for CPO staff members in May 2011, he was assigned to lead a primer course. This course is designed as an intake method under which inmates are identified their specific programming needs. Through facilitated classes,

they identify their crime processes and the risk factors that lead them to harmful thoughts and to committing crimes.

[99] Ms. Mater explained that the management team was well aware of the need for special assistance and support for the grievor to conduct the course, and during her testimony, she recalled meetings at which highly detailed instructions were given in writing to him in a memo dated June 3, 2011, to guide every aspect of his course preparation. Resources were identified for him, and he was directed to contact other CPO staff members as peer mentors to answer any questions he might have about the course and his tasks.

[100] She stated that the grievor emerged from his two-week training “enthusiastic” and “ready to start his primer course having voiced success from his two weeks of training.”

[101] The management team told the grievor that he would be required to record every class on video, so that each one could be reviewed and feedback given to him to assist his skill improvement. Upon her first viewing of the recordings, Ms. Mater testified that significant problems with the grievor’s work were immediately discovered. She emailed Ms. Doherty without delay (June 21, 2011) and sought her assistance in assigning a regional headquarters program manager to conduct a thorough review of the recordings available from all nine classes of the primer course.

[102] Ms. Mater explained that the grievor had placed an inmate in the primer course despite the fact that the inmate had already completed it. She stated that when the grievor was asked about it, he explained that he thought the inmate needed to redo the course as it did not work the first time. She explained again that the primer course is not a treatment program but rather an intake and screening process to identify baseline data and needs for subsequent treatment programs.

[103] Ms. Mater testified that in summary, after her review and that of the regional staff members who had watched the recordings, the unanimous conclusion was that she saw “minimal if any progress” in the grievor’s work after many months of training, retraining, feedback, and mentoring. She explained that she had never witnessed a CPO struggle to the extent of the grievor. Nor has she ever seen such an immense effort to retrain and mentor a CPO.

[104] By June 30, 2011, the grievor had submitted his first draft report arising from his facilitation of the primer course that had just recently concluded. The results shall be examined in more detail later, but despite Ms. Doherty seeing some improvement in his report writing, there were still significant errors in the draft, which concerned the management team.

[105] Within days of completing the QR work on the grievor's draft report and of the management team's discussion of the matter, the grievor was given a two-page memo dated July 14, 2011, and signed by Ms. Kerri Sullivan, manager, programs, which informed him that he was "... not meeting the requirements of [his] position ...". It lists every deficiency that had been identified with his work as well as the dates of 11 different training and mentoring classes or meetings. It also notes his being paired with Mr. Switzer as a co-facilitator in a designed mentoring relationship.

[106] The memo concludes by stating as follows:

*I hereby inform you that as your on-going [sic] performance is deemed extremely serious, if by 2011-08-29, your performance has not improved to the point where you meet the requirements of your position, I may proceed in recommending that you be demoted or terminated from your position. Upon your return to work, you will be provided with an opportunity to demonstrate improved performance through specific measurable tasks which will be outlined to you by your management team.*

*I am available to discuss this matter or any questions you may have.*

[107] No evidence was received at the hearing contesting the receipt of this memo. I find that it adequately put the grievor on notice that failing to meet the set standards of performance could lead to the termination of his employment. I also find that the set date was reasonable and that it was adequately communicated to him.

**D. Was it reasonable for the employer to conclude that the grievor's performance was unsatisfactory?**

[108] As noted, ample case authorities from this Board and its predecessors have set out how this question should be determined.

[109] It is well established that my job is not to reassess and form my own opinion on the grievor's work performance. Rather, Parliament has limited my role by means of s. 230 of the *Act* to examining the reasonableness of the employer's decision.

[110] Adjudicator Bertrand, in *Reddy v. Office of the Superintendent of Financial Institutions*, 2012 PSLRB 94 at para. 95, considered *Raymond* and stated that if the employer's assessment that the employee's performance was unsatisfactory was reasonable, then the adjudicator's jurisdiction is exhausted. He added that an adjudicator cannot substitute their own opinion for that of the employer with respect to the assessment of the performance.

[111] Recently, in *Forner v. Canada (Attorney General)*, 2016 FCA 136 at paras. 17 and 18, the Federal Court of Appeal endorsed the line of decisions I have noted that includes *Raymond*, *Reddy*, and others (*Plamondon v. Deputy Head (Department of Foreign Affairs and International Trade)*, 2011 PSLRB 90, and *Mazerolle v. Deputy Head (Department of Citizenship and Immigration)*, 2012 PSLRB 6), with similar conclusions. It concurred with those decisions and stated that adjudicators must not conduct their own independent analysis of a grievor's performance but rather must limit their analysis to the reasonableness of the employer's decision that the grievor's performance was unsatisfactory.

[112] As will be examined in greater detail later, and as the parties argued before me, *Raymond* also states that a decision made in bad faith, arbitrarily, or on a discriminatory basis cannot be deemed reasonable (at paragraph 129). Further, *Raymond* found that the employer would not be held to the standard of perfection in how it handled the grievor.

[113] The parties were largely in accord as to the authorities I have cited that will guide my analysis. The employer meticulously documented hundreds of pages of the grievor's work, along with memos, emails, and meeting notes to support its case. The grievor relied upon several comments about his good performance in evaluations as well as incidents at work that he submitted show the management team's bad faith towards him.

**1. Attendance**

[114] Many hours of the hearing were spent hearing evidence and arguments about the grievor's attendance, despite the evidence showing that it was a minor factor in the decision to terminate his employment.

[115] As mentioned earlier, Ms. Mason served as the acting program manager and the grievor's immediate supervisor from April 2010 until she retired at the end of August 2010. She testified that the hours of work for a CPO, including the grievor, were from 8:00 a.m. to 4:00 p.m. She said that he was often late for work and would arrive around 8:15 a.m. and sometimes later than that.

[116] Ms. Mason shared an email from the grievor dated May 19, 2010, in which he accounted for his hours of work and proposed a plan for how he would make up hours. His email states that he missed the following time:

- 1:30 p.m. to 4:00 p.m. on May 13;
- 8:00 a.m. to 9:15 a.m. on May 14;
- 8:00 a.m. to 11:00 a.m. on May 17; and
- 8:00 a.m. to 9:15 a.m. on May 18.

[117] The email states that for each occasion of missed work noted in that email, he had been dealing with property management or council meetings, had been exhausted, and had overslept (on May 17). Ms. Mason explained that he served on his condominium's council and that he often said it caused him to miss hours of his CSC work and to be very fatigued, due to long evening meetings.

[118] In his examination-in-chief on this email, the grievor explained that his condo building had suffered a sewage backup and that he had worked very long hours to remedy it. He also testified that he was sure it would not happen again. He proposed that he would work through lunch breaks and that he would take leave without pay when necessary to make up the time. Ms. Mason testified that he told her that he would work late some days to make up for his late morning arrivals.

[119] However, Ms. Mason testified that she told the grievor that he was required to take his breaks and that working late was very problematic, as it was a major



security concern to have unscheduled staff members in the penitentiary after their normal working hours. She described that the after-hours work protocol required the person to report to the central control office and log in with security, run a test of his or her personal panic alarm, and report in again upon departure from the office. She testified that she made it very clear to the grievor that he was required to work from 8:00 a.m. to 4:00 p.m. and that his prompt arrival in the morning was very important to help enable him and his co-facilitator prepare to start their daily lessons at 8:30 a.m., when the inmates arrived. She also stated that she made it clear to him that he should not work later than 4:00 p.m.

[120] Ms. Mason testified that she stressed to the grievor why it was so important for his program facilitation that he arrive promptly at 8:00 a.m. She said that she explained to him how each day's session required joint preparation by the facilitators as each would lead specific parts of the materials. She testified that his co-facilitator, Mr. Switzer, had spoken with her and had expressed a concern about the program being adversely impacted by the grievor's tardiness.

[121] Ms. Mason was asked about the grievor's claim that he had an arrangement with both her and Brenda Miller, the assistant warden at Mountain Institution, under which he could start work at 8:15 a.m. Ms. Mason replied that she did not recall a formal request to amend his hours of work and that if one had been made, it would have required a discussion with Mr. Switzer and senior management's approval, which she stated had not happened. She stated that she had not met with the grievor and Mr. Switzer to discuss the grievor's hours of work.

[122] Ms. Schierer also testified about this matter and said that she was aware of no conversations or agreements that allowed the grievor to arrive late to work. She also testified that when she was told of his claim that he had an arrangement with the now-retired Ms. Miller, she called her. Ms. Miller told her that there was no such arrangement.

[123] She further testified that on the contrary, Ms. Mason had such a clear recollection of dealing with the grievor's attendance issues that from memory, she was able to direct Ms. Schierer to an email dated June 11, 2010, in which she had told the grievor that his hours of work were from 8:00 a.m. to 4:00 p.m. and that any changes to them had to be pre-approved. The same email also told the grievor it was important

that he take his lunch break rather than work through it.

[124] Ms. Mater testified that she had supervised the grievor from September 2010 to June 2011, when she was the acting program manager. She stated that when she began in that acting position, Ms. Mason warned her that there were some concerns with the grievor arriving late to work.

[125] Ms. Mater also testified that the grievor's co-facilitator had voiced concerns that he sometimes had to prepare alone for classes that would be co-facilitated with the grievor due to the grievor arriving late for work. Ms. Mater explained that she discussed this problem with her supervisor, Ms. Miller, and that they agreed that the grievor would be required to email Ms. Mater every morning upon his arrival at his desk and again when he left work, to correct his irregular hours.

[126] In follow up to a meeting Ms. Mater held with the grievor on November 3, 2010, to discuss his performance, some improvement, and his attendance, she noted in an email on that date that the grievor "... agreed to improve his attendance and to adhere to an 8:00 to 4:00 work day effective immediately." She also noted his agreement that he was required to email her upon his arrival and departure from his desk every workday.

[127] In her testimony about that email, Ms. Mater explained that the grievor had told her that he had had an arrangement with his previous manager, Ms. Miller, who he claimed had approved him starting 15 minutes later each morning. Ms. Mater testified that she telephoned Ms. Mason, who had since retired, and was told that no such arrangement for alternate work hours had been agreed to. Ms. Mater also spoke with Ms. Miller about this and was told that no such arrangement had ever been agreed to. Ms. Mater stated that she clarified this with the grievor when she met with him and that as reflected in the email record noted earlier, she told him that he must be at the office each morning at 8:00 a.m. to start work.

[128] Ms. Mater testified about a meeting the grievor requested with her on November 4, 2010, during which he explained that he felt he was being unfairly singled out for attendance management. He claimed that other staff members arrived late and did not face the same consequences that he did. He also explained to her that he was going through a difficult time as his sister had died and that he was an American citizen and a visible minority, as he self-identified as a black man.

[129] Upon hearing this, Ms. Mater stated that she asked the grievor if he felt that he was being harassed, and he replied that he did not. She also testified that he did not make an accommodation request, although he did occasionally miss work or arrive late due to what he said was fatigue and trouble sleeping. However, she clarified that no formal accommodation request in writing was ever received and that a written request would usually have been required for an accommodation to have been made.

[130] I received documentary evidence in the form of a series of emails between Ms. Mater and the grievor dated November 24 and December 8, 2010. On each date, he had arrived late for work. Ms. Mater reminded him that he had not emailed her for his arrival time confirmation the two previous days and that on the day he had emailed her, he had done so at 8:29 a.m. to explain that he had arrived at work at “about 0808 a.m.” and that he was late due to having been caught behind a “... [s]chool bus that stopped a lot.” In the second series of emails, she reminded him again that he had not sent an email upon either his arrival or departure the previous day; nor had he emailed her on his departure two days earlier.

[131] In her examination-in-chief on this matter, Ms. Mater stated that she did not recall the grievor’s arrival emails ever arriving on time. When asked in his examination-in-chief to reply to Ms. Mater’s statement, the grievor said that it was a “blatant lie” and added that he did comply with his hours of work and that he did so under duress, having previously had a “special accommodation” with his supervisor to start his day at 8:15 a.m. due to his parental duties of taking his son to daycare.

[132] In his testimony on this issue, the grievor noted that in his view, a passage in his performance evaluation for December 14, 2009, to October 31, 2010, stated that his manager expected that his poor attendance would improve and referred to the fact that he had a special arrangement for his work hours. The passage in question states as follows: “An area of concern is John’s attendance... This concern was raised with John Williams and by A/MP Mason and it is fully anticipated that the leave management concerns will be a short term concern.”

[133] In cross-examination, Ms. Mater was challenged as to why the grievor was not disciplined if he arrived late so often. She stated that in discussions with Ms. Miller, it was decided that he might respond better by being encouraged and supported to do better rather than by facing discipline. The grievor challenged her again on this point.

He pointed out that the employer's evidence was that months passed with no improvement in his attendance. Again, she was asked to explain why no discipline was imposed if, in fact, such a serious problem did not improve. She replied by agreeing that in retrospect, she had erred by not disciplining the grievor for his poor attendance.

[134] The employer called Keri Sullivan to testify. She was the grievor's direct supervisor in March 2010, when she hired him, and then after she returned from leave, she supervised him again from June 2011 to September 2011. She gave detailed and extensive testimony supported by relevant documentation as to the many shortcomings of his facilitation and report writing, essentially confirming the same evidence outlined elsewhere in this decision. She also testified about her first-hand experience of when a member of penitentiary staff called her urgently one morning as inmates were arriving for their class, for which the grievor was the lone facilitator. However, it was 8:30 a.m., and he had not yet arrived. She testified that several times, she had observed him arrive at around 8:40 a.m. or 8:45 a.m. to begin his 8:30 a.m. class.

[135] The hearing also heard testimony from Ms. Miller. She managed the grievor's direct supervisors. She testified that she was briefed several times about his attendance problems and his poor performance facilitating programs and writing reports. She confirmed that she had been made aware of them by Ms. Mason before she retired at the end of August 2010. She testified that she had no recollection of any arrangements with the grievor to allow for an 8:15 a.m. arrival at work. She also stated that she was not aware of the grievor ever making any harassment complaints or accommodation requests during his tenure as a CPO at Mountain Institution.

[136] During her cross-examination, it was suggested to Ms. Miller that she had in fact met privately with the grievor to hear his request to begin his workday 15 minutes late due to his parental duties for his son, who had special needs. She replied that she would have told him to talk to his direct supervisor.

[137] However, Ms. Miller testified that in fact, Ms. Mason had voiced concerns to her about his poor attendance and work performance. When he challenged her that he had had an agreement in place with Ms. Mason for his 8:15 a.m. arrival at work, Ms. Miller replied that she had no memory of it, and she explained that the normal work hours

were from 8:00 a.m. to 4:00 p.m. In his cross-examination on this matter, the grievor testified that he would “swear on his soul” that he had a verbal agreement to begin his workday at 8:15 a.m. and that the employer’s witnesses had lied in their testimonies when they had denied it.

[138] When the employer asked Mr. Switzer in his examination-in-chief if he had been present for a discussion in which the grievor asked management to allow him an 8:15 a.m. start time, Mr. Switzer replied that he had no memory of any such discussion.

[139] In his cross-examination, the grievor was asked to reply to Mr. Switzer’s testimony that he had sometimes arrived for work after the start of a class. He replied that Mr. Switzer had lied.

[140] Mr. Switzer presented as a consummate professional who clearly took no pleasure in testifying but did so as he was asked to by his employer. He limited his testimony strictly to factual answers and made no comments that strayed into opinion or personal judgment.

[141] The grievor emphatically testified about his belief that he had a verbal agreement to arrive at 8:15 a.m. The evidence from every other witness contradicted him. More importantly, I find it highly unlikely that any manager would approve a late start to a CPO working in the co-facilitation of a class starting promptly at 8:30 a.m. as it would undermine the co-facilitators’ ability to properly coordinate their morning lesson plan.

[142] Given the denials from all the other witnesses that there was ever such an agreement, as suggested by the grievor, and given my findings on its improbability given the realities of the workplace’s rigorous schedule, I conclude on a balance of probabilities that it is more likely than not that he had at best, a mistaken belief that there was an agreement with his employer that he could start his workday at 8:15 a.m.

[143] Even if the grievor had such an agreement, there is clear evidence that he was told on many occasions beginning very shortly after Ms. Mater’s arrival that he was required to commence his workday at 8:00 a.m.

[144] And even if I did accept the grievor’s story of a prior agreement for a late arrival at work, I have overwhelming and uncontradicted evidence from several members

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*Federal Public Sector Labour Relations and Employment Board Act and  
Federal Public Sector Labour Relations Act*

of the management team that on many occasions, he arrived for work at much later than 8:15 a.m.

[145] I also reject the grievor's testimony that he would arrive at his workplace parking lot at around 8:00 a.m. and that then 15 to 20 minutes would elapse while he passed through security and walked a distance to his office desk. He was required to start his workday at 8:00 a.m., not arrive at his parking lot then.

[146] The grievor's attendance was unacceptably poor, but more importantly, it hampered his ability to be properly prepared to deliver his tasks to the standards required of him.

[147] The grievor chose a career in a highly regimented atmosphere, in which every aspect of his work was required to conform to clearly established national program standards. His prompt and reliable arrival at work each morning should have been the foundation of the proper daily performance of his duties.

[148] Bill Thompson, the warden of Mountain Institution, testified that it played a "minor" role in his final decision to terminate the grievor's employment. I find that there is overwhelming evidence to support a finding that this aspect of the employer's decision to terminate the grievor was reasonable.

## **2. Professional boundaries**

[149] The employer argued that the grievor failed to establish and maintain professional boundaries with inmates on more than one occasion, contrary to his training and standards of conduct. The grievor did not dispute the incidents at issue but described them as his way of establishing rapport with inmates. He stated that he had seen other members of staff make such gestures as handshakes with inmates.

[150] Ms. Schierer testified about how all correctional staff members are trained to establish and to always maintain strict professional boundaries with inmates. Personal information must never be shared with an inmate as it could create a significant risk to the institution's security and the staff member's personal safety.

[151] She pointed to the section of the training manual for the grievor's introductory two-week course that he completed twice. The professional boundaries section begins on page 118 and explains in detail what boundaries are and why they are critical

to establish and maintain. The manual notes as follows at page 119: “Program delivery is NOT a personal relationship; it is a professional relationship” (emphasis in the original). A subsection of the topic is devoted to instructing members of CPO staff to avoid the self-disclosure of personal information; it states as follows, at pages 120 and 121:

*It is common for program facilitators to be asked questions about their personal experiences as they relate to various program topics, especially with regard to usage of alcohol or substances. It is important not to fall into the trap of using disclosure as an attempt to develop rapport or credibility with the program participants...*

*People often feel that self-disclosure will serve as an aid to strengthen the relationship and help participants to be motivated by the success of the program provider. Unfortunately, this often backfires when the offender throws the disclosure back in the face of the program facilitator to challenge their credibility as a “professional”... Group members may also try to take advantage of a facilitator who is overly willing to share in an effort to avoid doing work in the program.*

[152] Ms. Schierer also testified that the staff members receive training about privacy law and that they are told that no information should ever be shared with inmates about another inmate’s programs and offences. She explained that sex offenders are at risk of assault or death if other inmates discover their offences. She testified that inmates at Mountain Institution are integrated, thus making it very important that the particulars of their programs and offences are not disclosed.

[153] Ms. Mater also testified about the issue of the grievor’s professional boundaries with inmates. She testified that in a discussion on February 4, 2011, she told him that she had seen him at the end of a day standing with a group of inmates and that she had observed him walk to one inmate, extend his hand, and shake the inmate’s hand. She testified that the grievor then identified himself to the inmate and told him that he was a sex offender program facilitator.

[154] Ms. Mater explained that members of staff should not make contact with or shake the hand of an inmate. She also explained that the grievor telling the inmate that he was a sex offender facilitator meant that other inmates could have overheard the conversation and concluded that the inmate he was speaking with was a sex

offender. As noted, Ms. Mater stated that that could have jeopardized that inmate's safety, had other inmates identified him as a sex offender.

[155] Ms. Mater also testified that at that meeting, she informed the grievor that she was aware that he had been sharing deeply personal information about his life experiences with the inmates in his program. She testified that she reminded him that doing so was very inappropriate and that she explained to him that the inmates could use this information against him later on. She said that he looked surprised when she told him this and that he replied that he was just trying to build rapport with the inmates in his program.

[156] The grievor disputed the interpretation of the facts with respect to his professional boundaries with inmates and argued that he had only been showing respect and some friendliness to them, to build rapport and to encourage them to participate openly in his program sessions.

[157] In support of his explanation, the grievor pointed to Mr. Eno's written evaluation of his initial CPO training course that states as follows: "During John's practice delivery sessions, I observed that he had appropriate professional boundaries with the participants in the group."

[158] The grievor also pointed out that the written evaluation of his second session in the CPO training course, which Ms. Doherty wrote, states as follows: "You established and maintained professional boundaries from the very start of the training." And further: "As a result of your openness and humility, you seemed to have earned the respect of your colleagues as well as your trainers." And: "... you effectively modelled the pro-social skills, values, beliefs and attitudes that are consistent with the principles of social learning."

[159] The incidents mentioned by the employer's witnesses in the matter of professional boundaries were uncontested. This, along with the very clear direction of the training manual I quoted earlier, makes it clear that the grievor either forgot or did not understand his training. His two evaluations that indicated that he established proper boundaries in his mock training sessions suggest that he modelled proper behaviour in the training. But his suggestion that he was trying to build rapport with inmates indicates that he did not apply his training to his work, as that claim directly contradicts a clear direction in the training manual.



[160] Given that evidence and my conclusions, I find that the employer acted reasonably when it concluded that the grievor failed to establish and maintain proper professional boundaries with inmates.

### **3. Facilitation and report writing**

[161] Ms. Schierer testified in great detail about the critical role the CPOs' program reports play in the proper functioning of the correctional system. She testified that the final program report that a CPO writes for each inmate is "the most critical element of risk assessment" when the CSC or the Parole Board considers the fate of an inmate and any future rehabilitative programming or release and its terms.

[162] Ms. Schierer explained that the grievor's direct supervisors reported to her and that she was regularly consulted on the many challenges he faced with his attendance, program facilitation, and report writing. She testified that her assistance with his report writing included detailed QC work within the management team to assess and prepare feedback for him on his draft program reports.

[163] In an effort to objectively illustrate the deficiencies of the grievor's report writing through my own observations, Ms. Schierer spent most of one morning of the hearing testifying to a line-by-line review of a report on a sex offender who had participated in the grievor's high-intensity treatment program for high-risk offenders. The program had run from May 31 to October 15, 2010.

[164] Having been given a detailed orientation to the purpose of each part of the report by Ms. Schierer, and having reviewed its substance line by line, I observed that the report addresses the treatment of a violent sex offender.

[165] Ms. Schierer pointed out the location in the report where it erroneously fails to list the index offence and how it contained what in her opinion were significant errors and omissions on every one of its 10 pages.

[166] Ms. Schierer noted one of the more significant problems with the grievor's draft, where he gave several very positive ("excellent") ratings to aspects of the offender's program for which there was no justification in the detailed narrative. On one of the scored factors, it was erroneously listed later in the report as a different score. Several key aspects of the report's findings contained vaguely written conclusions from the grievor that conveyed little or no meaning.

[167] Perhaps most alarming, it is plainly evident in reading the grievor's draft that the entire final section, dealing with recommendations for future treatment, had been cut and pasted from another offender's report, replete with the other offender's name, stated 20 times, and personal details of the other offender's treatment plan, including "attending art school". When he was asked about this in his examination-in-chief, the grievor stated that he had never cut and pasted material from one offender's report to another and that it was a false allegation.

[168] In Ms. Schierer's words, the draft showed "a disconnect" with what was required and what was written. She testified that it reads as if the grievor was confused. She added that the draft did contain some good information but in the wrong places. She also noted that other important information was missing.

[169] Ms. Schierer testified that CPOs must be vigilant in dealing with sex offenders as some are adept at impression management as part of their ability to manipulate and control their victims. She explained how such an offender can bluff a CPO by making hollow statements and acting out what is expected to be model behaviour to gain favourable recommendations from the CPO, who they hope will help them gain parole.

[170] Ms. Schierer pointed out the exact text in the grievor's draft report that illustrated vague and unsubstantiated statements that could easily lead to such manipulation. She explained that CPOs are supposed to consult the case management team for such an offender to check for supporting evidence of other behaviours by him in the penitentiary that might corroborate positive findings in the report and that should be cited as such.

[171] Ms. Schierer testified that the report had to be completely rewritten. She explained that she met with the grievor and Ms. Mater to discuss the deficiencies in his work and the need for him to improve. She stated that the discussion ended with the grievor saying that he understood her feedback. However, she added that the quality of his work did not improve after he had received the detailed feedback on the report and after the meeting.

[172] The employer called Ms. Jolin to testify. She has years of experience as a program manager in the QR of program reports. She testified that regardless of how many years she has carried out QRs, she follows the CSC's user guide, which provides

precise details on what is required in a proper program report and on how a QR review should be conducted. She explained that she followed that rigorously regimented process to “give the CPO the best chance to shine.”

[173] Ms. Jolin provided the hearing with a lengthy briefing on the high level of detail the employer provides to program facilitators as to how to deliver each of the 50 sessions in the high-intensity program for sex offenders. Ms. Jolin testified with an impressively high degree of confidence and ease as she described page after page of highly detailed instructions that are provided to all CPOs to guide every aspect of their work, both in the classroom and afterward, in their report writing. Her testimony was very convincing that no detail of the CPO program for offenders is left to chance for the CPO to creatively interpret.

[174] Ms. Jolin explained that the highly prescriptive nature of the programs and the facilitator manuals are necessary to ensure that uniform results and reliable reports are produced for each offender and that the highly technical psychological theories that are the foundation of the treatment are not betrayed by facilitator error.

[175] Ms. Jolin prepared a QR assessment report on the grievor’s conduct of his first co-facilitated high-intensity program for sex offenders, which concluded on October 26, 2010. As part of her QR work, she reviewed video recordings of nine different program sessions that he had facilitated. She stated that a QR report typically requires her to review four to seven taped classroom sessions to find patterns and to ensure that a CPO is not judged unfairly if she or he has a bad day. She also noted that she typically reviews three or four of a CPO’s program reports as part of her QR work.

[176] Despite some flattering comments about how the grievor managed his emotions well and modelled pro-social behaviour in the classroom, the overall conclusion of her report was that he “... did not demonstrate the required skills. Certification is not recommended and the [grievor] is considered unsuitable to deliver the program.”

[177] Ms. Jolin added that while the grievor demonstrated that he could establish and maintain a working alliance with his group, he struggled to deliver the program. And in some cases, session objectives would not have been reached without the co-facilitator’s assistance. The report concluded that the grievor appeared to have a limited understanding of the program.

[178] Ms. Jolin stated that she reviewed more of the grievor's video recordings than she normally does in a QR report in the hopes that she might find some progress, as with most new facilitators she would expect to see some improvement over the duration of the program. She explained that in the nine video recordings that she watched, she observed him having to read course materials from the facilitator manual, which caused him to miss offenders' responses to his questions. She explained that this missed input from the inmates would have been critical for him to advance the session and to ensure that the offenders could benefit from the work and advance their treatment.

[179] Ms. Jolin also testified that she observed that the grievor was unable to identify and challenge problematic comments from offenders in his classroom. She explained that this was very much a concern, as doing so is the core of the treatment program's success. Because he missed the problematic comments, his failure to correct them risked reinforcing their acceptability and the beliefs that had led the offenders to commit crimes in the first place. She also noted how his reports often lacked justification for his optimistic scores for offender outcomes and that his sessions often ran behind schedule. As such, later sections of daily lesson plans were rushed.

[180] Ms. Jolin testified about emails she exchanged with the grievor in which she offered him encouragement and assistance. The emails were reviewed at the hearing and included those exchanged on March 17 and 18, 2011.

[181] The grievor's sincere effort to improve his work was evidenced by the emails exchanged on April 5, 2011, in which Ms. Jolin told Ms. Mater that he "has shown some improvement" and described that she had seen how he prepared for his classes by highlighting and making sticky-note annotations in his manuals.

[182] In the conclusion of her testimony, Ms. Jolin stated that due to how the grievor was really struggling to deliver his program compared to other new facilitators, she recommended to the management team that he be required to repeat his CPO training. She said that it was very rare for a CPO to be required to do that.

[183] When she was cross-examined on how the grievor could have passed his initial CPO training and could have later been found not to be qualified, Ms. Jolin explained that the training is based on simulations and that it is different for CPOs when they are in front of real offenders, facilitating a program.

[184] The grievor stated in his examination-in-chief that he was not happy with the findings in this assessment. He said that it did not properly document the progress he felt that he had made with his facilitation and report writing. Furthermore, he explained that his sister had died during this period and that he had been away. On his return, his co-facilitator left on vacation. The grievor said that he thought he had done a fine job of delivering the program on days when his co-facilitator was away.

[185] When asked about the grievor's performance when he co-facilitated an earlier program, Mr. Switzer stated that the grievor showed great compassion and empathy for the offenders but that the grievor struggled with the program as a whole. Mr. Switzer added that by being able only to show empathy, the grievor did not challenge the offenders' harmful beliefs and actions. Mr. Switzer described how the grievor did not seem capable of discerning the offenders' unacceptable beliefs and comments. He also described how the grievor often had to read the course materials from the manual and would then miss an offender's reply to a question.

[186] Mr. Switzer explained that the treatment programs are based upon cognitive therapy theory, which leads offenders to recognize and follow a good life path, to avoid recidivism. He explained that a foundational element of the programs is identifying and challenging harmful beliefs whenever an inmate shares some in class. Without that identification and challenging of harmful beliefs, Mr. Switzer stated that inmates' self-justification for their sex crimes would not be corrected.

[187] When asked about the grievor's ability to complete a lesson, Mr. Switzer testified that the grievor often took double the amount of allotted time to deliver a segment of a daily lesson plan. He explained how this led to problems, including the offenders losing interest in the material and becoming distracted.

[188] Mr. Switzer further testified that at the halfway point of the program, he met with the management team to request a transfer to a different program, away from the grievor. He stated that there was a lack of communication from the grievor about his late arrivals or no-shows, which made difficult what was supposed to be a co-facilitation. He added that the sessions were straying so far from the prescribed time allotments that he became worried that his own certification would be revoked if the program could not be delivered in a way to meet national standards. Mr. Switzer

stated that he reasoned that if the grievor was not communicating well with him, then the grievor might do better with a different co-facilitator.

[189] In cross-examination, Mr. Switzer made it clear that he did not initiate contact with the management team to complain about the grievor. He stated that when management asked him to report to it on the grievor's daily attendance, he declined, stating that it was not his job to monitor the attendance of his co-workers.

[190] Ms. Doherty had worked as a CPO for three years and has been the regional program manager since 2010. She had many years of experience working in correctional facilities to draw upon in her training and QR work at the regional office. She conducted the December 2010 report writing training workshop in which the grievor participated.

[191] She gave thorough and confident testimony and a line-by-line review of the highly detailed materials offered to the CPO staff members who took the one-day report writing course. The materials included an eight-page checklist designed to guide a CPO through every aspect of writing a report.

[192] Ms. Doherty testified that via an email dated December 9, 2010, Ms. Mater asked her to give extra attention and assistance to the grievor, who would be participating in the upcoming report writing workshop beginning on December 14, 2010.

[193] Ms. Doherty testified that she was pleased to assist the grievor and that she found him very pleasant, polite, and open to improving his skills. Having observed his efforts at the workshop, she testified that she found him confused and that he struggled to write his workshop lessons. She stated that it was not clear whether he struggled to understand what was being taught at the workshop or to apply the material to the offenders in his program, for which he was to write reports.

[194] At the hearing, an email exchange from January 4, 2011, was examined in which the grievor followed up with Ms. Doherty after the workshop and accepted her open offer for assistance. They agreed to a meeting at his workplace, where additional one-on-one tutoring assistance with report writing was provided to him later that week.

[195] Ms. Doherty testified that this tutoring session left her with the clear impression that the grievor had no understanding of what was required to write a report. She said

that he was confused as to which resources to use to seek guidance in his work and that he did not understand the purpose of the reports. She explained that she observed that he merely repeated the sex offenders' versions of the events of their crimes and that he did not try to challenge the harmful thinking or beliefs that had led to their crimes.

[196] She related that at one point in the tutoring session, while she was working through this problem, the grievor stated, "The offender didn't really harm the victim." Again, this comment arose from the grievor delivering treatment programming to offenders convicted of rape or sexual assault. The particular offender from whom the grievor's comment had arisen had been convicted of 11 sexual assaults, plus a sexual assault with a weapon offence.

[197] Ms. Doherty conveyed those concerns in a highly detailed email to the grievor's manager, Ms. Mater, on January 12, 2011. The email concludes with Ms. Doherty stating that she had concerns with the grievor returning to the classroom two weeks from then to begin his next program, as it would be a disservice to all involved, especially the offenders.

[198] In January 2011, Ms. Doherty suggested that the best course of action for the grievor was to provide him with additional training, which then took place in May 2011 when he repeated his two-week CPO course. Ms. Doherty was one of his instructors. She testified that although he continued to appear confused and unable to identify offender thinking distortions, she saw a little bit of growth in some aspects of his facilitation skills during the retraining. She explained that he paid attention and participated well in the retraining, and she was optimistic that he might be able to succeed in the classroom, with continued support.

[199] Despite the many concerns of the management team noted earlier, the grievor was for the second time approved to return to the classroom, with conditions, after the training. He was assigned to deliver the primer program on his own and was to video record all his sessions so that management could review them each week.

[200] By July 2011, Ms. Sullivan had succeeded Ms. Mater as the grievor's direct supervisor. She wrote to Ms. Doherty on July 7, shortly after her arrival in this position, while the grievor was delivering the primer program that followed his retraining.

[201] Ms. Doherty testified that Ms. Sullivan shared with her what she saw when she began to review the recordings of the grievor's sessions. Ms. Sullivan testified that she immediately became concerned for public safety with what she saw. She said that the grievor did not identify and challenge harmful comments made by offenders. The offenders appeared to control the direction of the sessions.

[202] Ms. Doherty then reviewed one of the recordings of the grievor's primer program and the first two pages of one of the offender reports from that program. She testified that the report was so badly written and that it had so many errors that she ceased reviewing it and concluded that a complete rewrite was necessary. She explained that it dealt with an offender convicted of murder. The grievor was to make specific observations from his course and report on the offender's crime process; that is, what had happened in the offender's life that had led him to commit murder. Instead, however, the grievor had simply cut and pasted the details of the crime report dealing with the act of murdering the victim.

[203] She documented how the grievor misunderstood the crime as he wrote in the primer report that the offender had experienced heated emotions before the murder, thus implying that it might have been an impromptu event fueled by a fight and anger. However, she documented that in fact, the murder had been a planned contract killing that had not arisen from a fit of anger or emotion.

[204] On August 15, 2011, Ms. Doherty wrote to Ms. Sullivan with an assessment of the last primer course the grievor had facilitated several weeks earlier. Her email indicated that her QR work had found some improvement in the grievor's report writing but that many errors, some of which were "quite critical", were still present in his work.

[205] She provided several details of what exactly she saw in the grievor's reports that had led her to those conclusions. The crime processes he identified did not provide enough detail to allow the offender's personal targets to make sense. She also found the personal targets he identified in some cases seemed to contradict what he wrote in the crime process. She also found that he had incorrectly named a treatment program in a report — the offender had actually been in the primer.

[206] She also testified that she found positive reports of progress for two offenders that stated that they had a moderate risk of reoffending, which was of concern, and yet



the grievor's overall conclusion was that both offenders had done quite well in their program.

[207] Ms. Sullivan's July 14, 2011, memo to the grievor put him on notice that his work performance was unsatisfactory and that he would be required to demonstrate improved performance to acceptable standards by August 29, 2011, or potentially face the termination of his employment. She testified that in the meeting at which his unsatisfactory performance was discussed, the grievor responded by saying that he was right for the position and that being a CPO was his dream job. She testified that he told her that his managers were not helping him.

[208] Ms. Sullivan testified that at the conclusion of their meeting, she told the grievor that he should reflect upon and perhaps discuss with his family his future as a CPO and whether he might be willing to consider a transfer to a different position within the CSC. When asked how the grievor responded, she stated that he returned to work the next workday and that he accused her of threatening him.

[209] Ms. Sullivan testified she was surprised to hear from the grievor that he took no responsibility for his performance and that he denied that any problem existed as she had met with him several times to go through detailed feedback of the many problems she saw in his work. She testified that she asked him to accurately remember the details of their meeting and the specific feedback she had given him on his work. She then suggested that he might wish to contact the employee assistance program if he felt he needed help. She said the conversation ended there. She also stated that neither on that day nor at any other time did the grievor make an accommodation request.

[210] The grievor returned to work after a period of sick leave and received a follow-up memo from Ms. Sullivan dated August 9, 2011, titled "Performance Measures Action Plan". It was 16 pages long and described in great detail how he was to perform 10 measurable tasks. Several involved actual inmate files, and a mock group facilitation was also planned.

[211] Ms. Sullivan testified for several hours about the details of the measurable tasks. She testified that she met with the grievor and his union representative on August 9, 2011, and that they discussed the purpose and content of the exercise and went through every detail of each of the 10 tasks.

[212] She said that at every step of the memo and during the tasks, she asked the grievor if he had any questions and if he understood what was expected of him. She said that they discussed several questions but that in the end, her opinion was that the grievor had asked her all the questions he had and that he understood each task. She also testified that again, he denied that there were any issues with his performance. She said that at the meeting, she was accused of not providing him mentoring or development assistance and was accused of being racist. The grievor specifically stated to her that he had never received written feedback about his work.

[213] Ms. Sullivan testified that the exercise began on August 9 or 10, 2011, and that it included the following 10 tasks, each set out in a highly detailed memo for the grievor:

Task 1. Write an ICPM (Integrated Correctional Program Model) Primer Report for an offender.

Task 2. Write another ICPM Primer Report for a different offender.

Task 3. Complete an ICPM Primer Offender Crime Process write-up for four offenders.

Task 4. Complete a pre-program file review and identify the offenders' crime process, risk factors, and personal targets.

Task 5. Conduct an offender interview for the ICPM and write a report summarizing the offender's crime process, risk factors, personal targets, obtained skills to mitigate risk, and skills required.

Task 6. Complete a review of his ICPM primer program and identify any concerns he had with the offenders that were on the list for the program. He was to focus his review on the following: timeframes and dates, selection criteria, primers required and completed, appropriateness of offenders, policy requirements that were or were not completed as per program standards, consequences of delays, and effect on offender reintegration and public safety.

Task 7. Complete a thorough lesson plan for an ICPM session that he was required to deliver to his manager and any other delegated individuals

in a mock training session. Following the session, he was required to submit notes on the participants.

Task 8. Complete a lesson plan for “Module 2: Feeling Good, Session 10: Changing Harmful Beliefs”. He was also required to observe the delivery of an ICPM session being facilitated by two colleague CPO staff members. He had to record thinking errors and cognitive distortions demonstrated by the offenders and identify the specific name of each thinking error he observed.

Task 9. Complete a program loading for all aspects of an ICPM “Multi-Target Moderate Program”. He was required to identify start and completion dates and the top 10 participants and first 5 alternates.

Task 10. Carry out program referrals for a list of new-intake offenders. His recommendations were to include timeframes.

[214] Ms. Sullivan provided detailed testimony as to how each task arose from the core CPO duties that the grievor had been trained (twice) to perform. She also testified as to the amount of time that would be allowed during a normal workday for a CPO to perform each task. She testified that the grievor was allowed 150% to 200% of the amount of time normally required for each task.

[215] Ms. Sullivan said that she met with the grievor at the start of each day to ensure that any questions he had about the tasks was answered. She also stated that on several days, he asked for extra time to complete the daily task, which she said she always granted him.

[216] When asked to summarize how the grievor performed in the measurable task exercise, Ms. Sullivan testified that he did not do well. She said that he did not meet the objectives of the tasks. He was not able to perform them in the time provided, and his work did not meet the standards required of a CPO.

[217] Ms. Sullivan wrote a nine-page memo to Warden Thompson dated August 30, 2011. It was a highly detailed report on the grievor’s performance in each of the 10 tasks. Included in her memo are the following observations (certain portions of which I have paraphrased and presented in non-italicized text within square brackets):

[Task 1:] ... Additional time was provided however, Mr. Williams was unable to complete the report... The report contained serious deficiencies. The report content did not contain any substance of program content and contained only superficial information regarding the offender. The crime process ... was not identified... The offenders index offence was ... a violent beating of a [redacted] month old child which resulted in the child's death, yet this level of violence was minimized ... and not identified as a personal target to manage risk....

... the wrong report template was used ....

... the attendance and participation section of the report ... were contradictory.

[Task 2:] Mr. Williams was unable to complete the report.... The report contained many of the same critical errors as noted [in Task 1].... The index offence involved a criminal harassment charge ... his ... partner was assaulted and threatened for a 3 year period. The report focus was on the marijuana grow operations.... The report ... was vague and provided no information on skills to manage risks.

Senior Regional Program Manager Michelle Doherty conducted an independent review of the 2 final reports [in this task]. Below are the comments ...:

"... his reports have improved since the first time [she reviewed his work]...."

"Also he makes errors that are quite critical. [He states in both his reports that the offenders have a moderate risk of returning to crime,] but his ratings in the body [of the report] indicate both offenders are doing quite well. This is very confusing .... Based on ... task 1 and 2, [the grievor] has not ... demonstrated the required competency level for this job requirement."

[Task 3:] [The grievor successfully completed the part of the task in which he was to type offenders' handwritten work into a clean format for later reference. This information was to be typed into a Word-format document for later transfer into OMS (the Offender Management System). However, he was given a clear direction not to transfer any information into OMS. Despite that, he attempted to place information into OMS. He failed to complete the crime process analysis for the offenders, which was the most critical element of the task.]

[Task 4:] Mr. Williams's written [work] did not outline the requirements of the assignment .... The majority of his written summary was a cut and paste [from the offender's

criminal profile report]. *The [work] failed to identify a crime process. [The report falsely stated there were no convictions for sexual assault.] ... however, file information clearly indicates a ... conviction for sexual assault of an [redacted] year old child. File information contains clear information on the offender's criminal history and describes a pattern of partner violence, generalized violence, and sexual violence. [The grievor's written work] failed to identify any of the 3 crime processes....*

[Task 5:] *The offender that was interviewed is a High Profile Sex Offender serving a life sentence. Mr. Williams did not use the correct interview booklet... The standard consent form was not completed ... prior or following the interview... the offender provided Mr. Williams with information on risk factors; however, Mr. Williams did not recognize ... or explore [them] further. Despite significant file information pertaining to prior program participation, the interview did not discuss ...the offender's current ability in managing his risk factors. The index offence ... involved the abduction, rape, and murder of a [redacted] year old child was vaguely discussed during the interview, while, previous convictions for [break and enters] were discussed in length. Mr. Williams attempted to explore sexual overtones with the B&E offences, however his [questions] did not ... draw out this information. To his credit, Mr. Williams presented with a comfortable, calm demeanor with the offender ....*

*The written summary contained some cut and paste information from the Criminal Profile... The report did not summarize the crime process. Information ... from the interview was inaccurately reflected on ... the written summary... the offender stated that he did not do B&E's for money. The offender made reference to thrill seeking, and some sexual deviant behaviour during the B&E's. [However, the grievor wrote in his task report that the offender did B&Es for money.]*

[Task 6:] [The grievor submitted his written task within the required time; however, it did not contain accurate or relevant information.]

[Task 7:] [The session conducted by the grievor contained serious flaws. The lesson did not begin with an introduction, overview, objectives review, and a warm-up self-check in self-monitoring, which are mandatory requirements set out in the lesson plan. The grievor missed five pages of the lesson plan and moved sporadically around the rest of the plan. He used a fictional problem, which is not appropriate. The offenders were not able to internalize the material. Instead, the lesson plan called for the group to provide a real-life problem from their own experiences to be worked

on. The grievor repeatedly changed the facts of his fictional problem and refused to accept the responses from the offenders. Frustration built within the group and the grievor was given several cues by the mock participants to guide him, but he was unable to redirect the lesson. He blamed the participants for “throwing him off”.]

[Ms. Doherty provided an independent review of the grievor’s performance for this task:] *“... I would like to make note ... he got slightly flustered ... and stated twice to the group that we were making it hard for him and that we got him lost in the session. I don’t think this was the case at all, especially considering we tried to get him back on track a few times. Additionally, by saying this to a group, he externalized the blame for his lesson not going well, which is the exact opposite of what we teach in the group [to real offenders]. One of the core concepts taught in the program is that we can’t control what others do but we can control how we act (or react) to them...”*

*... he was able to understand the key concepts of the lesson; but he struggles with explaining them to the group.*

*Overall, Mr. Williams did not deliver the session as intended, failed to demonstrate an understanding of the program material, struggled with the group dynamic, and was unable to meet the session objectives....*

[Task 8:] [The grievor’s lesson plan was inadequate, and his notes from observing the facilitated session did not identify the required information.]

[Task 9:] *Mr. Williams met the timeframe requirement for this assignment. Mr. Williams identified 10 participants ... and 1 alternative for the program. He did not identify the ... 5 alternates ... Mr. Williams completed a program loading shadow file [which] contained some relevant information ... [for the 10 participants]. The files did not contain the interview booklets or adequately identify how the participants met the criteria as requested for this exercise. There are several errors with the offenders ... identified as his top priority... offenders identified for the program, would not have been available ... given long term segregation ... etc. [File information was available to reveal these facts.]*

[Despite clear direction to complete this task on his own merit, and that any assistance required was to be sought from his manager, the grievor asked co-workers several questions to help complete this task.]

[Task 10:] *Mr. Williams completed this assignment on time. Mr. Williams was able to correctly identify some of the ...*

referrals... While Mr. Williams made some correct recommendations he did not explain the nature of the referral or how the criteria were met... There were 5 referrals that were not completely identified....

### ***Punctuality and Tardiness***

Although Mr. Williams was late on a couple of occasions, he made good improvements in reporting to work on time. During this assessment period, Mr. Williams consistently arrived to work on time and completed his required check in as per his attendance monitoring plan.

### ***Conclusion***

Mr. Williams was required to complete specific measurable task assignments which related directly to the competency requirements of the Correctional Program Officer position. Mr. Williams completed the required measurable task assignments. In doing so he put forth good effort and maintained a positive attitude towards his work and manager. It is evident that Mr. Williams wants to be a Correctional Program Officer and believes he is capable of doing the job. However, Mr. Williams continues to struggle with completing the basic job requirements and fails to demonstrate an understanding of program materials and offender risk.

Some positive improvements were noted during this assessment period. For example, Mr. Williams made improvements in reporting to work on time. However, he continues to demonstrate a lack of a deeper comprehension of program material, offender behavior and risk, policy, and the program officer position. In completing the task assignments, Mr. Williams was unable to demonstrate the required skill and ability level in order to complete the job requirements.

Concerning is that despite the significant level of training, mentoring, and interventions provided to Mr. Williams in order to assist him in enhancing his understanding, skills, and abilities, over the course of a 17 month period, he has not been able to make any meaningful improvements. Further concerning is that Mr. Williams does not acknowledge the training and attempts made to assist him. During the review of his progress, Mr. Williams stated that he has not been provided an opportunity to do the job and to learn correctly. His inability to recognize his responsibility in addressing the concerns continues to impair his progress. When Mr. Williams is provided with feedback on his performance he does not appear to understand the extent or criticalness of the issues.

*... Mr. Williams did put forth significant efforts in completing his tasks. He appears to really want to do the job of a Correctional Program Officer, and appears to hold a strong belief that he is appropriately suited and capable of completing the job requirements. Yet, he has been unable to complete any requirements to date. It is not a question of motivation for Mr. Williams, but rather his performance is directly related to him not having the skills, abilities, and competencies to perform the job requirements to the minimum standards.*

### ***Recommendation***

*Given, the serious deficiencies and the role of the Correctional Program Officer position as it relates to public safety, Mr. Williams is not suitable to continue employment as a CPO. Further, his continued lack of understanding of policy, difficulties following direction, lack of appreciation for the environment and clientele, presents challenges for his continued employment with the service. It is therefore recommended that Mr. Williams be demoted/or terminated from the CSC.*

[Sic throughout]

[218] In addition to that memo, his co-facilitator and the management team also testified to his overall performance.

[219] Mr. Switzer testified that after 100 sessions in the high-intensity sex-offender program they co-facilitated, he saw no improvement in the grievor's performance in the classroom with offenders.

[220] In closing remarks summarizing her hours of testimony in examination-in-chief, Ms. Mater stated that in her career with the CSC, commencing in 2008, she has never before seen a CPO required to repeat the two-week training course.

[221] She also testified in her concluding remarks that after several months of directly supervising the grievor, she saw "minimal, if any improvement in his work", even after hours of mentoring from several staff members, his report writing course, and the assistance from the regional QR office and training experts. She added that she had never witnessed a new CPO struggle as much as he did to try to learn the job.

[222] The employer also called Mr. Thompson to testify about the grievor's performance. Mr. Thompson has 36.5 years of service with the CSC, and at the time of the hearing, he was the (acting) deputy commissioner, supervising all the wardens



in all institutions.

[223] Mr. Thompson was the warden of Mountain Institution during the grievor's time there. He testified that it was his decision to terminate the grievor's employment and that he did so after carefully reviewing what he said was the most comprehensive binder of documentation that he had ever seen in his career that had been assembled for an employee termination or disciplinary case.

[224] In both his examination-in-chief and his cross-examination, Mr. Thompson was asked to clarify the statutory authority he cited in his termination letter to the grievor dated October 14, 2011. The letter notes s. 12(1)(e) of the *Financial Administration Act* (R.S.C., 1985, c. F-11) as the authority for the grievor's termination. In his testimony, he denied that he changed the grounds upon which he decided to terminate the grievor and explained that the letter contained an error in that it should have cited s. 12(1)(d), which is termination for unsatisfactory performance.

[225] Mr. Thompson testified that the grievor's poor attendance and the incidents of his failures to respect professional boundaries were "minor" factors but that in his ultimate decision, he was primarily focused upon the grievor's poor work, which included the following:

- inadequate skills;
- not following the program curriculum;
- not following the manager's direction;
- becoming argumentative when being given direction and feedback by managers;
- not being able to improve work sufficiently to meet established standards; and
- not completing reports from courses.

[226] He described how three different program managers gave the grievor assistance and advice as to how he could improve his facilitation and report writing and that he was put through training again, all with very little improvement.

[227] Mr. Thompson testified that upon his review of the materials provided to him, he concluded that vast resources were being expended on assisting and managing the grievor and that the grievor's poor work was risking public safety due to his inability to deliver programs to national standards and to his inability to write a proper program report.

[228] Mr. Thompson concluded his testimony by testifying that he met with the grievor to inform him of the decision to terminate his employment. He stated that the grievor was argumentative and that the grievor stated that his work was in fact competent and that the employer had not given him any notice that his performance was unsatisfactory.

[229] I am satisfied, based on all the above-mentioned evidence, that the employer was reasonable in its conclusion that the grievor's facilitation and report writing were unsatisfactory and required improvement.

#### **4. The grievor's perspective on his alleged performance issues**

[230] As I have alluded to at several points in this decision, and as noted in the exit interview he had with the Warden, the grievor contested the employer's conclusion that he was not performing his duties to the standards required of him.

[231] I listened carefully to hours of testimony from the grievor and have reviewed line by line his evaluations and the several meetings with his managers, during which they provided feedback about what they viewed as his many performance deficiencies.

[232] In his hours of testimony, the grievor repeatedly expressed his feelings and personal opinion that the negative findings in his evaluations and feedback about his performance were unfair and inaccurate.

[233] The grievor testified that he was well suited to the CPO position as he had a deeply held genuine interest in helping people as evidenced by his past positions in a caring and counselling capacity in New York and by how he had approached his work in Vancouver, British Columbia.

[234] I accept the grievor's statements about his interest in helping people, as they were confirmed by several management team member witnesses as well as his written evaluations, all of which noted his empathy and his genuine care for people and noted

that he was deeply committed to trying to help all the inmates he came into contact with during his time as a CPO.

[235] However, as Mr. Switzer noted in his testimony, the grievor's empathy and the rapport he subsequently built in the classroom were only the first steps of helping the offenders.

[236] Mr. Switzer testified that if only empathy is shown, without following up by challenging harmful beliefs and harmful behaviour, the inmates will not change much. They will continue to self-justify risky behaviour that will lead to them to reoffend upon their release.

[237] To support his claims of competence, the grievor was able to point out in argument many comments he received in his evaluations and feedback, several of which have been noted, which credit him with possessing skills and in some cases showing improvement in his efforts.

[238] The grievor noted in argument on this point that his initial performance evaluation was very positive and that it stood in stark contrast to his later feedback. Commenting on the period of work that started with his commencement as a CPO on March 1, 2010, and that ran until October 31, 2010, Ms. Mater wrote the following:

...

*On his ICPM training no substantial concerns were raised and as with all participants general areas have been identified for improvement. It is noted that all participants in this training were very thoroughly assessed as such every candidate has areas to focus on and develop. John was required to attend a follow up session due to a day he missed related to family commitments.*

*John's easy going style and his positive attitude afforded him a smooth transition from security [CX-1] to interventions [CPO]. John is eager to learn and open to feedback that will assist him in his development.*

*John is currently co-facilitating the High Intensity ICPM Multi Target Sex Offender Program and the ICPM Sex Offender Maintenance Program. He has been paired with an experienced facilitator while he is learning the program and developing his facilitation skills. John was immediately comfortable in managing the group process. He adapted to a heavy workload preparing for his lessons and delivering*

*seven sessions of the main program and one session of the maintenance program per week. This is no small task for an experienced facilitator and could potentially overwhelm a new facilitator. However, John managed this schedule, in addition to learning the program material, with relative ease. He often prepared his lesson material on his own time.*

*An area of concern is John's attendance. He was placed on attendance awareness following numerous absences and late arrivals over a short period of time. His attendance was affected by daycare issues and other non-health related personal issues. This concern was raised with [the grievor] by A/MP Mason and it is fully anticipated that the leave management concerns will be a short term concern.*

*John has the potential to become a strong program facilitator. He consistently demonstrates respectful relations, professional boundaries, and a strong positive, enthusiastic outlook on his position.*

[239] The grievor cross-examined Ms. Mater on that performance evaluation, which she had signed. She agreed that it gave a “glowingly good” report of his work. She explained that his manager for most of that period was Ms. Mason, who had retired before the evaluation was written. Ms. Mater stated that she had been unable to speak with Ms. Mason to consult her about the evaluation.

[240] When asked about her apparent contradictory evidence of the grievor's good early performance but many problems later under her direct supervision, she replied that the evidence was not contradictory. Rather, she explained she had observed only two weeks of his earlier work when she signed the evaluation in question.

[241] In the evaluation of his work for the period ending March 12, 2011, Ms. Jolin noted several problems and found the grievor unsuitable to deliver the program. However, she also found that he managed his emotions well and took steps to model appropriate pro-social skills and attitudes. She also stated that he was very polite and respectful of the group participants and that he has a casual and non-judgemental approach, which put everyone at ease in his program.

[242] In an unsigned evaluation written by Ms. Doherty at the conclusion of the grievor's second two-week training program in May 2011, she found many deficiencies, as noted earlier; however, she also made several positive observations, including the following:

[He scored very high (11/12) in establishing a working alliance.]

*John, you were naturally polite and courteous throughout the training. During your presentations, you listened well, took direction from others, and acknowledged differing points of view. You also tried to ensure that each member of the group was respecting each other, by asking only one person to talk at a time and making sure everyone had equal opportunity to answer.*

*During the co-facilitated segment, that admittedly didn't go very well, you stood by your partner and accepted half of the responsibility for the session going sideways. Your co-facilitator admitted it was his idea to change the lesson and use the example he did, but you put on a united front, supported your co-facilitator and shared the critique. By managing your emotions, admitting your mistakes, listening to feedback and asking direct and clear questions, you effectively modelled the pro-social skills, values, beliefs and attitudes that are consistent with the principles of social learning.*

...

*At times, you used guided learning techniques quite well. As you became more comfortable with your practice sessions you began to ask clear, open-ended questions to the group, and drew from some of their previous examples to help guide them to the next learning point. You showed great potential in this area....*

...

*Discussions throughout the training and your analysis of various worksheets demonstrated you have an ability to identify thinking distortions....*

...

*As each presentation went by, you became more relaxed and confident when delivering. Your language was appropriate, you moved around the room, you called people by name, and your voice was clear....*

...

*You displayed your abilities to actively listen to the members in the group. You did this by paraphrasing their answers, rephrasing your questions whenever someone may not have understood and by drawing from previous examples in other segments... This showed that you were attentive to the group and as a result the group really opened up to you.*

...

*Throughout the training, you did well with linking the current material to past presented concepts....*

...

*Throughout the training, you improved upon your knowledge of the material and you demonstrated a theoretical understanding of the program, meaning that you do well when you are the participant and working in groups with your peers....*

...

*You established and maintained professional boundaries from the very start of the training. Your personal disclosures were appropriate and purposeful.*

...

*... you never seemed to get discouraged whenever someone provided you with constructive feedback... As a result of your openness and humility, you seemed to have earned the respect of your colleagues as well as the trainers.*

*... you present as an open-minded, humble and caring individual, who is open to learning new concepts. It is hoped that this training will assist you in gaining a deeper understanding of the program concepts as well as build upon your skills that are necessary for effective program delivery....*

[243] The grievor testified that at least part of his troubles with report writing arose from not having access to the network drive at the office that held all the templates he required for the different offender program reports.

[244] In response to some of the criticism from his supervisors about his failure to properly record the criminal process of an offender that led to the offender's index offence, the grievor stated that he was not sure what he had done so badly and that he felt that the criticism he received from Ms. Sullivan was false.

[245] During his cross-examination, the grievor made several bold, and in my opinion unfortunate, statements about co-workers lying about his poor attendance, and he made flat denials of ever receiving any help from Mr. Switzer.

[246] Yet the grievor made several admissions to the contrary in his cross-examination when confronted with specific dates and times of poor attendance and pieces of work for which the management team, and on at least one occasion Mr. Switzer, assisted him with training manuals and report editing and formatting.

[247] In fact, after a lengthy recitation of meetings, mentoring, training, and written feedback offering the grievor assistance to improve his work, he stated as follows: “It seems like a lot of meetings and papers, I don’t remember, this sounds like a lot of assistance, but I didn’t feel like I got help.” Minutes later, he stated again : “But they did not help me with how to do my job better.”

[248] The grievor repeatedly asserted that Ms. Jolin had reviewed the video recording of only one facilitation session before she wrote the evaluation recommending that he not be allowed to continue to deliver programs. Yet in cross-examination, he was presented with her evidence of reviewing video recordings of each of his eight classroom sessions.

[249] Given these examples of the grievor contradicting his own testimony and making erroneous claims, I prefer the evidence of the management team that documented well the many cases of it offering assistance, feedback, and mentoring to the grievor.

[250] When asked to respond to the employer’s allegation that he did not understand the implications of violent criminal harm to victims, the grievor replied that he did not agree. He added that while he did at times struggle with his work, he did not struggle with everything. He testified that his removal from facilitating programs had made him feel like he was working under duress, which had made him feel inadequate. He said that he wanted to keep working and to learn from his mistakes but that the removal caused him to fear for his job. He also stated that after taking the CPO training course a second time, he noticed that senior managers did not acknowledge him when they walked past him in the hallways at work and that he was left out of staff discussions.

[251] The grievor cited *Morissette v. Treasury Board (Department of Justice)*, 2006 PSLRB 10, as authority supporting his submissions on his competency not having been properly assessed, due in part to his interpersonal conflict with his supervisors.

[252] In *Morissette*, the employer alleged that the performance of the grievor in that case was consistently unacceptable during her 3.5 years with it. However, during that time, she was transitioned from a casual to a one-year term employee, was then offered an indeterminate position on probation, and finally, was advanced from her probationary period to a fully indeterminate position. The adjudicator stated that he found that it “boggle[d] the mind” how the employer could offer the grievor full indeterminate employment then allege that she had been incompetent through most of her employment (see paragraph 115).

[253] In the matter before me, the grievor made the same submission; namely, how could the employer twice deem him capable to deliver programs after taking his CPO training course and then allege that his performance had been unsatisfactory throughout his time at Mountain Institution?

[254] It is important to note that the grievor in *Morissette* was found to “... not seem to appreciate the level of incompetence she routinely displayed ...” while working at the Department of Justice (see paragraph 119). Ultimately, despite being found incompetent, Ms. Morissette’s grievance was allowed because her employer did not provide her notice that her performance problems had put her at risk of termination. The grievor in the matter before me could not claim a similar absence of notice.

[255] While I understand the grievor’s consternation as he was twice approved to deliver programs after his training, I do not accept his submission that that approval necessarily meant that he was able to competently perform his duties.

[256] In what I view as optimism on the part of the management team, the grievor was approved to return to the classroom after his second CPO training despite having shown months of significant problems, as documented earlier.

[257] While I have noted the many positive comments documented in the evaluation of his second CPO training course, the evaluation also makes several quite disconcerting conclusions, including the following:

[Program delivery score of 13/21.]

...

*You had difficulty adhering to the lesson plan and sometimes skipped key points ....*



...

*... you had difficulty guiding the [group] to the linkages and sometimes missed key questions ....*

...

*... You struggled with providing constructive feedback to them and you often admitted that you didn't see much that needed improvement....*

...

*Discussions throughout the training and your analysis of various worksheets demonstrated you have an ability to identify thinking distortions... However, when delivering your segments you struggled more significantly in this area. This most likely has to do with you being uncertain about the direction of the material and not having a strong grasp on the program concepts....*

...

*... you did not always seem mentally prepared to deliver the session....*

...

*You often ran out of time before getting to all the key learning points in the segments you delivered....*

...

*... you attended all 10 days of the training... However, you struggled with being on time each day, either being a few minutes late in the morning or when returning from breaks or lunch ... you were apologetic about your tardiness ... But often the opening segment in the morning, or the transition after lunch is usually when a re-cap [sic] is provided. This may have been beneficial for you in order to assist in tying information together....*

...

[258] I note that the main elements of those critical comments are consistent with the main problems documented earlier that arose from the grievor's efforts to deliver his programs and write reports; namely, he seemed unprepared to deliver the classes due to his inability to master the lessons he read from his binder notes, and he missed critical input from inmates. Either due to missing that critical input or to not recognizing it as such, the inmates' errant thoughts went unchallenged, which meant

that by implication, they were reinforced as acceptable, thus delaying any progress in teaching them acceptable pro-social skills.

[259] The grievor's own assessment of his competency and adequacy as a CPO were not supported by the evidence of his written work or recorded facilitation.

[260] As at paragraph 119 of *Morissette*, I find that the grievor does not seem to appreciate the level of incompetence he routinely displayed while at work.

[261] Also as in *Morissette*, I do not understand how the employer was able to testify for days as to the grievor's incompetence, and yet approve him to deliver programs again after his second attempt at CPO training.

[262] However, given the overwhelming evidence I have documented of the grievor's incompetence, I find that the employer's decision to twice approve him to deliver programs speaks to optimism on the part of management that was based upon a noble but futile attempt to help the grievor. However, it is not evidence that the employer was unreasonable in ultimately deciding that his work was unsatisfactory.

[263] Having carefully considered all the testimony and the hundreds of pages of documentary evidence presented as exhibits, I have clear and compelling evidence that the grievor failed to conduct his program group facilitation and failed to write reports to the standards communicated to and required of him. Given this finding, I conclude that the employer was reasonable in determining that the grievor's work was unsatisfactory. In fact, given the testimony as to the almost unprecedented effort of the employer to assist the grievor and his many profound shortcomings that the employer described as risking public safety, I would have been convinced of the grievor's work being proven to be unsatisfactory without his being asked to perform a second two week training course.

**E. Was the employer's assessment of the grievor's performance tainted by bad faith?**

[264] In addition to arguing that he was competent, the grievor also argued that the employer's concerns with his work arose after Ms. Mater arrived as his direct supervisor and after Ms. Sullivan's arrival later on.

[265] The grievor pointed to his very positive first evaluation for the period during which Ms. Mason primarily supervised his work just before she retired (April to August

2010) and to the many positive comments about this performance that were later provided by Ms. Jolin and Ms. Doherty. The grievor submitted that when he was given a fair chance by management team members who were not in conflict with him, he succeeded at his work.

[266] The grievor submits that bad faith arose in the employer's assessment of his performance due to his alleged conflict with Ms. Mater and Ms. Sullivan.

[267] The grievor pointed to the daily chronology of notes that Ms. Mater kept that documented her interactions with him and with others in the management team about his work. They were not part of the employer's personnel file for the grievor. He argued that the notes' negative tone belies Ms. Mater's true intent throughout the period he was under her supervision, which was to have him fail and to prepare the foundation to terminate his employment.

[268] In stark contrast to the very positive feedback documented earlier, especially with respect to the good character he exhibited at work, the grievor pointed to documents the employer prepared to consider whether another position could be found for him rather than terminating his employment.

[269] The documents in question are the statements of merit criteria and conditions of employment for three other positions available within the CSC. The grievor pointed to the following very harshly worded comments that reflected upon his character as evidence of the bad faith the employer showed towards him:

...

*Passive aggressive behaviours towards Manager*

...

*Been dishonest [sic], claims discrimination, does not acknowledge responsibility in performance, disregard for direction and policy*

...

*displayed hostile behaviour when assistance given*

...

*not honest, denial of concerns, blames others*

...

[270] The grievor noted how these comments are in stark contrast to some of the very positive comments about his character in the noted evaluations, including comments from Ms. Doherty and Ms. Jolin stating that the grievor was very polite, respectful of others, willing to work to improve his skills, and open to feedback from instructors. Ms. Mater also wrote in his initial evaluation that he "... has the potential to become a strong program facilitator. He consistently demonstrates respectful relations, professional boundaries, and a strong positive, enthusiastic outlook on his position."

[271] The grievor also testified on several points of interaction with his managers that he felt amounted to harassment. In cross-examination, he confirmed that he never made a harassment complaint against anyone at his workplace. However, in testifying about his interactions with the management team, he stated that he felt that the required daily attendance emails, the retraining, being told repeatedly that his work hours were 8:00 a.m. to 4:00 p.m., the measurable outcomes exercise, and the mock facilitation all harassed him.

[272] In his examination-in-chief, the grievor pointed to examples of management team correspondence that in his opinion mocked and insulted him. The first example is an email exchange on March 19, 2012, seeking the clarification of an erroneous computer record that was identified by a member of the management team as having been created by "John Williams !!! ☺", to which Ms. Schierer replied, "OK, enough said".

[273] Another email dated March 1, 2011, with a long distribution list, was circulated to invite staff members to a lunch. A co-worker replied to all, stating that she would bring buns and pickles because she did not think most people liked her cooking. The grievor replied to all, stating the following: "That's funny...☺! I don't have childcare that day so I'm with my son all day; darn, when will I ever have a chance to have lunch with Brenda M. again? I'm missing the chance of a Lifetime. ☺ I'm not impressed one bit... [sic]". On Sunday, March 13, someone on the distribution list forwarded the grievor's email to the management team. At 11:36 a.m. that day, Ms. Miller emailed Ms. Mater and Ms. Schierer, stating the following: "Is he trying to be funny? This is wide distribution. Not sure I ever had lunch with him. Not impressed with this at any rate. What do you think?"

[274] On March 21, 2011, the grievor forwarded an electronic file with a photo and particulars of an inmate being transferred into Mountain Institution to his co-facilitator Mr. Switzer and copied nine other co-workers. The email appears to be an attempt to make a joke about how the new inmate and Mr. Switzer have a similar haircut, as follows: “Alex, I had no idea that your younger sibling... was coming to Mountain. The hair cut [sic] sure runs in the family, you should be proud Lol [sic]... maybe one of us will get him to our program.”

[275] On March 22, 2011, the grievor invited as follows a long list of 53 co-workers to a charity event to support a former staff person at the institution who was raising money for MS research:

*“Hope for the Cure” Fundraiser Friday March 25, 2011*

*Hello my fellow co-workers,*

*I have just received some tickets for my friend[’s]... fundraiser for MS. Some people already know [her] as she used to work in the Health care dept. a couple of years back, and she was the Honouree at the Hockey classic between Kent and Mountain.*

*There will be an event at [redacted]. The phone number is [redacted]. Tickets are \$10.00 which includes a Steak sandwich dinner, and we are responsible for our beverages. The time is 6 p.m. to 9 p.m. on this Friday, March 25, 2011.*

*If there is anyone who would like to go I have ten tickets on me right now. I can get more if they are needed, so please let me know if you want to go. I’m sorry if I’ve missed anyone, it’s hard to remember so many names off the top of my head.*

*Cheers,*

*John E. Williams*

...

[276] The grievor forwarded it to another long list of addressees, including several corporate office groups, stating as follows: “Sorry if you’ve already received this invitation, but I needed to know that I’m including everyone.”

[277] Unfortunately for the grievor, his email was again forwarded to the attention of Assistant Warden Miller, who found time late in the evening on March 23, 2011,

at 11:12 p.m., to email Ms. Mater and Ms. Schierer to ask them if someone could "... please ensure John is aware of the CD on use of Corporate Computer Systems."

[278] The management team testified that the emails were simply its genuine efforts to manage the grievor and to point out his breach of information technology policy. The grievor argued that those emails show evidence of the management team being disrespectful of and mocking him, thus showing bad faith towards him.

[279] The grievor cross-examined Ms. Schierer about a phone call that she made to one of his former employers in Albany, New York, where he had worked as a counsellor in a care centre for youth. She testified that she wanted to inquire about the kind of care, specifically the psychological theory or method (social cognitive, humanistic, or psychodynamic, for example) upon which the centre conducted its programs. She said that she had asked the grievor about it in a meeting and that he had given her a vague answer. She also admitted that it was exceptional for the CSC to make such a phone call to a previous employer and that she had never done so before.

[280] Ms. Schierer testified that in her view, the person with whom she spoke at the Albany treatment centre sounded very informal, gave vague answers to her questions, and could state only that the theory underlying their treatment methods were "the same" as those the CSC used. She added that the brief call essentially confirmed only what was written in the grievor's resume, as the person in Albany was not willing to provide any further information.

[281] Her written notes from this call confirm the concerns I have noted and also question the grievor's stated military service as follows: "Note - resume states 'Four years experience in the United States Marine Corps and discharge with rank of Lance Corporal'. When?? Times not provided resume does not appear to accommodate for these 4 years" *[sic throughout]*.

[282] Ms. Schierer was slow and at some points evasive in her cross-examination on this matter and finally admitted the obvious, which was that she was suspicious of the person whom she called and of the accuracy of the grievor's claims in his resume.

[283] During her cross-examination on this matter, she admitted that she did not trust the grievor to perform the job required of him. However, she added that she “would trust him without doubt, if [she] was attacked by an offender that [the grievor] would help [her].”

[284] Ms. Schierer concluded by stating that when she took her concerns about the outcome of the call to her superior, Ms. Miller told her that suspicion about the integrity of the grievor’s resume was not the purpose of the call and that Ms. Schierer should focus on helping the grievor improve his work.

[285] The grievor submitted that the sheer hostility in the tone of this call and notes from Ms. Schierer were evidence of her bad faith towards him.

[286] The grievor drew attention to the fact that he was given a memo dated July 14, 2011, in which his supervisor, Ms. Sullivan, put him on notice that his ongoing poor performance was extremely serious and that if it did not improve by August 29 to the point of being able to meet the requirements of his position, he might be demoted or terminated from his position. It also notified him that he “... will be provided with an opportunity to demonstrate improved performance through specific measurable tasks ...” to be administered by the management team.

[287] Those 10 measurable tasks were noted earlier. The grievor testified that he felt very strongly that his measurable task assignments were set up for him to fail by purposely making him look bad.

[288] He specifically referred to the mock facilitation session and gave detailed testimony about it. He explained that he prepared his lesson materials at great length the evening before, which were to be presented. However, upon his arrival at the classroom, his co-facilitator told him that he intended to make some changes to the plan, which left no time for the grievor to adjust his parts of the lesson accordingly.

[289] The management team members who were in the classroom had already testified at the hearing and had described the mock facilitation as having been completely within the range of normal conditions posed by offenders.

[290] However, the grievor testified that he was quickly made very uneasy by the role playing, in which his superiors were very profane and verbally aggressive towards him.

In fact, he testified that the managers who acted as inmates in the mock-up were far  
*Federal Public Sector Labour Relations and Employment Board Act and*  
*Federal Public Sector Labour Relations Act*

more aggressive than any real inmate he had ever faced in the classroom had been. He described how emotionally disturbing it was for him to have his supervisor face-to-face with him being upset and profane, how unprofessional he felt it was, and how he tried to withdraw as a result. He also explained that it was especially difficult for him as he felt that his supervisor, Ms. Sullivan, had been very unhappy with him at work for some time, so it was particularly difficult to have her in close proximity at the mock session yelling profanities at him.

[291] The grievor also pointed to a 14-page memo dated July 18, 2011, and signed by Ms. Sullivan that was adduced as an exhibit at the hearing. She outlined the many deficiencies in his work as well as the many training and mentoring interventions that had occurred. It concluded by recommending the termination of his employment.

[292] The memo begins by stating as an introduction that it will provide an analysis of problematic behaviour and performance issues displayed by the grievor since his employment as a CPO commenced in March 2010. Much of what has been documented earlier in this decision is detailed in the memo.

[293] The memo also repeats the allegations noted earlier of Ms. Schierer calling the grievor's former employer in New York and suggesting that neither his resume nor his former manager in New York provided an honest account of his training and experience. It also repeats the allegation of his military service being false or exaggerated.

[294] The memo concludes by stating that the grievor "... has made no improvements in his skill or ability level." It adds that if he continued to deliver programs, it would be a disservice to all involved, including the offenders and the public, and it would potentially place staff members, inmates, and the public at risk. She then recommends terminating the grievor's employment with the CSC.

[295] He replied to the memo by essentially pointing out that his supervisor's mind appeared to have been made up and that the termination of his employment had been a *fait accompli* even before he had performed his measurable tasks, which were supposed to be his last chance to demonstrate his competency.

[296] Ms. Doherty emphasized again in her cross-examination that the grievor showed some improvement in his facilitation during the retraining but that he was not able



to capitalize on any of this progress when he returned to his classroom and to report writing. When challenged as to why she thought so, she explained that he had only a superficial level of understanding of the program and that she did not know what more could have been done to help him improve. She admitted that she was unaware that he had been on sick leave due to stress before his final mock facilitation. However, she denied that the grievor had been set up to fail it.

[297] She further explained that mock sessions are regularly used to assess facilitators' skills and that she is personally involved in them to ensure that they are neither too aggressive nor too lenient. She explained that in real sessions, inmates can become agitated and profane and that in her opinion, the session with the grievor was not "over the top" in how the managers portrayed inmates. She also stated that the trainee's superiors and direct supervisor had also participated in other mock sessions, as was the case with the grievor.

[298] I think that the grievor was entirely justified in questioning the appropriateness of his supervisor writing a memo recommending that he be terminated immediately after she told him that he would have one last chance to prove himself capable. It shows extremely poor judgement, and it was wrong for Ms. Sullivan to pursue this course of events in the manner she did.

[299] The timing of her memo recommending the termination shows that her mind was already made up as to the grievor's performance in the measurable tasks. Her memo is factually in error as she states that there was no improvement in the grievor's skill or ability level. I have noted several points of evidence that clearly state that he showed some improvement during his training.

[300] It was similarly wrong for Ms. Schierer to draw the conclusions she did after her call to New York to the extent of even questioning the grievor's military service. The evidence before me at the hearing neither confirmed nor denied what the grievor's resume states about his military service. However, including her suspicions about it in her memo and then in the memo recommending the grievor's termination was an error in judgement as it was based on nothing more than a gossipy hunch on her part.

[301] When considering these matters related to the grievor's allegation of bad faith, both parties cited *Raymond*. In addition to the criteria that it outlines, it also specifically refers to what will render unreasonable an employer's assessment

of a grievor's performance. *Raymond* notes that a decision made in bad faith or one that is arbitrary or discriminatory cannot be reasonable (see paragraph 129). It also notes that if an assessment of an employee's performance was made in bad faith, it cannot be reasonable (see paragraph 131). And finally, it notes that the assessment does not have to be perfect or ideal to be found reasonable (see paragraphs 140 and 141).

[302] The grievor relied upon those findings in *Raymond* to argue that the very negative tone of the management emails, Ms. Mater's personal file, the unfair conclusions from the call to New York, and the fact that Ms. Sullivan made up her mind in advance about the outcome of his 10 measurable tasks all point to bad faith and to the assessment of his performance being invariably biased against him.

[303] The employer replied by pointing out the hours of testimony and hundreds of pages of evidence that it argued provided objective proof of the grievor's many problems and that even the members of the management team with whom the grievor claimed to work well, namely, Ms. Jolin and Ms. Doherty, also provided very clear evidence as to his incompetence in addition to the positive and flattering feedback they gave him.

[304] The employer cited the decision of Adjudicator Katkin in *Kalonji v. Deputy Head (Immigration and Refugee Board of Canada)*, 2016 PSLREB 31, as an example of a recent Board case in which a grievor had claimed to have been treated badly and treated differentially in how management applied rules and discipline. Despite this, the adjudicator noted his duty to focus his review upon the reasonableness of the employer's assessment in addition to the other criteria cited earlier from *Raymond*.

[305] In the present case, I find clear and compelling evidence of the grievor's inability to perform his duties to proper standards that is not tainted by what I have found were errors in judgement in part of the outcome of the call to New York and the untimely memo recommending the termination of the grievor's employment. As I cited earlier from *Raymond*, I am not required to find the employer used a perfect or ideal assessment method for the grievor.

[306] In arriving at this conclusion, I wish to emphasize the fact that Parliament has directed my review of these matters and the consideration of whether bad faith existed to be strictly limited to the assessment of the grievor's performance and not to his

relationships with his supervisors. As I found in my recent decision, *Grant v. Deputy Head (Correctional Service of Canada)*, 2017 PSLREB 59 at paras. 108 and 109:

*[108] What Parliament has directed me to do in s. 230 is to explore whether the employer's assessment of the grievor's performance as unsatisfactory was reasonable. It strikes me that many grievors will have experienced bad feelings in their relationship with those supervisors who struggle day to day with the difficulties being experienced by their staff who feel challenged to meet performance standards. I read s. 230 as being an acknowledgement by Parliament that such difficulties and even hard feelings may arise but that the assessment of performance must be looked at separately and on its own merits.*

*[109] Bad faith, if it is proven to have tainted the assessment of performance, can lead to a finding of unreasonableness under s. 230. I accept that for a grievor who has experienced many difficult experiences with a manager, this separation may be difficult, if not impossible for him or her to make.*

[307] While counsel for the grievor argued that I cannot separate the mistakes and what in his submission amounted to bad faith from the employer's assessment of the grievor's performance, that is indeed my duty, and the evidence as outlined allows me to make this determination.

[308] For all of the above reasons, the Board makes the following orders:

*(The Order appears on the next page)*

**V. Order**

[309] Both grievances are dismissed.

[310] I received a request on consent of both parties to issue a sealing order for Exhibits E-14, E-23, E-44, and E-52.

[311] Each exhibit contains highly detailed information from inmate and corrections files, including inmates' names and other identifying information. Given that this is personal information of third parties, I order those exhibits sealed.

November 16, 2017.

**Bryan R. Gray,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**