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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

BETWEEN

TEJINDER BRAICH

Grievor

and

DEPUTY HEAD (Correctional Service of Canada)

Employer

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

In the matter of an individual grievance referred to adjudication

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

For the Grievor: Jacob Axelrod and Patrick Nugent, counsel

For the Employer: Jenna-Dawn Shervill, counsel

Heard at Calgary, Alberta,
October 11 to 14, 2016, and March 21 to 23, 2017.

I. Summary

[1] Tejinder Braich ("the grievor") had worked for nearly 1.5 years as a correctional officer ("CX"; classified CX-1) for the Correctional Service of Canada ("the employer" or CSC) at Bowden Institution ("the institution"), situated north of Calgary, Alberta, when his employment was terminated. The employer learned that police in his hometown of Abbottsford, British Columbia, had discovered him with associates of criminal gangs in a bar that those gangs frequented.

[2] When approached by the police in the bar and asked to identify himself, the grievor showed his CSC badge. When the police told the gang members seated with the grievor that they were required to vacate the premises, the police reported that despite telling the grievor that he was free to remain, he left with them, in the same taxi.

[3] Approximately four months later, after a recreational golf tournament for institution staff, the grievor attended a late-evening social gathering at a co-worker's apartment. He was observed there with clumps of white powder in one nostril, which the employer determined was cocaine.

[4] The employer considered this conduct unacceptable. After an investigation, it determined that its bond of trust with the grievor had been irreparably harmed, so it terminated his employment.

[5] On January 12, 2015, the grievor referred two grievances to adjudication pursuant to s. 209(1)(b) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2). The first arose from his suspension and was withdrawn at the hearing. This grievance resulted from the termination as the grievor denied ever using illegal narcotics.

[6] He explained that he displayed his badge inadvertently when the police asked him to show his identification and that he had only a very brief conversation with two childhood school friends who had beckoned to him when he entered the Abbotsford bar.

[7] In considering this grievance, I must determine, as matters of fact, whether the grievor misused his badge, whether he was associating with known criminal gang members, and finally, whether he used an illegal narcotic (cocaine) at a social gathering with his co-workers. Then, by applying these findings of fact to the applicable law,

I must determine if he deserved some form of discipline and if so, whether termination was appropriate, given all the relevant circumstances.

[8] After listening carefully to all the testimony and after reviewing all the documentary evidence and jurisprudence the parties offered to me at the hearing, I find that the grievor's actions merited discipline and that the employer's decision to terminate his employment was reasonable. I dismiss the grievance.

[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 titles of the *Public Service Labour Relations and Employment Board Act* and the *Public Service Labour Relations Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act*.

II. Background

[10] The employer called David Pelham to testify as to the details of his decision to terminate the grievor's employment. He was the warden at the institution, had been for 6 years, and has 35 years of service in his career with the CSC. He testified that before this matter arose, he had not had any interactions with or issues involving the grievor other than the usual brief welcome to new staff who commence employment at the institution.

[11] When he spoke of the importance of the role of CXs at the institution, Mr. Pelham testified that it is critical as they are the front line of safety and security for all staff and inmates there. He testified that he "relies upon CXs intensely".

[12] Mr. Pelham testified that he had been absent on leave from June to September 2014, and that he returned to work to find the grievor already on suspension. Mr. Pelham then looked into the findings of the administrative investigation into the reported incidents, which shall be examined in detail later in this decision. He assessed the findings and made the decision to terminate the grievor's employment. He testified that he accepted the findings, the specifics of which included:

- the use of cocaine while off duty;

- continued criminal organization associations; and
- the use of a CSC badge for non-official purposes.

[13] Mr. Pelham explained that these three findings violated the CSC's "Code of Discipline", specifically:

- they were likely to discredit the CSC and showed no respect for the law (section 8(c) of that code);
- they violated employer trust (section 6(g)); and
- they demonstrated a failure to comply with a legislative directive and with public service values (sections 3.1 and 3.4 of the *Values and Ethics Code for the Public Sector*, which state that actions are to be held to the highest standard of public scrutiny and that the highest standards of employer and public trust must be maintained).

[14] In summary, Mr. Pelham stated that the grievor was aware of that code and the requirement that he comply with it. In Mr. Pelham's view, each incident was proven on a balance of probabilities, which led him to believe that it was necessary to terminate the grievor's employment because he had broken the bond of trust required of all CXs.

III. Issues

A. Were there valid grounds to discipline the grievor?

[15] The Board frequently cites the decision in *Wm. Scott & Company Ltd. v. Canadian Food and Allied Workers Union, Local P-162*, [1976] B.C.L.R.B.D. No. 98 (QL)("*Scott*"), as authority for determining whether there was just and reasonable cause for a termination. *Scott* finds that for a dismissal for cause to be considered just, firstly, the employer must consider whether the employee has given it just and reasonable cause for some form of discipline. Secondly, it must be determined whether the decision to dismiss the employee was an excessive response in all the circumstances. And thirdly, if the adjudicator considers that the dismissal was excessive, then he or she must determine the measures that should be substituted as just and equitable (see *Scott*, at para. 13).

[16] For the first two elements, *Scott* considers the seriousness of the offence, whether it was premeditated or spontaneous, whether the employee had a long-standing and good record of service, whether progressive discipline was attempted, and finally, whether the discharge was consistent with the employer's established policies or whether the employee was singled out for harsh treatment (see paragraph 14).

1. Did the grievor misuse his CSC badge?

[17] The employer alleges that the grievor misused his CSC badge by showing it when he was asked to identify himself by Constable Jamie Ramsden of the Abbottsford Police at Lou's Bar and Grill ("Lou's Bar"). Specifically, the grievor's termination letter states that he breached the CSC's code of discipline three different times, including by using government property (his CSC badge) for non-official purposes when he showed it to a police officer on the evening of February 12, 2014.

[18] In describing this event in his examination-in-chief, the grievor testified that the police officer "could see [his] badge" as he described that he opened his wallet to find his identification. He explained that he had a wallet from the CSC that has a transparent inside cover that displays the CSC badge when the wallet is opened. He testified that he was aware that his badge was visible when he opened his wallet to retrieve his identification as requested by the police. The grievor also stated that he told the officer that he was a CX because he knew that Cst. Ramsden saw his CSC badge as he opened his wallet to retrieve his identification.

[19] The grievor explained that he carries his badge with him at all times due to the risk of it being stolen. He testified that within his first few weeks of work as a CX that his wallet containing his CSC badge was stolen from his car. He stated that the theft and loss of his badge was reported both to the police and to the CSC. He said that after that, he always kept his badge on his person, to not risk another theft.

[20] The grievor called his bargaining agent representative, Kelly Lorencz, as a witness to testify about the wallets often used by CXs that have a dedicated space to hold and show the badge. Mr. Lorencz had been present through the hearing of all the testimony in the employer's evidence. The employer's counsel objected to Mr. Lorencz testifying on the grounds that his evidence was tainted as he had already heard other testimony on the same matter. I allowed Mr. Lorencz to testify but reserved my

decision on what if any weight I would place upon it.

[21] Mr. Lorencz testified that he personally uses the same wallet as the grievor does, and in his opinion, so do most CXs. It has a dedicated and transparent space in which to hold and display the CX's badge. He produced his wallet from his pocket while in the witness stand and showed how when it is opened, the badge is contained within the inside fold and is visible depending upon how the wallet is being held and the observer's viewing angle.

[22] Having considered his statements, I place no weight upon them as he had no personal knowledge of the actual wallet used by the grievor on the evening in question. I further find his opinion as to which wallet is most often used by CXs purely anecdotal and therefore not necessarily reliable.

[23] The employer called Cst. Ramsden, who is a six-year veteran of the Abbotsford Police, to testify about his chance meeting with the grievor in Abbotsford on February 12, 2014. He explained that Abbotsford has criminal gang problems and that to enhance public safety, the police regularly visit bars and restaurants to identify patrons. The police require known gang members to vacate the establishments, to avoid violent crime from occurring.

[24] Cst. Ramsden further explained that many establishments voluntarily participate in the "Bar Watch" program, which invites police to conduct regular patrols. He added that police officers also consider themselves to have authority under a city by-law to enter and inspect a bar or restaurant that might not voluntarily participate in Bar Watch and to eject any known gang members.

[25] Cst. Ramsden testified that while he was on regular patrol on the evening in question, he visited Lou's Bar because it is frequented by gang members. He added that it had declined an invitation to join Bar Watch.

[26] Cst. Ramsden testified that upon entering, he recognized two men, Peter (Preet) Mahil and Russell Mayhew, both of whom he knew to be convicted criminals involved with gangs active in drug trafficking. He added that he had personally arrested Mayhew two years earlier and that Mayhew had a long list of convictions for drug trafficking and other offences, including some involving weapons and violence.

[27] Cst. Ramsden stated that Mayhew is considered so dangerous that search warrants had recently been executed at his residence and that the police emergency response team was assigned the task as Mayhew was considered to pose a risk of violence towards the police.

[28] Adding emphasis to the notoriety of the grievor's friends and the consternation this caused his managers was a confidential CSC security intelligence briefing that was adduced as evidence at the hearing. It states that all three of the gang members found seated with the grievor at Lou's Bar have connections to one of the gangs in the Vancouver and Lower Mainland area that at that time was involved in an extremely violent gang war, which had resulted in several very public execution-style killings, some of which took place at bars, restaurants, and cafes. The briefing also noted the fact that one of the criminal gangs involved in this violent conflict had cultivated connections with inmates in federal institutions.

[29] Cst. Ramsden said that he would see Mahil in a bar on a weekly basis and would require him to leave the premises, so he explained that his initial discussion with Mahil had a rather friendly tone, due to their familiarity. Cst. Ramsden said he first asked Mahil for identification, then Mayhew, and then a third man, who was identified as Granger and who had entries in the police information database as being associated with a gang member.

[30] And finally, Cst. Ramsden addressed the fourth man, who he said was seated at the same table as the other three. This fourth man was identified as the grievor. Cst. Ramsden testified that when he asked the grievor to show identification, the grievor rose from his seat at the table with the other men, reached into his pocket, and produced his wallet, after which, in the Constable's words, he then "in a very deliberate act showed me his badge and told me he was a corrections officer." In his cross-examination, Cst. Ramsden confirmed that the grievor had to have known that the Constable saw his badge, since in the Constable's words, "He showed it to me."

[31] Cst. Ramsden was asked in cross-examination to explain the discrepancy in his testimony compared to his notes taken on the night of the incident that were adduced as an exhibit. The discrepancy was whether his bar visit was part of the voluntary Bar Watch program or whether it was done pursuant to civic by-law authority. His notes indicated that the criminals seated with the grievor were ejected from the bar under

the Bar Watch program, while he testified that in fact, the ejections were done under civic by-law authority.

[32] Having been asked about this discrepancy in his notes, Cst. Ramsden was then asked, "So, mistakes do happen?", to which he replied, "Yes."

[33] Based upon the testimony of Cst. Ramsden, who had no doubt whatsoever that the grievor purposely showed his CSC badge, on a balance of probabilities, I find that it was reasonable for the employer to conclude that the grievor did use his badge for non-official purposes at the bar on the evening in question.

[34] The discrepancy about Bar Watch or the city by-law authority to patrol the bar, as listed in the Constable's notes, has no probative value as that issue does not in any way raise doubt as to his ability to make clear observations or about his memory as to how the grievor showed his badge.

2. Did the grievor continue criminal organization associations during his employment with the CSC?

[35] The second allegation cited by the employer in the decision to terminate the grievor's employment was that the grievor "… continued [his] criminal organization associations while under the employ of the CSC …"

[36] Specifically, the employer relied upon the events surrounding the February 12, 2014, event in which the grievor was discovered in the company of criminals with known gang associations as well as comments he made to co-workers.

[37] The grievor testified that he was born and raised in Abbotsford, that he attended school there, and that after graduation, he ran a security and investigations business. He stated that he had many friends and family there. In his words, "Everyone knew each other." He testified that on the evening of February 12, 2014, he and his brother arrived at Lou's Bar to have dinner and drinks with a group of friends that his brother thought might be there.

[38] The grievor described how he and his brother arrived at the bar and entered through a side door on the patio. He said he heard someone call his name. He looked around and recognized that the person beckoning him was Russell Mayhew. The grievor said he shook Mayhew's hand and told him that he thought he was in custody, to which Mayhew replied that he had just been released from Surrey, pre-trial.

The grievor testified that he then told Mayhew he was a CX, immediately after which the police arrived at the table and the conversation ended.

[39] The grievor testified that he knew Mayhew because they had gone to school together and had graduated in 2001. In addition, Mayhew's father had a waste business, which had worked with the business of the grievor's father around the time of their high school graduation. The grievor stated that he had no relationship with Mayhew at the time of their February 2014 conversation at Lou's Bar.

[40] The grievor testified that after he exchanged greetings with Mayhew, his brother left the group and went to the bathroom. He further stated that he then conversed for two or three minutes with Mahil, who was with Mayhew.

[41] The grievor testified in cross-examination that he did not sit down while speaking with these men. However, this directly contradicts his recorded statement to the Board of Investigation (BOI), in which he confirmed three times that he did in fact sit at the table to speak with his friends (Exhibit E-8, an audio recording, at 13 minutes and 22 seconds, again at 14 minutes, and finally at 14 minutes and 10 seconds).

[42] The grievor also testified to a somewhat different version of events and said that Mahew told him that he had just been released from custody and that he asked the grievor if he would help him break free from his life of crime. The grievor testified that the men agreed to get together to talk sometime later, at which point the police arrived and interrupted the conversation.

[43] The grievor stated that he had a brief discussion with the police officer and that he identified himself as a CX and explained to the police that he had just happened to see some long-time friends at the bar. He further explained that Mayhew had asked him for help to go straight and break free from his life of crime.

[44] The grievor then testified that the police told everyone in the group that they had to leave the bar and then escorted them out. This statement drew an objection from the employer's counsel based upon the rule of evidence recognized in *Browne v. Dunn* (1893), 6 R. 67, H.L., which directs counsel to disclose and then cross-examine a witness on testimony that counsel expects will later be contradicted by a witness counsel intends to call at the hearing.

[45] In this instance, the hearing had already heard Cst. Ramsden testify very clearly that he took the grievor aside from the group and that among other things, told him that the gang members he was seated with would be ejected from the bar but that he was not required to leave.

[46] In his reply to the objection, counsel for the grievor stated that he had not expected to hear the grievor make the claim that the police had asked him to leave, so he could not have put it to Cst. Ramsden in cross-examination.

[47] Given the importance of the grievor's claim that the police told him that he was required to leave the premises immediately and since it directly contradicts Cst. Ramsden's testimony, I place very little weight on the grievor's testimony of how he left the bar. He should have informed his counsel of it, and his counsel should have put this testimony to Cst. Ramsden for the hearing to have had the benefit of the contradictory testimony being tested in Cst. Ramsden's cross-examination.

[48] The grievor then testified that he left the bar without his brother as the police escorted the group out and formed a line behind them blocking the path back in. The grievor stated that he then hailed a taxi, entered the front seat, and asked the driver to take him home.

[49] The grievor testified that he then noticed that the other guys he had been with in the bar had jumped into the back seat of the cab to join him. He stated that he was not sure who got into the back but that the "other guys" got out at another establishment maybe 1 or 1.5 km away, after which the grievor then continued alone in the taxi to his parents' home.

[50] When asked in his examination-in-chief why he had let the other guys get into his cab, the grievor replied that they had all been escorted out of the bar together and that he had thought nothing of them sharing a cab.

[51] In cross-examination, the grievor was confronted with his recorded statement given to the employer's BOI, in which he said that he left the bar with his brother and that they shared a cab, that his friends left at the same time in a second cab, and that they went their separate ways after leaving the bar (Exhibit E-8, audio recording at 16 minutes from the start). When asked to confirm that he made this statement to the BOI, the grievor replied that he could not remember doing so. When counsel for the

employer provided the audio recording for the hearing to listen to this point, the grievor was heard telling the BOI that he and his brother left in one cab, that the other men left in another cab, and that some of them might have been with him.

[52] The grievor was also asked in cross-examination if he agreed that he did not mislead the BOI, to which he replied in the affirmative.

[53] As noted, Cst. Ramsden testified to his interaction with the grievor at the bar and gave a different version of events on some key issues. He stated that he approached the grievor's table and found him seated, not standing as the grievor testified.

[54] In cross-examination on this point, the grievor first repeated the assertion he made in his examination-in-chief that he did not sit down at the table when he spoke to his friends. However, upon repeated questioning in cross-examination on this point, he testified that he might have sat down in the bar after the police questioned him.

[55] In cross-examination, the grievor was also reminded of his statement to the BOI. When it asked if he was with three guys and his brother, he had replied that he had not been with them and that they had been at a different table. Asked again by the investigators about the three men, the grievor replied that he did not know and that they were at a different table.

[56] Cst. Ramsden also testified that after he had identified all the other men at the table, when he saw the grievor's identification and CSC badge, he asked the grievor to step away from the group so that they could have a discreet conversation.

[57] The Constable testified that he told the grievor that he was very disappointed to find a CSC officer seated with criminal gang members. He said he told the grievor the following: "I can't believe you are here with gang members," and: "It is not appropriate for you to be here." Cst. Ramsden then said he checked the grievor's background with his dispatcher. When he found out that the grievor did not have a criminal record and deemed him not a threat to public safety, he advised the grievor that he was not required to leave the bar but that the criminals he was seated with would be required to leave.

[58] The Constable also testified that the grievor explained to him that he was friends with Mayhew and that he was talking to Mahil to "try and sort him out." The

grievor also acknowledged that he knew that Mahil had a checkered past. The Constable also testified that the grievor acknowledged during their brief conversation that being with these men was not appropriate.

[59] The Constable testified that after he had ejected the other three men from the bar, he observed them leave with the grievor and share his taxi. The Constable added that he was concerned that a CX would leave a bar in a taxi with known gang members and that he wrote notes of it that same evening and shared them with his supervisor.

[60] Cst. Ramsden stated in cross-examination that the grievor referred to the group of men as his long-time friends. The Constable also repeated his testimony that he spoke in front of the grievor about Mahil just being released from custody.

[61] When challenged in cross-examination about Granger being a friend of the grievor, Cst. Ramsden said firmly that his notes indicated and that he remembered that the grievor stated that he was friends with all three men. The Constable repeated that exchange when he was challenged about the grievor departing the bar with all three men in a taxi. The Constable replied by repeating that his notes and his clear recollection were that the grievor departed the bar in a taxi with the three men.

[62] Nothing else of any probative value arose in the Constable's cross-examination.

[63] When the grievor was asked in his examination-in-chief why he left the bar without his brother, even though he had testified that he was to have dinner and drinks with him, the grievor stated that his brother saw him speaking with the police officer in the bar, that he and his brother "gave each other a head nod", and that his brother then left. The grievor added that his brother came home about 15 minutes after he did.

[64] The grievor testified that was not aware that either Mayhew or Mahil were convicted criminals with gang affiliations when he spoke to them at the bar on the evening in question. However, the grievor had previously stated to the BOI as follows: "They know who I am and I know who they are. It's public knowledge on TV, newsprint and internet, that they are going through the system." (See Exhibit E-8, audio recording at 22 minutes and 20 seconds from the start.) The grievor also stated that he knew of Mahil's history of incarceration and said he had heard that Mahil was a "bad kid".

[65] The grievor also confirmed in his cross-examination that he stated in his recorded interview with the BOI that in response to being asked about his knowledge of Mahil and Mayhew, he replied, "I know what's in the news, I read it constantly."

[66] At the hearing, copies of printed news media were adduced as exhibits that among other things described Mayhew as "gang-involved" and as having been arrested for the third time in five months (as published by the *Abbotsford News* on December 13, 2012). One report described him as "gang-involved" and noted his sentence of 10 months in jail for 2 counts of possession for the purpose of trafficking. One also notes that a small amount of cocaine was seized upon his arrest in December (as published by the *Abbotsford News* on April 18, 2013).

[67] The grievor acknowledged being aware of the crimes and criminal gangs in those news stories. However, despite testifying that he read the news daily at home, he maintained that he did not know that either Mayhew or Mahil was active in criminal gangs when they met at the bar in Abbotsford.

[68] In support of his submission that his chance meeting of his school friends who had since become criminal gang members was completely innocent, the grievor testified in his examination-in-chief that he provided voluntary disclosure when he began working at the institution that he had family members and acquaintances who were criminals.

[69] The grievor was asked to comment upon the BOI report mentioning the fact that he had previously disclosed that both his father and his uncle were convicted criminals.

[70] The only written disclosure that was adduced as an exhibit at the hearing was a letter to the grievor from the employer dated November 22, 2012, and signed by a CSC regional recruitment officer. It confirmed that the grievor had shared information with that officer in a conversation. The letter states as follows:

…

> *A discussion took place on 2012-11-22, with Candidate on staffing process, Tejinder Braich and Recruitment Officer … CX3 to review the Standards of Professional Conduct in the Correctional Service of Canada Declaration.*

> *Tejinder Braich read the … Declaration and signed the form as read and understood the contents.*
>
> *During the conversation, Mr. Braich was very cooperative and open, regarding his father*['s] *… and his uncle*['s] *… criminal histories. Neither is currently incarcerated but they had served a previous Federal sentence at … They both have completed their Warrant Expiry.*
>
> *He stated that [sic] father and uncle's situation would not affect his performance as a Correctional Officer with the Correctional Service of Canada and that he has no concerns for his personal safety at any of the federal institutions, if he should be successful in the training and be offered full time employment.*
>
> *He indicated, if successfully offered employment with the CSC, he would be very open and transparent and make his management staff aware of his circumstances.*
>
> …

[71] The grievor's counsel asked the grievor a leading question about that conversation, which led to the written memo of disclosure I just noted. He was asked if "other relationships were disclosed", to which he replied, "Yes."

[72] The grievor also testified that on his first day of work at the institution, he met with Special Investigation Officer (SIO) Holsworth. He testified that he gave SIO Holsworth a letter disclosing that he had high school friends who were going through the criminal justice system. The grievor testified that the SIO told him it was not a problem.

[73] The grievor also testified that he made two other visits to the SIO's office at the institution to make other voluntary disclosures. He said that he disclosed that he had seen an inmate who was connected to his father and that the inmate had recognized him. The grievor also said he disclosed seeing another inmate who recognized him by name as the inmate knew the grievor's cousin, who he said was a CX in the CSC's Pacific Region.

[74] The grievor testified that he asked the SIO "if [he] needed paperwork" about these disclosures, and the grievor stated that the SIO was "nonchalant" about the whole matter of the disclosures. The grievor added that a co-worker, whom he named, had witnessed these voluntary disclosures.

[75] In reply to another question in his examination-in-chief on this same topic, the grievor testified that he made another voluntary disclosure to the SIO of his past relationships as he had been a school friend and sports teammate of the Bacon Brothers.

[76] The hearing was told that the Bacon Brothers had since become notoriously violent criminal gang leaders in Greater Vancouver and the Lower Mainland. The grievor added that he had no relationship with the Bacon Brothers while he worked as a CX or at the time of the hearing.

[77] The hearing adjourned upon the conclusion of the grievor's examination-in-chief and reconvened after an interval of approximately six months. It restarted with the grievor's cross-examination, in which the issue of his voluntary disclosures was explored in detail.

[78] The grievor confirmed the matters previously noted in the disclosure letter of November 22, 2012, and confirmed that he wanted to be as open as possible with his employer on all such matters.

[79] The grievor also confirmed that he had spoken to SIO Holsworth to disclose his school friends, the Bacon Brothers, and that Abbottsford has a serious gang issue. The grievor was then asked to confirm that he also disclosed to the SIO that he knew Mayhew, and he agreed that he did. He was then asked if he also disclosed others to the SIO, and he testified that he did. When asked if he disclosed his knowing Mahil to the SIO, he replied that he did not but added that he did tell the SIO that there might be an old Facebook photo of him with Mahil.

[80] The grievor was then asked in cross-examination to confirm that he had not testified previously at the hearing that he disclosed either Mayhew or Mahil to the SIO. The grievor then testified that he knew that he had disclosed both Mayhew and Mahil to SIO Holsworth and that he had maybe just forgotten to mention it during his examination-in-chief months earlier.

[81] When the employer's counsel advised the grievor that she would call a witness who she expected would say that the grievor had not made any disclosure to the CSC about knowing the Bacon Brothers, he replied that he had no comment to make.

[82] The grievor was also reminded in his cross-examination that he had not told the BOI about knowing the Bacon Brothers or of his claim of disclosing knowing them to the SIO. He confirmed that he probably had not shared this with the BOI.

[83] Having heard the grievor's testimony-in-chief about his many disclosures to the SIO, the employer called SIO Holsworth to provide rebuttal testimony on it. Mr. Holsworth had 22 years of service with the CSC, eight of them as the SIO at the institution. He testified that the SIO gathers intelligence about the institution and any threats to security and safety, investigates incidents, and keeps files on every inmate.

[84] When asked about his interaction with the grievor, he stated that he met with the grievor, as he does with all new staff, upon the grievor's commencement of work. He explained his SIO role to the grievor and management's expectations of all new staff at the institution with respect to their role in ensuring safety and security. He testified that after the introductory discussions, the grievor stayed longer and shared with him a letter disclosing that his father and uncle had been incarcerated in a federal institution.

[85] Mr. Holsworth was asked if the grievor disclosed anything about the Bacon Brothers. He replied that he had no recollection of that. When asked if he expected that he would recall a conversation about a CX disclosing contacts to the Bacon Brothers, he replied he would most certainly recall such a disclosure as they are a high-profile and well-known criminal organization. Mr. Holsworth added that if the grievor had made such a verbal disclosure to him about connections to criminals, he would have asked the grievor to provide a written statement confirming the disclosure, to protect him later if anything of concern ever arose.

[86] And finally, in reply to a question as to what he had on file about the grievor, Mr. Holsworth stated that he had only the initial letter disclosing the grievor's father and uncle on file. In cross-examination, Mr. Holsworth stated that any potential problematic relationships that might be disclosed would always be documented in writing. He also repeatedly denied the assertions that the grievor had given him verbal disclosure of his relationships with known criminals and repeated his statement that he would remember something as significant as a CX disclosing a relationship with notorious criminals such as the Bacon Brothers.

[87] The grievor's counsel also questioned Mr. Holsworth about a line on page 10 of the investigative report dated September 15, 2014, which stated that the grievor had reported that he has disclosed his associations with organized crime to the SIO's department. The report then stated that the BOI had confirmed with the SIO's department that the grievor had not submitted an official disclosure with that office but that he had made a verbal disclosure; however, nothing had been documented in terms of names or details of his associates. Mr. Holsworth was asked whether the report could be in error, given his previous statements about all disclosures being documented. He replied by stating that all SIO staff will always ask for a written, not verbal, disclosure.

[88] In closing on this point, the grievor's counsel suggested to Mr. Holsworth that the grievor had made verbal disclosures to another SIO, which had not been documented. Mr. Holsworth replied that this was not possible as the standard practice for all SIO staff was to document in writing every disclosure that the staff made to them.

[89] In summary on this matter of disclosure, I am most persuaded by the words in the investigative report that suggest that the grievor did in fact make an unascertained verbal disclosure to an SIO. I accept that it was not made to Mr. Holsworth, but it is possible that another SIO was given some sort of disclosure. While the evidence before me does not corroborate the grievor's testimony as to what exactly he disclosed, I find that this matter has little if any dispositive value in the final analysis.

[90] If the grievor did in fact verbally disclose his relationship with his school friends Mahil and Mayhew as he claims he did, it would show that he was well aware that they are criminals and that he should have known better than to sit with them and to visit a known criminal gang drinking establishment. He should also have known better than to share a taxi with them after choosing to leave the bar with them.

[91] Much more important to me in determining this matter is what occurred during the evening in question at the bar in Abbotsford. After the evidence was adduced on the grievor meeting his friends there, the parties argued their versions of how I should view that evidence.

[92] The grievor argued that the meeting at the bar occurred by chance and was of no consequence as they were mere childhood and school acquaintances that he had

not seen for five years before that evening and that nothing untoward happened. Additionally, the grievor rather boldly argued that in fact he was fulfilling his duties as a peace officer and a CX by agreeing to help Mayhew, who he testified had asked him for help to break free from his self-professed life of crime.

[93] However, the employer argued that there were inconsistencies in the grievor's description of the evening that suggest he was well aware that the acquaintances he joined by sitting at the table were well-known criminals with strong links to organized crime. The employer also pointed out the testimony contradicting the grievor's statement that he left the bar with the criminals in a shared taxi despite being told by police that he was not required to leave the bar.

[94] At an almost theoretical level, the grievor's submission that he went out for dinner with his brother and purely by chance ran into some school friends and greeted them at the bar is both a plausible and exculpatory narrative.

[95] However, when the details of the grievor's version of the evening are examined, his narrative quickly becomes improbable. When I assess the details of the evidence before me, including the grievor's rather fluid versions of testimony, and weigh them against what I find was Cst. Ramsden's highly credible testimony, the grievor's story falls apart.

[96] In *Faryna v. Chorny*, [1951] B.C.J. No. 152 (QL), the British Columbia Court of Appeal provided guidance for determining contested facts and assessing witness credibility. The Court determined that the credibility of an interested witness must be tested by reasonably subjecting the story to an examination of its consistency with the probabilities that surround the currently existing conditions. The real test of the truth of a witness's story must be its harmony with the preponderance of the probabilities that a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[97] In his first opportunity to explain his actions, the grievor told his employer's BOI that he did not remember details of the night in question at Lou's Bar. He later told the BOI that he and his brother departed the bar together in a shared taxi.

[98] Approximately two years later, and after listening to Cst. Ramsden's related testimony, the grievor testified before me in his examination-in-chief that in fact, he

departed the bar in a taxi with the three criminals.

[99] I also note the grievor's testimony that he and his brother chose to attend Lou's Bar that evening to enjoy some drinks and dinner and to possibly meet some friends his brother thought might be there.

[100] The grievor then testified that while he was engaged in a brief conversation with his friends, and his brother went to the washroom, the police arrived. He testified that while he was in discussion with the police, his brother approached them but stopped and made eye contact with the grievor and nodded, impliedly to signal something, and then departed the bar alone.

[101] By the grievor's own testimony, he left the bar after only a few minutes, shared a taxi with the three criminals who then got out at another bar, and then arrived at his parents' home shortly thereafter. He also testified that his brother arrived home 15 minutes later.

[102] So in what must have been less than one hour, the grievor and his brother went out for drinks and dinner, had neither, and then both went home, for no obvious reason, according to the grievor's version.

[103] While neither counsel questioned the witnesses about the rest of the brothers' evening, I find it very strange that the grievor maintained that he did nothing wrong during his brief chance encounter with his old friends, yet both he and his brother acted in a manner that belies the innocence of the meeting at the bar.

[104] I find the grievor's and his brother's hasty departures from the bar and their return to their parents' home rather suspicious and more like what a pair of people with guilty consciences might do.

[105] I also note the rather curious choice of establishments they chose for their evening of drinks and dinner out on the town. I would not expect a bar that is a notorious criminal gang favourite to be the first choice of a CSC peace officer for dinner with his brother.

[106] Coupled with that is the fact the grievor then saw some of his school friends there, who happen to be hardened criminals affiliated with criminal gangs, and he then chose to leave with them in a shared taxi. Altogether, it was a very curious coincidence,

if the grievor's version of events is believed.

[107] I prefer Cst. Ramsden's testimony in terms of the contradictory statements I heard from him and the grievor about whether the grievor was ejected from the bar. It makes no sense that the police would eject the grievor. Their sole purpose in touring establishments known to be frequented by criminal gang members is to safeguard public safety.

[108] Cst. Ramsden testified that he had his dispatcher check the grievor's name in their database, and since no past problems or criminal record were found, he said he had no reason to eject the grievor from the bar. This evidence is logical, and I accept the Constable's testimony on this point. I find as fact that the grievor freely chose to leave the bar with the three gang members.

[109] I also note at this juncture the Constable's testimony that he very clearly explained to the grievor that he was seated with criminal gang members, which was very problematic in the Constable's view, given that the grievor was a peace officer.

[110] No reasonable-minded peace officer aware of his or her obligations and professional duties who had just by chance met school friends that he or she knew were criminals would elect to leave a bar and then share a taxi with them right after having the impropriety of the situation pointed out by a police officer. The Constable clearly told the grievor that he was seated with criminal gang members.

[111] I heard considerable testimony and received exhibits regarding how much the grievor knew of these friends' criminal activities, in particular if he knew at the time of the meeting at the bar whether they were active in criminal gangs. The grievor gave several blanket denials of knowing of their gang affiliations. The employer cross-examined him on this point, and he conceded that he was aware that they were criminals and that he closely followed their criminal misadventures in the media. The grievor was reminded that he told the BOI that he read the news constantly and that he is aware of its content in response to being asked about his knowledge of the Bacon Brothers and Mayhew.

[112] Also relevant to this matter of what the grievor knew of the criminals he was seated with at the bar is the evidence of both Janet Craigen and Neeley Lawrence, who were the grievor's co-workers at the institution. Ms. Craigen testified about her

conversation with the grievor at a party hosted by Ms. Lawrence, which shall be considered in greater detail later in this decision. She testified that during their visit that evening, the grievor spoke about his "friends and homies" and told her that they were "bad dudes". She added in cross-examination that when the grievor made these statements about his friends in Abbotsford, he was speaking in the present tense. She also testified that she had heard him on other occasions at work speak of having friends who were in criminal gangs.

[113] Ms. Lawrence testified about speaking with the grievor that evening and stated that he told her that he was "hooked up" and that he "knew drug dealers". She stated as follows: "[he] could get me anything that I wanted."

[114] The grievor's counsel suggested that the grievor was extremely intoxicated at the party, and his counsel submitted that these statements were nothing more than "drunken babble". He also pointed to the fact that Ms. Lawrence had initially provided misleading statements to her employer when she first reported the grievor for his alleged cocaine use at her apartment that same evening. Ms. Lawrence tried to conceal how she knew of the alleged cocaine use, as she wished to protect the identity of her friend and co-worker Ms. Craigen. She was concerned about retributions at work against Ms. Craigen for providing information about a co-worker to management.

[115] The grievor's counsel also established that Ms. Lawrence gave other misleading information to the employer. In addition to claiming that she had witnessed the events shared with her by Ms. Craigen, Ms. Lawrence also misinformed the employer that her roommate witnessed the grievor ingest cocaine on the night in question.

[116] The grievor's counsel submitted that given these previous misleading statements, I should place no weight on Ms. Lawrence's testimony.

[117] Given the grievor's submission as to witness credibility on this issue, I am satisfied accepting only Ms. Craigen's testimony on what the grievor said to her at the party. As shall be examined in more detail later, Ms. Craigen provided absolutely credible and unimpeachable testimony on all the events in question.

[118] I reject the grievor's argument that his utterances about his friends were mere drunken babble. I note that Ms. Craigen testified that at the social gathering, after hearing the grievor boast about how his friends back home were "bad dudes", she

decided she did not want to hear any more of this from the grievor, since she had also heard him talk at work about how his friends were in gangs. While I don't have testimony to this fact, I trust the grievor was not intoxicated at the workplace when he had been talking about his friends that were in gangs.

[119] I also find it more than a coincidence that only months after the Abbotsford bar incident, and after being witnessed with white powder in one nostril, the grievor spoke about having "friends and homies" who are "bad dudes". The issue of the white powder shall be examined in more detail later in this decision.

[120] I find the discussion of exactly how much the grievor knew of their criminal activities and when he knew it of little dispositive value. He admitted in his testimony to having knowledge of both Mahil and Mayhew being active and recidivist criminals. As I noted earlier, the grievor's credibility is at a deficit when he maintains that he knew nothing of their gang affiliations. The evidence clearly establishes that both Mayhew and Mahil were active associates of criminal gangs and that the grievor had been told as much by Cst. Ramsden but he still chose to leave the bar in a taxi with them.

[121] The grievor's exculpatory narrative also included one of the criminals he spoke with at the bar asking the grievor for help once the criminal found out the grievor was a CX. The grievor testified that his friend asked him for help so that he could break free from a life of crime. The grievor testified he agreed to help and that he promised to contact his friend just as the police arrived and intervened in the conversation.

[122] Given the noted frailties of the grievor's credibility, it would have greatly enhanced his story of helping his friend had he also adduced evidence of following up after the conversation, firstly to disclose in writing his altruistic intentions to help a gang member to the SIO at the institution, and secondly to provide evidence that he actually sought for his criminal friend referrals to trained professionals, such as those at the John Howard Society, who help people in such circumstances.

[123] A CX has sworn duties and a code of conduct that precludes him or her from choosing to have drinks and dinner in an establishment that is a known criminal gang hangout. Nor should a CX choose to sit at a table with criminals at such a bar. And a CX certainly should not choose to leave a bar with such criminals and share a taxi with them after being told that they are members of criminal gangs and that being a CSC

employee and a peace officer and being with them is very problematic.

[124] A CX is wrong to make any of these ill-advised acts. Taken all together, I conclude the grievor actively associated with criminal gang members.

[125] With these findings of fact and witness credibility, I conclude that it was reasonable for the employer to determine that the grievor continued his criminal organization associations while it employed him.

3. Did the grievor consume an illegal narcotic substance (cocaine) while off duty during his employment with the CSC?

[126] The third of the grievor's misadventures cited by the employer in its decision to terminate his employment was that he had used cocaine while off duty.

[127] Specifically, the employer relied upon the events surrounding the evening of June 5, 2014. The grievor testified that it was a full day that began in the morning and continued with an evening of consuming "quite a few" alcoholic drinks at a golf event for institution staff and later involved visiting a restaurant, bar, and strip club. After all that, he then went to Ms. Lawrence's apartment, where some co-workers had gathered.

[128] The grievor testified that he was very intoxicated, "lots more than normal", when he arrived at Ms. Lawrence's apartment. She and her roommate were present, along with four other CX staff. By all accounts, the gathering was quiet and otherwise uneventful with the co-workers gathered in the kitchen and the living room and on the small balcony visiting in small groups.

[129] In his examination-in-chief, the grievor testified that he had conversations with both Ms. Lawrence and Ms. Craigen. He was asked about his relationship with his co-worker and host of the evening gathering, Ms. Lawrence. He began to explain that some co-workers had told him that Ms. Lawrence did not like him as she thought he was arrogant.

[130] The employer's counsel immediately objected to this testimony before the grievor could say anything more, again on the rule of evidence from *Browne v. Dunn*, as this issue had not been put to Ms. Lawrence in cross-examination to allow her to answer this allegation of her harbouring personal ill will towards the grievor. This matter should have been put to Ms. Lawrence in cross-examination so she could reply

to it. Without the benefit of hearing her testimony on this matter, I disallowed the grievor's testimony alleging her disliking him.

[131] The grievor stated that he spoke to Ms. Lawrence and later to Ms. Craigen in the kitchen at the get-together. He said that he told them that he wanted to transfer to Abbotsford but that he had to wait two years before applying. He testified that he shared his concerns with Ms. Craigen that members of criminal gangs, including the Bacon Brothers, were being incarcerated and could potentially arrive at the institution. He stated that he asked Ms. Craigen for advice on how he should talk to these inmates should they arrive there. He denied talking to her about illegal narcotics and denied telling Ms. Lawrence that he could buy her drugs and that he was actively associating with organized crime.

[132] The grievor testified that he spent only 45 minutes at the party, that Ms. Craigen left shortly after their conversation ended, and that he went home 5 minutes after she left.

[133] I note at this juncture the fact that the grievor's memory of the evening had improved significantly over the passage of more than two years between being questioned by the BOI and testifying before me. The disciplinary investigation report (at pages 8 and 9) states that he said that after the golf day and dinner, he went to a strip club, and that everything started getting hazy at that point.

[134] When the BOI investigators asked specifically about him attending another bar later that evening and then attending the social gathering at Ms. Lawrence's home, the grievor replied that he remembered only bits and pieces of being there. When asked about his discussions with Ms. Lawrence and Ms. Craigen that evening, he told the investigators that he had no recollection of what they were about.

[135] As noted, Ms. Craigen gave a different account of her interaction with the grievor at the apartment that evening. She testified that he spoke about his "friends and homies" in Abbotsford and that he said they were "bad dudes." She added in cross-examination that when the grievor made his comments, he spoke in the present tense.

[136] She testified that the conversation involved more than just him talking because he was intoxicated. She testified that while she enjoyed her conversations with the

grievor on other occasions, she did not want to hear more about this topic as she had heard him talking at work about his friends being in gangs. When asked, Ms. Craigen testified that she understood what the grievor had told her to mean that his friends in Abbotsford were in criminal gangs.

[137] Ms. Craigen testified that she spoke to the grievor for nearly 30 minutes, after which she observed him go the bathroom, which was near the kitchen. She said that he was in the bathroom for about five minutes, after which she observed him return to the kitchen where, from a distance of two feet, she observed white powder stuck on the opening of one of his nostrils. She stated that she assumed it was cocaine. When asked in cross-examination about her observations, she repeated again without hesitation that she was no more than two feet away from the grievor and that she clearly observed clumps of white powder around the edge of one nostril.

[138] She said that she was "tired of this" from the grievor and that she left the kitchen, used the same washroom, and went home. She testified that when she entered that bathroom, she observed a "dusting of a white powder" on the vanity counter. She also testified that from her vantage point in the kitchen, she would have seen another person enter the bathroom after the grievor, which she stated did not occur. She then explained that she tried to clean the white powder off the counter.

[139] Ms. Craigen testified that on either the morning after the party in question or on the second morning, she saw the grievor at work. He seemed embarrassed, told her that he was sorry, and explained that it was the first time he had done that. She interpreted this to be an apology for his taking cocaine at a gathering of work colleagues.

[140] She testified that she thought he might have noticed that she left the party almost immediately after seeing him with white powder in his nostril. She also stated that in her view, his statement that it was his first time (using cocaine, as she assumed he meant) was not credible in her opinion as she stated nobody does that for the first time in a social gathering with a bunch of co-workers.

[141] The grievor testified to this same exchange and explained that in fact, he was expressing his regret to Ms. Craigen for his being so intoxicated the day before at the staff golf event and later in the evening. He said that he told her that he "owned that".

[142] There was a pause after the grievor testified that he told her he owned that, after which, when it was clear that no further testimony was forthcoming on that point, I asked him to help me understand what "that" was, which he said he owned. He explained that he meant that he apologized to her for being drunk at the golf course, the strip club, and at Billy Bob's club, and finally, for being drunk when he attended the social gathering of staff at Ms. Lawrence's apartment.

[143] Also relevant to this exchange is the grievor's statement in his testimony-in-chief confirming that he drinks alcohol and that in the past, he has done so to excess. In fact, on the night in question, he testified that he was "very inebriated, lots more than normal", when he arrived at the gathering.

[144] He also explained how others have told him how he acts when he is intoxicated. I take this as an acknowledgement that he was not referring to being intoxicated for the first time when he spoke to Ms. Craigen on the first or second morning after the incident of the white powder in his nostril.

[145] The grievor's counsel sought to establish that another person at the party, Andrew Keith, might have been responsible for the white powder in the bathroom. In replying to a leading question to this effect during her cross-examination, Ms. Craigen said that it was possible that Mr. Keith could have used narcotics in the bathroom and could have left the white powder on the vanity counter and on the floor, which she observed. When asked if it was possible that Mr. Keith used and left the white powder in the bathroom and that the grievor then simply accidentally got the white powder on him while using the bathroom, Ms. Craigen replied that she did not think this could have happened given that she clearly observed the grievor with clumps of white powder only in one nostril.

[146] Ms. Lawrence was also a CX at the institution and a co-worker of the grievor. She played a critical role in this whole matter as she was the only person who alerted management to the incident of the white powder on the grievor's nostril.

[147] Ms. Lawrence first became aware of the incident when her good friend and co-worker Ms. Craigen told her at work the day after the social gathering of what she had observed the previous night. Ms. Craigen testified that Ms. Lawrence asked her why she had left her apartment when she did, and Ms. Craigen explained that out of respect to her friend, she told Ms. Lawrence about what she had observed with the

grievor and white powder in his nostril and in her bathroom. Ms. Craigen added that she never spoke to anyone else about the incident until she was summoned by management at the institution to answer questions about the matter.

[148] Ms. Craigen testified that upon hearing of the white powder issue, Ms. Lawrence became extremely angry. Ms. Lawrence later confirmed that testimony. She explained that she keeps a very clean apartment, vacuuming at least once per day. Immediately upon learning of the incident from Ms. Craigen, Ms. Lawrence testified that she went to her bathroom and observed the white powder still visible on her vanity counter and on the floor. She testified that this made her even more upset as she has pets and a friend with a young child who often visit her home. She was very concerned that either her pets or the child could have accidentally ingested what she assumed was a harmful narcotic.

[149] When asked about the days that followed the social event, Ms. Lawrence testified that a few days later at work, the grievor confronted her when she radioed for another guard to provide her with an escort to the guard tower. She said that he heard her radio call and responded in the place of the other CX whom she had specifically requested, which meant she was alone in the guard tower with him.

[150] Ms. Lawrence testified the grievor asked her, "What's your fucking problem?", and, "Are we cool?" She said that she replied to him as follows: "You used coke and disrespected me and my house and made a mess." She then testified that the grievor told her that he "owned it" and that he asked her not to tell anyone about the incident. She explained that she thought he meant that he did not want her to tell anyone about him using cocaine in her bathroom. She added that in concluding this difficult conversation, she admonished the grievor stating as follows: "You don't deserve to wear the same uniform that I do."

[151] Ms. Lawrence testified that shortly after being confronted by the grievor in the tower, she approached SIO Korzenoski to tell her of the grievor's use of cocaine at her apartment. However, instead of explaining to her the fact that Ms. Craigen had made the observations about the grievor, Mr. Lawrence told her what she called a "story" to try to protect Ms. Craigen's identity as Ms. Craigen had asked her not to tell anyone when she had shared her observations. Ms. Lawrence testified that there is a strict code among CX staff that none of them are ever to go to management with any information

that reflects poorly upon a co-worker. If a CX violates that code, he or she will be labelled a "rat" by co-workers and will be shunned from then on.

[152] In her cross-examination about the story she told to the SIO, Ms. Lawrence thrice denied telling the SIO that she had personally witnessed the grievor use cocaine. She also stated that she did not tell the employer that someone else had told her what the grievor had done. She also said that she did not remember telling the SIO that Mr. Keith had used cocaine at her house that same night. When asked if she had informed the employer's investigation that her roommate had told her of the grievor using cocaine, she responded hesitantly and somewhat confusedly. Ms. Lawrence also stated that she did tell the investigators that Ms. Craigen had told her about the grievor's use of cocaine. She also agreed that Ms. Craigen had told her that she had seen white powder on the toilet. When challenged with the proposition that she never spoke to the grievor in the tower after the party, she stated that she had, as she had already testified to it.

[153] In her closing testimony, Ms. Lawrence admitted to misleading the SIO in her initial report of the grievor and seeing coke, but she was adamant that she accurately reported the events of the evening to the BOI, other than concealing the true source of the information. She purposely made the impression that her information was based upon her personal observations.

[154] In argument about the reliability of Ms. Lawrence's testimony and statements, counsel for the grievor pointed to the disciplinary investigation report prepared by the employer's BOI, which was relied upon in the decision to suspend and then terminate the grievor's employment. In the report, Ms. Lawrence is reported (at page 5) as giving a different version of her recollections to the SIO compared to what she later shared with the BOI. Her story changed in the important aspect of whether she had made the observations herself. It is also important to note that she initially reported seeing white powder on the grievor's face as well as seeing Mr. Keith use cocaine, which is contrary to her testimony before me. Given these inconsistencies, I do not place any weight upon any of her testimony.

[155] In his closing argument, counsel for the grievor suggested that I should find the grievor's testimony credible as it remained consistent across the passage of time. I asked counsel how he could credibly make such a submission given the grievor's

prior inconsistent statement as to whether he left Lou's Bar with his brother or with his criminal friends. Counsel replied that whom the grievor left the bar and rode in the taxi with is not a significant point of evidence.

[156] I disagree with the suggestion that the grievor gave consistent testimony. And I strongly disagree with the suggestion that whether he left in a taxi with known criminals is not significant.

[157] The BOI investigator's notes indicate that when the grievor was first asked to explain his actions, he stated that he did not remember the details of the night at Lou's Bar. He later told the BOI that he and his brother departed the bar together in a shared taxi and that possibly the others were in the cab. Approximately two years later, he provided detailed testimony of that evening, and in his examination-in-chief, he confirmed the police report of the incident, stating that in fact, he departed the bar in a taxi with the three criminals he had been speaking with.

[158] I also note the grievor's testimony before me in which he stated that he and his brother chose to attend Lou's Bar that evening to enjoy some drinks and dinner and to possibly meet some friends his brother thought might be there.

[159] All of the evidence regarding the grievor leaving the bar when he was told he did not need to, his brother's secret nod and departure, and the taxi home after having no drinks or dinner point to something other than a completely innocent and brief chance conversation with school chums from a bygone era.

[160] Despite claiming that he had been drinking all day and all evening and had become very intoxicated, the grievor had a highly detailed recollection of a conversation with Ms. Craigen at the social gathering. He testified that he expressed fear to her that members of the violent Bacon Brothers criminal gang might soon arrive to serve sentences at the institution. And for some undisclosed reason, he stated that his safety might then be in jeopardy. He hoped he could transfer to an institution near his hometown of Abbotsford. He testified that he asked for her advice as to how he would talk to those people if they arrived at the institution.

[161] I also find problematic the grievor's testimony about vomiting at the gathering. He testified that he was very intoxicated. He told the employer's BOI (see page 8 of the report) that he began drinking alcohol in the morning. He testified before me that he

drank all day and all evening and that at some point late in the evening, while at Ms. Lawrence's residence with co-workers, he felt ill, went to the bathroom, and vomited. That much of his testimony is logical. However, he also gave detailed testimony about cleaning the bathroom afterwards and cleaning his mouth with mouthwash.

[162] Ms. Craigen testified that she observed that the grievor was in the bathroom for approximately five minutes and then saw him return to the kitchen. She explained that she was standing two feet from him after he exited the bathroom and that she observed no smell of vomit; nor did she see any visible signs of it on him. She also stated that very shortly after he exited the bathroom, she entered it and observed no smell of vomit or any visible signs of it.

[163] Most problematic in this bathroom episode is that while Ms. Craigen did not detect any sign or smell of vomit on the grievor immediately after he left the bathroom, she did clearly observe, when she was two feet from him, clumps of white powder in one of his nostrils. He provided no evidence whatsoever to somehow connect the occurrence of this white powder to his vomiting or to anything else. His testimony did not mention the white powder on his nostril.

[164] Even if the grievor was able to somehow empty his stomach while being very intoxicated and avoid making a mess, or he was able to thoroughly clean a mess and not make another mess while cleaning up, I would have expected either a lingering malodour exposing the recent occurrence of vomit or alternatively the scent of a cleaning agent, neither of which were reported in Ms. Craigen's testimony when she was asked if she had made any such observations.

[165] Mr. Pelham testified that in his careful review of the investigation into the allegations against the grievor, he relied most upon statements from Ms. Craigen and Cst. Ramsden. He explained that he accepted the final versions of statements from Ms. Lawrence as they seemed to match what he had been told by Ms. Craigen. He added that he did not rely upon statements by other people who attended the social event but who did not testify before me.

[166] Mr. Pelham also noted that the grievor had three opportunities to explain but that he essentially denied any drug use and said that he could not remember the evening in question in Abbotsford.

[167] He further stated that the grievor's reply to many of the BOI's questions was "I don't know" or "I don't remember." Mr. Pelham also stated that given the grievor's voluntary disclosure to the SIOs that his father and uncle had both been incarcerated, and given his related pledge to be completely open and transparent, he stated that the grievor should have disclosed his meeting at Lou's Bar on February 12, 2014.

[168] The record shows that the grievor was sent a memo dated September 19, 2014, which had the BOI disciplinary investigation report attached, for his perusal before he had the opportunity to respond to the allegations at a disciplinary hearing. He was also offered the opportunity to rebut the allegations in writing. He testified that he was unable to properly respond to the allegations because the investigation details had been heavily redacted, which rendered him unable to respond. His counsel also vigorously argued that point.

[169] At a very high level, I share the concerns voiced by many grievors who are sometimes denied access to the details of the allegations made against them. One of the most fundamental and foundational aspects of our legal system (as it pertains to administrative law, as in this matter) is the Latin maxim, *audi alteram partem*, which posits that the person has a right to be heard and further that to be heard, the person must know the case being made against him or her. I think that many grievances could be resolved more expeditiously if grievors and their bargaining agent representatives had more timely and more complete disclosure without being forced to seek documents about themselves through access-to-information legislation.

[170] While I have noted that it is well established in our jurisprudence that this adjudication hearing cures any previous procedural irregularities suffered by the grievor, his counsel argued that, in fact, is lack of rebuttal of the allegations was used against him in the employer's decision to terminate his employment.

[171] Having closely listened to the testimony and arguments on this point, I note that the following was included in the details disclosed to the grievor, in addition to the many redactions made to the report given to him:

- the staff golf event, the list of activities and many establishments visited that day, and finally that employees, including the grievor, attended a house for a gathering;

- the grievor reported having discussions during his time at [redacted] home;
- the grievor was asked if he used cocaine on the evening at issue;
- the grievor was asked about his associations with criminal organizations;
- when the grievor was questioned about the incident at Lou's Bar, he initially replied that he did not remember it;
- when the grievor was asked about his interaction with police that night at Lou's Bar, he stated that he was with his brother [redacted];
- the grievor said that he went to school with [redacted];
- the grievor said that he sat down with his brother at the table at Lou's Bar and that a few minutes later, the police showed up. The grievor told the police that they were friends; however, he reported that he had no recollection of what else was said;
- the grievor was asked if he flashed his CSC badge at the police officers, and he stated that he accidentally showed it as his identification and badge are in the same wallet; and
- the grievor was asked if he left the bar with the individuals identified by the Abbotsford police to him as known associates of criminal organizations, and he confirmed that they shared a cab.

[172] Given that that information was given to the grievor, I am satisfied that he was sufficiently aware of the allegations being made against him to have a fair and reasonable opportunity to reply and rebut the findings. If he honestly could not remember the details of his misadventures on the two dates at issue, it was due to his excessive consumption of alcohol, which was not the employer's responsibility.

[173] Regardless of the disclosure the employer made to the grievor of the particulars of the BIO report, the grievor cannot concurrently maintain that he had no clear (or any) memory of the incident in question when he was in front of the BIO a few months

later and then provide me with highly detailed testimony two years later as to exactly what he said and did.

[174] It is simply one or the other. The grievor either cannot remember the events of the night in question, when he was observed with white powder on one nostril, or has a highly detailed recollection of what he did and said.

[175] Given his testimony about starting to drink alcohol in the morning and continuing to drink all day and all evening and his then being extremely intoxicated, I believe it more probable than not that his testimony of that evening to the BOI was the more accurate, which was that he could not remember what he said or did at the social event.

[176] Having outlined the evidence upon which I conclude that the grievor did commit each of the three alleged acts of wrongdoing found by the employer, I conclude that there were indeed valid grounds for disciplining him.

B. Was the decision to dismiss the grievor an excessive response in all the circumstances?

[177] Mr. Pelham testified that he concluded that the grievor had discredited the CSC in the eyes of the Abbotsford Police Department by his actions at Lou's Bar. He also found that the grievor's actions after the staff golf event harmed staff and working relationships at the institution. And perhaps most importantly, Mr. Pelham testified that he must have complete trust in all his employees; otherwise, he cannot run a safe institution. Given the findings of the investigation and the apparent lack of accountability or remorse on the part of the grievor, Mr. Pelham concluded that this essential bond of employment was irreparably harmed.

[178] In both its testimony about its justification to terminate the grievor's employment and in its argument based upon his testimony, the employer pointed out inconsistencies and submitted that he was not a credible witness.

[179] The grievor first argued that grounds for discipline were not established and that alternatively, if they were, terminating his employment was unjust, given all the circumstances. Secondly, he submitted that if I find that grounds for discipline did exist, a one-day suspension should be substituted.

[180] The grievor cited *Lapostolle v. Deputy Head (Correctional Service of Canada)*, 2011 PSLRB 138, and the judicial review by the Federal Court in 2013 FC 895, as a precedent for a one-day suspension, since some of Mr. Lapostolle's earlier wrongdoing with organized crime connections was penalized via a one-day suspension before he was terminated for continued wrongdoing. Mr. Lapostolle's one-day suspension arose from several unauthorized file accesses and from being observed by police sharing a limousine and later dinner with the owner of a strip club and others "… who could be involved with criminal elements …" (see 2013 FC 895 at para. 20).

[181] The grievor in the matter before me argued that the employer's allegations had not been proven with clear, cogent, and convincing evidence, which is required to sustain a finding that the decision to terminate him was reasonable.

[182] Specifically, the grievor argued that there was no evidence of him having any ongoing association with members of organized crime gangs outside of his chance meeting with former school chums at Lou's Bar. He stated that he had no regular contact with the men he spoke with at the bar, that the conversation in question was very brief, and that they shared only a brief cab ride afterwards. The grievor argued that a brief chance meeting and conversation with a childhood friend is not wrong and not worthy of discipline.

[183] In fact, in switching from defence to offence, the grievor pointed to CSC policies directed at its mission to rehabilitate criminal offenders and help their reintegration into society as justification supporting his testimony that Mayhew had asked him for help to break free from a life of crime. The grievor specifically cited "Rule 11", at Exhibit 1, Tab 11, which is the CSC's "Code of Conduct" rule that states that CSC staff must actively encourage and assist offenders to become law-abiding citizens. The grievor submitted that his chance meeting and brief discussion resulted in him agreeing to help an old friend who said he needed help to free himself from a life of crime.

[184] The grievor did not pursue in any further detail the allegation of bias on the part of the employer. It is well established in administrative law that an adjudication of a grievance is a hearing *de novo* that cures any previous procedural matters between the parties. The grievor presented me with no concerns about a lack of disclosure from the employer in the preparation for this hearing.

[185] The grievor also argued that it was unfair for the employer to initially elect to do nothing in response to the Abbotsford Police report of the events at Lou's Bar and then over four months later to rely upon the incident in the decision to investigate and discipline the grievor, in part for that incident. He referred me to Brown and Beatty, *Canadian Labour Arbitration*, as authority for the principle that employers must sanction individuals for inappropriate behaviour in a reasonably expeditious fashion. Brown and Beatty add that if the employer cannot explain any delay imposing discipline, the discipline may be voided (see paragraph 7:2120).

[186] When challenged in cross-examination about why she did not act sooner to raise the incident at Lou's Bar as a disciplinary matter, Acting Warden Nancy Shore testified that the Abbotsford Police Department had shared the information about its contact with the grievor with the CSC but had asked that it not be disclosed at that time so as to avoid any risk of jeopardizing an investigation into organized crime. Ms. Shore thought that the request came in writing, but the employer was not able to produce it at the hearing.

[187] To summarize the matter of the grievor's delay submission, I do not find problematic the approximately four-month delay in the employer acting upon the incident report. The delay did not cause the grievor prejudice in being able to answer the allegations, once they were brought to his attention.

[188] More importantly, I find that when an initial incident is linked to a later incident because it involves similar conduct, it points to a pattern of misconduct that would potentially harm the employer's interests if it were ignored. In that case, the time allowed for the employer to retroactively act upon the initial report will be extended.

[189] In response to the testimony about being been seen with white powder on one of his nostrils, the grievor argued that the hearing received no clear and convincing evidence to prove that it was cocaine. He also argued that if it was in fact cocaine, then some other person had used it and had left some on the bathroom vanity counter. However, he failed to provide even the most tenuous thread of a logical connection to how someone else leaving cocaine on the bathroom vanity could somehow inadvertently have become caked in one of his nostrils. As such, I find this argument and the brief line of questioning by the grievor's counsel with respect to Mr. Keith in poor form.

[190] The grievor suggested that Ms. Craigen was tired and irritated when she observed the white powder on his nostril and noted that she testified that she had never actually seen cocaine. She testified that she had only assumed that the white powder in his nose was cocaine. He also suggested that his conversation with Ms. Craigen on the morning after the party contained only vague statements that in no way indicated that he admitted to using cocaine at the social gathering.

[191] In support of his submission about Ms. Craigen's observations of the white powder, the grievor cited Brown and Beatty (see paragraph 3:5130), which states the rule of circumstantial evidence in criminal law known as the "Rule in Hodge's Case". It provides that if the only evidence is circumstantial, it will not be proof of the fact to be established unless it points conclusively to the inferences drawn, and they are not capable of supporting any other rational inference that would exclude culpability. Brown and Beatty also note that when the conduct in question would also be a crime, adjudicators have applied this rule. However, in other contexts not involving criminal conduct, they note that adjudicators commonly assess circumstantial evidence without any particular presumption or rule as to its conclusiveness.

[192] The grievor also submitted that leaving the bar with the members of the organized crime gangs was due to an innocent miscommunication between him and the police.

[193] The grievor submitted that I should not accept the CSC's opinions as they are insufficient to prove the case against him. He further stated that the investigative process leading to the termination of his employment was unfair and biased as he claimed he was not given the details of the case against him. Given all that, he argued that the employer's use of his lack of a rebuttal of the allegations against him during the investigation was unjust.

[194] The grievor drew my attention to *F.H. v. McDougall*, 2008 SCC 53, which clearly points out the need for me to make a determination on a balance of probabilities but adds that the evidence upon which I base this decision must be clear, cogent, and convincing, which he submitted is far from the case.

[195] The grievor also relied upon *Basra v. Deputy Head (Correctional Service of Canada)*, 2012 PSLRB 53, and *Malisza v. National Research Council of Canada*, 2014 PSLRB 69, which consider allegations and find them not substantiated by clear, cogent,

and convincing evidence. In applying these cases to the facts before me, the grievor submitted that Ms. Craigen's testimony about the white powder she observed in his nostril was based upon a sincerely held but mistaken belief that it was cocaine.

[196] The grievor cited *Kinsey v. Deputy Head (Correctional Service of Canada)*, 2015 PSLREB 30, as a recent decision supporting his submission that he had received an excellent performance appraisal and that there should be a presumption of reinstatement. *Kinsey* considers the case of an obese CX. His managers' attitude caused the adjudicator grave concern (at para. 103). Mr. Kinsey was subjected to intense scrutiny for matters that the adjudicator found should have more appropriately been considered issues of accommodation and performance management (at paras. 106 and 111). Other than the good performance appraisal, the relevant facts in *Kinsey* are completely different from those before me, and that case is not relevant.

[197] The grievor rebutted the employer's case authorities by arguing that they involved cases of employment being terminated for far worse wrongdoing than occurred in the matter before me.

[198] *Lapostolle* involves the termination of a CX's employment (classified CX-2) due to him having been observed on several occasions with notorious criminal gang members. He also accepted a $10 000 gift, which sponsored his participation in a Las Vegas poker tournament, from a person with known ties to criminal gangs. Police also found Mr. Lapostolle twice in one week travelling in a speeding car with a person having ties to criminal gangs.

[199] And finally, Mr. Lapostolle was found two years earlier to have been in a limousine, with the markings of a local strip club, with the same person with ties to organized crime. For that incident, he had been suspended for one day from work as discipline and had been warned not to visit that bar again or to associate with the individuals from that bar as some were known to have gang connections. That incident was not relied upon as justification in the decision to terminate Mr. Lapostolle.

[200] As in the matter before me, Mr. Lapostolle denied knowing that the men he associated with were involved in organized crime. The adjudicator determined that that denial was wilful ignorance in the case of his poker sponsor's links to organized crime.

[201] But unlike the matter before me, Mr. Lapostolle was found to have had more contacts with associates of organized crime and very significantly was found to have accepted $10 000 from that sponsor for the poker tournament. Another exacerbating factor in *Lapostolle* was that one of the criminal gang associates he was found with was wearing a clearly visible item identifying a gang.

[202] The adjudicator in *Lapostolle* concluded that persons who obtain employment with the CSC accept personal constraints that come with it that favour the employer and accept to act at all times with integrity, even outside work hours. She noted continued associations occurred after the employer in that case had warned Mr. Lapostolle. The adjudicator also noted that as in the matter before me, the acquaintances were more than casual as Mr. Lapostolle had known the criminals since childhood, which made him especially vulnerable to the criminal gangs.

[203] The adjudicator also pointed out that as in the matter before me, Mr. Lapostolle visited establishments known to be frequented by criminal gang members, along with the exacerbating matter of Mr. Lapostolle being in the company of a person wearing a visible item identifying a gang (which was not shown to be an issue in the matter before me). When she looked at these two issues, the adjudicator found that the employer should not be required to specifically prohibit conduct that is clearly reprehensible to everyone.

[204] Having made that finding, the adjudicator concluded that by associating publicly with individuals involved in organized crime, Mr. Lapostolle tarnished the CSC's image. And given all the circumstances, it was determined that Mr. Lapostolle was no longer to be able to perform his duties with integrity, which caused irreparable harm to the relationship of trust with the employer (see *Lapostolle*, at paras. 90 to 93).

[205] And finally, the adjudicator found that the termination was justified because Mr. Lapostolle did not acknowledge the seriousness of his conduct even at the hearing (see paragraph 95).

[206] Although the grievor in this case correctly pointed out that more occasions of interactions with those associated with criminal gangs were discovered in *Lapostolle*, along with the one instance of the gang member wearing visible gang identification and the significant payment to sponsor poker, all the other concerns that the adjudicator noted in *Lapostolle* are consistent with the employer's concerns in the

matter before me.

[207] In this case, the grievor admitted to being childhood friends with the criminal gang members. He chose to have drinks at an establishment well known to be frequented by criminal gang members. After being told by police that he was seated with known criminal gang associates, the grievor chose to leave the establishment and share a taxi with them, furthering his very public association with them. And he publicly displayed his CSC badge in that establishment.

[208] The grievor then explained to me that he agreed to follow up after the meeting at the bar with a notoriously dangerous criminal gang associate as a part of their friendship, allegedly to help him break free from his life of crime. This meant that the grievor would have been in an ongoing relationship with that person that if true, would have demanded, as a responsible and diligent CX, making written disclosure of this relationship to the SIO at his place of employment.

[209] When the Federal Court considered Mr. Lapostolle's application for judicial review to quash the adjudication decision to uphold his termination, it rejected his appeal and among other findings noted the fact that he claimed that his $10 000 poker money was actually more of a business sponsorship contract. The Court noted that even if it accepted the poker sponsorship argument, Mr. Lapostolle failed to disclose it to his employer. The Court also noted in *obiter dicta* that it would be surprising had Mr. Lapostolle not been aware at the beginning of his career that the dubious character of the company he kept could lead to his dismissal.

[210] And as in *Lapostolle*, the grievor's primary submission to me was that he had done nothing wrong that would justify discipline.

[211] Adjudicator Olson arrived at the same conclusion as *Lapostolle* in the recent case of *Shandera v. Deputy Head (Correctional Service of Canada)*, 2017 PSLREB 26 at para. 211. He found that CSC employees are held to a higher standard of conduct and that they are aware of those heightened expectations of them and their personal conduct. He cited *Bridgen v. Deputy Head (Correctional Service of Canada)*, 2012 PSLRB 92, and several other cases that reach the same conclusion.

[212] Having carefully reviewed all the cases relied upon by the employer and rebutted by the grievor involving CSC employees and criminal gang associations,

I reject the necessarily implied corollary of the grievor's argument that his gang associations were somehow less significant than was so in those cases. His submission necessarily implies that there is something akin to a sliding scale of seriousness for CSC peace officers in their associations with members of criminal gangs and a concomitant sliding scale of consequences for CSC-employee associations with gangs.

[213] I disagree. I find any and all such criminal gang associations by a CSC employee deeply troubling and completely unacceptable. All such associations are fraught with risk that the employee will be compromised either by recruitment and inducement or by coercion and threat. As noted in Warden Pelham's testimony, if a CSC employee is compromised by a criminal gang, the security and safety of all inmates and staff at the institution are put at risk.

[214] Furthermore, the CSC rightly argued in all these cases and in the matter before me that its reputation and credibility in the eyes of partner law-enforcement agencies and the public suffer significantly every time a CSC employee is found to have any association with criminals, especially with members of criminal gangs.

[215] If I were to accept the grievor's argument that his criminal gang associations were less serious, I would open the door to peace officers feeling entitled to some criminal gang associations that could be tolerated with little or no discipline before facing the serious sanction of losing their jobs. No good could come from that.

[216] In support of the grievor's argument that termination was excessive if I did find some wrongdoing on his part, I was referred to *Beliveau v. Treasury Board (National Parole Board)*, [1982] C.P.S.S.R.B. No. 109 (QL), PSSRB File No. 166-2-12955 (19820706), in which a National Parole Board employee lived with a federal inmate who was on parole. While investigating an armed robbery, the police raided the employee's home and discovered a loaded 357 Magnum handgun, 14 bullets, tools for break and enter, a bag of syringes, a police radio scanner, large sums of money, and scales. A criminal charge was laid against her; it arose from the search of her home. However, she was not convicted for it.

[217] While the employer in *Beliveau* cited risks associated with Ms. Beliveau's work at the National Parole Board and her access to sensitive offender information, the adjudicator found that no wrongdoing had been proven and struck her termination.

[218] I am neither bound to follow that case nor inclined to be persuaded by it. *Beliveau* is from a different era in 1982. The matter before me involves a person present in a federal institution with face-to-face contact with inmates. I received testimony as to extremely violent gangs that have cultivated ties to federal inmates as part of their crime networks, which is a significant difference from *Beliveau*.

[219] The grievor also argued that the internal review process for the employer's investigation into his alleged wrongdoing was unfair. He testified that he was not able to see the full details of the investigation and its findings and was then asked to provide his response to the allegations. He claimed that he was not able to fully answer the allegations due to lack of disclosure and that the employer then took his lack of response as an aggravating factor in determining that his employment would be terminated.

[220] As the employer noted in its response, it is well established that the hearing of a grievance before this Board is a hearing *de novo*, with full disclosure of all evidence. Any past procedural shortcomings are remedied by the new hearing of the matter (see *Tipple v. Canada (Treasury Board),* Federal Court of Appeal [1985] F.C.J. No. 818 (QL)(C.A.) at 2).

[221] The grievor pointed to evidence that he received one very good performance evaluation during his brief tenure working as a CX at the institution, and he cited jurisprudence that such a good record of employment should have been a strong mitigating factor in presuming he was suitable for corrective and progressive discipline. Given the gravity of the matters noted in this case, I am not persuaded by this argument.

[222] The grievor argued in the alternative his complete denial of any wrongdoing. He argued that even if I do accept all the employer's findings as to his wrongdoing, the termination of his employment was not warranted, and that a one- or two-day suspension should be substituted for it.

[223] Warden Pelham gave unambiguous testimony as to his reasons for deciding that the grievor could not continue in his employment with the CSC. He stated that for the reasons that have been explored in this decision, the bond of trust with the grievor had been irreparably harmed. He explained how he must have complete trust in all his staff as their safety and that of the inmates depends on it.

[224] Having closely observed the grievor's testimony, I completely accept Mr. Pelham's decision and the reasons for it. The grievor gave testimony at several critical points to his case that was simply not believable and that at times contradicted his earlier statements. He was at times hesitant and evasive. He gave no testimony whatsoever as to the white powder observed on his face in one nostril and yet suggested in argument that the powder was accidently placed there.

[225] The grievor argued that being found by police seated in a known gang hangout bar with known members of organized crime gangs and then leaving with them in a taxi was an innocent misunderstanding. He suggested that bragging after a day of heavy consumption of alcohol that he was connected with "bad dudes" who could get his co-worker anything she wanted was simply the incoherent babbling of a drunk.

[226] And then later the same evening, the grievor retired for five minutes to the bathroom and emerged with white powder plainly visible in and around one nostril, and a thin coating of white powder was found minutes later on the bathroom vanity. He simply stated that the employer has not proved that he used cocaine. This statement and the previously noted "bad dudes" comment, each if taken on its own, might be seen as less concerning, but taken together, each shows a consistent theme of very unwise relationships and lifestyle habits for someone in the early stages of a CX career.

[227] If the grievor wishes to maintain childhood friendships with known criminal gang members and help one of them rehabilitate his life, he should have disclosed it in writing to his employer in a timely manner. Doing otherwise, while boasting to co-workers about being connected with "bad dudes", is completely inconsistent with the high standards of conduct required of a CX.

[228] The grievor argued that the incidents that the employer relied upon in this hearing either were misunderstandings or were not proven. I do not agree. I heard clear, cogent, and convincing evidence that the grievor deliberately showed his CSC badge to the Abbotsford Police when they approached him at a bar frequented by criminal gang members. It was further established that when he was told that it was improper for a CX to be seated with criminals with gang affiliations, he then chose to leave with them, even though the police had just informed him that they were known to have gang associations. He then shared a taxi with them.

[229] And finally, I find the convergence of these circumstances so compelling as to allow me to find on a balance of probabilities that the white powder in the grievor's nose was cocaine or some other illicit narcotic. He neither denied the existence of the white powder in his nostril nor provided any exculpatory evidence as to how it got there or what it could have been, if not cocaine.

[230] Counsel for the employer drew my attention to *Laplante v. Treasury Board (Canada Border Services Agency)*, 2007 PSLRB 104, upheld in 2008 FC 1036. She pointed out the similarity of the grievor in that case, who was dismissed based upon circumstantial and speculative evidence of assisting family members who were smuggling cocaine across the Canada - United States border. In dismissing the grievance, the adjudicator noted the lack of direct evidence from a police investigation but also found inconsistencies in the grievor's testimony that led him to believe that the grievor was in fact involved in the criminal activity. In upholding the decision on judicial review, the Federal Court reviewed the adjudicator's findings and found them reasonable, citing the need to be deferential in matters of findings of fact and credibility.

[231] The employer also cited *Canada Post Corporation v. The Association of Postal Officials of Canada* (1996), 56 L.A.C (4th) 353 at para. 47. The arbitrator in that case found that when a *prima facie* case of employee misconduct has been made, the employee is obliged to explain his or her conduct. The arbitrator found that lacking such forthrightness, the grievor's story of the events was not in harmony with the preponderance of probabilities and that his failure to offer an explanation to police after his arrest weighed heavily against his credibility and the believability of his story.

[232] Given the fact that the grievor in this case argued that he did nothing wrong and that there were no grounds for discipline, I must conclude that he does not understand his mistakes, has accepted no responsibility, and has shown no remorse for his actions and the harm he caused his workplace and how he has besmirched the CSC's honour.

[233] Adjudicator Shannon, in her recent decision *Rahim v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 121 at para. 83, considered whether the employer-employee relationship had been irreparably harmed and noted the critical role accepting responsibility plays in that assessment. She found that when determining whether a grievor may engage in future misconduct, a critical issue is

whether he or she has accepted responsibility for his or her actions and whether he or she understands the impact it has on the employment relationship.

[234] Given the primary submission to me in the grievor's closing argument, which was that he had done nothing wrong that merited any discipline, I conclude that he has no appreciation that his conduct on the two evenings in question was unacceptable.

[235] Accordingly, I find that upon the noted clear, cogent, and convincing evidence, the employer has established on a balance of probabilities that it had just and reasonable cause to terminate the grievor's employment as its bond of trust with him has been irreparably harmed. The discipline imposed upon him was not excessive.

[236] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

IV. Order

[237] The grievances are dismissed.

[238] The employer requested that I issue a sealing order for Exhibit E1, Tabs 2 and E2. Each exhibit contains detailed information from police and CSC security intelligence briefings that involve observations, investigations, and intelligence gathered about organized crime. It is in the public interest that this information not be disclosed lest it be of use to criminals in the study of police and CSC security intelligence gathering methods and their levels of knowledge of criminal gangs.

[239] I order Exhibit E1, Tabs 2 and E2, sealed.

December 20, 2017.

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