

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

SEAN WELLS

Grievor

and

**TREASURY BOARD**  
**(Solicitor General - Correctional Service Canada)**

Employer

***Before:*** Rosemary Vondette Simpson, Board Member

***For the Grievor:*** David Landry, Public Service Alliance of Canada

***For the Employer:*** Ronald Snyder, Counsel

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Heard at Moncton, N.B.,  
July 8 to 11, 1997.

## DECISION

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At the outset of the hearing, there was an order for the exclusion of witnesses.

Mr. Sean Wells was working as a correctional officer II at the date of his discharge from the Springhill Correctional Facility in Nova Scotia. He grieved his indefinite suspension and discharge.

By letter dated October 7, 1996 from Mr. Claude E. Dumaine, Warden of the Springhill Institution, Mr. Wells was informed that his employment was terminated effective April 29, 1996, the date that he was indefinitely suspended. The letter reads in full as follows (Exhibit E-20):

*Re: Termination of employment with the Correctional  
Service of Canada Springhill Institution*

*I have now had the opportunity to thoroughly review the content of the investigation report completed by Bruce Megeney following allegations to the effect that you committed a serious misconduct in violation of the CSC Code of Conduct. The said report was shared with you on August 1, 1996 in the presence of your lawyer, J. Letcher. You were invited to review the report and to submit any pertinent representation before I considered any action relative to the allegations made. At your request, we subsequently met with you and your lawyer on August 7, 1996.*

*Based on the information available to me, I have concluded that you have in fact violated the CSC Code of Discipline and Standards of Professional Conduct. Specifically, that over the course of several years you socialized and associated in the community with Daniel Poirier, a known drug dealer; that you were present and knowingly involved while this individual conducted drug related activity; and that you maintained inappropriate association with Daniel Poirier while he was incarcerated at Springhill Institution.*

*Representations made in your defense at our August 07, 1996 meeting did not in my view reduce the weight of the evidence contained in the above mentioned investigation report, nor did you provide me with any circumstances which may have mitigated in your favor. In fact, you did not even acknowledge any misconduct, oversight or use of poor judgment to excuse your participation in the events referred to in the investigation report.*

*I am satisfied that on the balance of probability, you are guilty of the allegations referred to in paragraph two (2) of this letter. I am also satisfied that as a result of your behavior you have rendered yourself incapable of performing your duties with CSC because your credibility has been so tarnished and your effectiveness so diminished with both staff and inmates, you would be unable to carry out your basic duties with any degree of effectiveness. In essence, the trust so vitally important between management and correctional officers in a correctional environment has been violated to the point that it cannot be restored.*

*Based on the foregoing, I am left with no alternative but to terminate your employment with the Correctional Service of Canada. In accordance with Section 11 of the Financial Administration Act, the termination is for cause and will be effective April 29, 1996, i.e., your date of suspension.*

*You have the right, as per your Collective Agreement, to submit a grievance relating to this decision. In the event that you decide to submit such a grievance, it should, in accordance with Article M-38.19 of the PSAC Master Agreement, be submitted directly to the final level of the grievance procedure.*

Constable Todd Gilmore, a member of the Royal Canadian Mounted Police since 1987, was an undercover officer in an investigation called "Operation Jim Dandy". It was an investigation of drug trade, liquor and other contraband. He and a paid police agent operated a small store call the "Jim Dandy Newsstand". This operated from January to approximately December 1995. In the fall of 1995, he had dealings with Mr. Daniel Poirier, a major cocaine trafficker who was later convicted of drug trafficking. He was sent to jail for five years after pleading guilty.

In his undercover capacity, Constable Gilmore made two drug deals with him. In one deal Mr. Poirier sold \$1,700 worth of cocaine to Constable Gilmore and in another, Mr. Poirier was the vendor in a deal for a kilogram of cocaine at \$50,000. On December 11, 1995, Mr. Poirier entered the "Jim Dandy Store" with Mr. Wells whom he introduced to Constable Gilmore. Constable Gilmore was already aware, because of surveillance, that Mr. Wells was a person regularly seen with Mr. Poirier. He also knew that Mr. Wells was a prison guard and that he had worked as a part-time security guard. The three of them went to lunch at "Don Cherry's Sport Bar"; Messrs. Wells and Poirier drove over together and Constable Gilmore arrived alone. They were seated at a small table which measured approximately three feet by three feet, with

Mr. Poirier opposite Constable Gilmore and Mr. Wells to the right of Constable Gilmore. It was his evidence that Mr. Wells was closer to him than Mr. Poirier was. Constable Gilmore stated that the restaurant was crowded but not especially noisy. He and Mr. Poirier had no trouble hearing each other and Mr. Wells was closer to him. Conversation and lunch lasted more than one hour and 75% of the conversation concerned discussion of a drug deal that Constable Gilmore had arranged with Mr. Poirier. Much of this conversation took place at the beginning of the time when all three were facing each other. The conversation was in both French and English and there were a number of references to the French slang for cocaine and hash: “poudre” and “noir”.

Mr. Wells took no part in the drug conversation; he just continued with his meal. There was no doubt in Constable Gilmore’s mind that Mr. Wells heard and understood the conversation which lasted throughout the meal. Mr. Poirier seemed to have no concerns about Mr. Wells overhearing the conversation. At one point, Constable Gilmore asked Mr. Wells what he did for a living. Mr. Wells indicated he installed security alarms. He made no mention of being a prison guard. It was only in the last five or ten minutes that Mr. Wells turned slightly in his chair and faced one of the televisions directly. There is no doubt that he could still continue to hear the conversation at the table. As a result of the “Jim Dandy” and another operation, there was a large “drug bust” in the Moncton area resulting in many arrests, including Mr. Poirier’s, and seizures of large amounts of drugs and other proceeds of crime.

On the same day as the incident in question, Constable Gilmore recorded the incident in his notes.

Constable Brian Barnes, a member of the Moncton Police Force since 1975, testified that he had participated in “Operation Janitor”, a surveillance operation targeting Mr. Poirier. He had known Mr. Wells for eight or nine years while Mr. Wells was a security guard at a local shopping mall. They had a cordial, friendly relationship and were on a first name basis. He had, from time to time, observed him in the presence of Mr. Poirier.

On September 29, 1995, he was watching Mr. Poirier's house and he saw Mr. Wells on the porch of Mr. Poirier's residence. Constable Barnes was speaking with other officers, by radio, who were also observing Mr. Poirier. There were four different surveillance teams following Mr. Poirier.

On November 1, 1995, a day that Mr. Poirier was under surveillance, he was at the residence of Mr. Wells at 55 Church Street, Moncton, and Mr. Wells was seen getting into a car with him.

Mr. William John MacDonald, a Moncton police officer since 1978, testified to being part of the joint forces undercover operation. At one point, he was doing surveillance and observed Mr. Wells accompanying Mr. Poirier to lunch at "Don Cherry's Restaurant" which Constable Gilmore also attended. He had known Mr. Wells for between five and seven years because Mr. Wells had worked as a security guard at the Highfield Square Shopping Mall.

On January 3, 1996, he interviewed Mr. Wells at the police station and videotaped the interview. He later found out that the audio part of the tape was not working. No admission of criminal activity was made by Mr. Wells. He admitted that he "hung around" with Mr. Poirier. He spent a lot of time with him and they had taken trips together, including a trip to a concert in Montreal. On that trip to Montreal, Mr. Wells, Mr. Poirier and another correctional officer drove to Montreal together. Mr. Poirier flew back and the others drove back to Moncton. When questioned about this, Mr. Wells denied transporting anything back for Mr. Poirier.

When asked about Mr. Poirier's associates, Mr. Wells stated that he was aware of Charles Blades whom he saw once at Mr. Poirier's house. Mr. Wells stated that he was in another room and did not pay attention. Mr. Wells acknowledged that he knew who Charles Blades was, that is, a known career criminal in the city of Moncton. Constable MacDonald noted that Mr. Blades had acted as a drug runner for Mr. Poirier for which he had been convicted and incarcerated. Mr. Wells also acknowledged that he had known Mr. Poirier was a drug dealer for three years but added: "I never thought he was that big". Later, Constable MacDonald informed the Institutional Preventive Security Officer (IPSO) where Mr. Wells worked as a correctional officer. He spoke to Mr. Bob Hanley and informed him of his interview with Mr. Wells.

Mr. Bob Hanley, the former IPSO of the Springhill Institution where Mr. Wells worked, testified. He has been ill; he has suffered some memory loss and has been on stress leave and disability since March 1996. He first heard of the investigation into Mr. Poirier before October 1995. Later, on January 4, 1996, he spoke to Constable MacDonald who told him of Mr. Wells' friendship with Mr. Poirier. Constable MacDonald told him that he had interviewed Mr. Wells about the meeting at "Don Cherry's Restaurant" where a drug transaction had been conducted. Shortly after he received the call from Constable MacDonald, Mr. Wells came to him and told him that a buddy of his, Daniel Poirier, had been convicted on drug charges and would be coming to the Springhill Institution. Mr. Hanley told Mr. Wells that there should be no problem if he kept away from him and had as little to do with him as possible.

Mr. Bob MacKay, formerly a correctional officer II and now Acting Correctional Supervisor since May 1996, explained that there were four housing units. Inmates should generally not be in housing units other than the one they are housed in. He observed Mr. Poirier three or four times in Housing Unit #10, the Unit to which Mr. Wells was assigned as an officer. He observed Mr. Wells interact with Mr. Poirier for 15 minutes on one occasion. When he asked Mr. Wells why Mr. Poirier was visiting, Mr. Wells replied that Mr. Poirier was a friend of his from the street and was looking for some advice. Mr. MacKay had concerns that Mr. Wells was spending too much time with Mr. Poirier and thereby placing himself in a bad position with regard to his colleagues and other inmates.

On occasion, he noticed Mr. Wells giving Mr. Poirier a newspaper. While it was not uncommon for officers to give the newspaper to inmates in their own housing unit when they had finished reading it themselves, it was not good practice to give anything to inmates from outside their own unit. He stated that Mr. Poirier was out of bounds as soon as he entered the front door.

Mr. Denis Daigle, a correctional officer I at Springhill Institution, testified that he has known Mr. Wells for several years; both had been part-time security officers at the Highfield Square Shopping Mall in Moncton. He also knew Mr. Poirier because he had a shop in the Mall but had no personal relationship with him. He had observed Mr. Wells and Mr. Poirier interact on a number of occasions. He observed Mr. Wells interacting with Mr. Poirier as an inmate on one occasion. When he himself had some

acquaintances from his community assigned to Springhill, he informed the IPSO and made sure they were housed in units other than his own; he made sure that they would not be contacting him. Sometimes inmates have legitimate business in housing units other than their own and there were occasions when they did visit, although this was not to be encouraged.

Mr. George Sproul, a correctional officer II, testified that Mr. Wells had asked him to attend an Elton John concert in Montreal with Mr. Poirier in October 1995. He understood that a number of others would be travelling with them also. As it turned out, he was the only one to go with Mr. Wells and Mr. Poirier. Mr. Sproul understood that Mr. Poirier was a successful contractor. Mr. Poirier drove all three of them to Montreal and paid for the one-room suite which they all shared. Although Mr. Sproul was not sure if Mr. Poirier had paid for his ticket to the concert, Mr. Sproul himself did not pay and to the best of his knowledge Mr. Wells did not pay. Mr. Poirier purchased the tickets from a scalper at a strip club for about \$110.00 each. Mr. Sproul stated that he himself was drinking quite heavily that evening. He saw nothing improper take place. The next day, Mr. Wells drove back to Moncton with Mr. Sproul when Mr. Poirier informed them that he had decided to fly back.

The trip caused him no concern until four or five months after the concert when he saw Mr. Poirier in a meal line at the Institution and learned that Mr. Poirier, whom he thought was a successful contractor, was now a convicted drug dealer and federal inmate. He was surprised, concerned and angry and approached Mr. Wells. He was concerned that only a few months before he had accepted an invitation from Mr. Wells to attend the Montreal concert in the company of Mr. Poirier. Mr. Wells assured Mr. Sproul that he had had talked to the IPSO, Bob Hanley, about his relationship with Mr. Poirier and had been told not to worry about it.

When Mr. Sproul was assigned to Housing Unit #10, he had on at least two occasions observed Mr. Poirier come to the Unit to speak to Mr. Wells. On one occasion, Mr. Poirier and Mr. Wells were in a room together for approximately 30 minutes because Mr. Poirier had concerns about his community assessment report and brought these concerns to Mr. Wells.

When Mr. Sproul learned, around April 30, 1996, that Mr. Wells had been suspended for associating with Mr. Poirier, he went to his supervisor, Mr. Bruce Megeney, who referred him to Mr. Dave Coon, the new IPSO, and told them about the trip to Montreal. Mr. Sproul was then placed under investigation. He indicated that he would be quite angry with Mr. Wells for taking him on the trip if Mr. Sproul learned that Mr. Wells had been aware at the time that Mr. Poirier was a drug dealer. Mr. Sproul was disciplined for failure to report the trip in a timely fashion.

Mr. John Alderson also testified for the employer. He has been the Unit Manager since 1989 at Springhill Institution. There is a unit manager for each housing unit. From January 1995 to April 1996, Mr. Wells was assigned to Housing Unit #10 and Mr. Poirier was assigned to Housing Unit #8. Mr. Poirier was not one of the inmates assigned to Mr. Wells. Mr. Wells had no authority to deal with a community assessment report on Mr. Poirier. He was obligated to send Mr. Poirier to his own case management officer. However, if he did engage in a conversation with him about the community assessment report, he should have completed an "Activity Record" (Exhibit E-6). This is used to record activities and dealings by correctional officers with inmates not assigned to their caseloads. It is important that such records be kept because it is critical that staff share information. If Mr. Wells was dealing with Mr. Poirier's community assessment record during his interaction with him, there is no record of it.

If Mr. Wells knowingly associated with Mr. Poirier, a drug dealer, outside the Institution and attended "Don Cherry's Restaurant" with him when he discussed a drug deal, it would now be a very serious problem for Mr. Wells to carry out his functions as a correctional officer. Correctional officers must have integrity and their behaviour must reflect positively on the Institution. They must be role models and lead by example.

Mr. Dave Coon, the present IPSO at Springhill Institution since March 1996, has 24 years service in Corrections. He has been involved with this case since March 1996. He was present at meetings which were held with prison officials and members of the police forces involved in the surveillance and evidence gathering against Mr. Poirier. There was a process of disclosure. Later, the Warden,



Mr. Claude E. Dumaine, ordered Mr. Bruce Megeney, a unit manager, to head up an investigation regarding Mr. Wells and his association with Mr. Poirier. Mr. Coon stated that he assisted Mr. Megeney in this investigation. He also acted as an initial fact finder prior to Mr. Wells' suspension. On April 29, 1996, Mr. Wells was suspended. A number of interviews were conducted of inmates, including Mr. Poirier.

Mr. Coon stated that if it is found as fact that Mr. Wells knowingly associated with a criminal outside the Institution, was present and heard a drug transaction taking place at "Don Cherry's Restaurant" and inappropriately associated with Mr. Poirier within the Institution, then Mr. Coon would have a very difficult time with Mr. Wells working as a correctional officer within the Institution. As the IPSO, it is his duty to provide a safe and secure environment within the Institution for staff and inmates. The best tool for achieving this is that staff must be honest, trustworthy and professional people at all times. Mr. Coon stated that he must be able to have faith that every member of the staff will carry out his/her duties with integrity and honesty. For example, if Mr. Wells had to search visitors or inmates for contraband, Mr. Coon could not be confident that Mr. Wells would carry out those duties properly and diligently.

Mr. Bruce Megeney, Unit Manager at Springhill since 1995, testified. On March 27, 1996, Mr. Coon informed him, as manager of the unit that Mr. Wells was assigned to, of the information he had received from the police. Over the next month, he spoke every week to Mr. Coon about the progress of his fact finding and Mr. Wells continued in the job. By April 29, 1996, the decision was made to suspend Mr. Wells because of the seriousness of the offenses and the investigation continued. During the month of June, he interviewed staff members who had worked with Mr. Wells. Each was given the opportunity for union representation. A tape recorder was used. Later the tapes were transcribed and each employee was given the opportunity to review the tapes and initial changes. He did a final report and presented it to the Warden on July 8, 1996 (Exhibit E-14). (The admission of the report was objected to as hearsay by the grievor's representative. I allowed it to be admitted for the sole purpose of showing that the interviews had taken place and not as to the truth of their contents. The evidence that I would rely on would be the *viva voce* evidence of witnesses at the hearing.)

Although Mr. Megeney's report referred to a fourth allegation concerning drug related activities by Mr. Wells in Springhill, this was not relied on by the Warden in the decision to take disciplinary action against Mr. Wells. A copy of the report was given to Mr. Wells on August 1, 1996 and he was given an opportunity to rebut the allegations on August 7. The Warden, the Deputy Warden and Mr. Megeney decided that Mr. Wells should have his employment terminated.

Mr. Claude E. Dumaine, the former Warden at Springhill Institution, testified. He is now a special advisor to the Deputy Commissioner, Atlantic Region, for Correctional Service Canada.

In March 1996, he received information that Mr. Wells and Mr. Poirier had associated with one another outside the prison. An investigation was held within the Springhill Institution. It was reported to him on April 29, 1996 that a preliminary investigation confirmed the earlier allegation. The information he received concerning the association of Mr. Wells with Mr. Poirier and also the fact that Mr. Wells had been present at "Don Cherry's Restaurant" when Mr. Poirier discussed a drug deal with the undercover police officer, Constable Gilmore, convinced Mr. Dumaine that even though the investigation was not complete Mr. Wells should be suspended from duty. Mr. Dumaine requested that the investigation continue. On June 14, 1996, he was presented with the final report of the investigation. Mr. Dumaine studied the report that he had been given and then set up a meeting for August 1, 1996. He requested the presence of Mr. Wells and his lawyer, Mr. Letcher, Deputy Warden A. Alexander, and Mr. Megeney. Warden Dumaine was also present at this meeting. He wanted to give the report to Mr. Wells so that he could go over it and make any rebuttal that he wished to make on the allegations. Mr. Wells was given full opportunity for himself and his lawyer to speak. It was decided to meet again on August 7, 1996. The allegations that Mr. Dumaine relied upon were: (1) Mr. Wells' association with Mr. Poirier on a social level when he knew him to be a drug dealer; (2) the fact that Mr. Wells was present at "Don Cherry's Restaurant" when a drug deal was being discussed; and (3) Mr. Wells had involved himself inappropriately with an inmate.

Mr. Wells was given full opportunity to present his response to the allegations. At no time did Mr. Wells acknowledge any misjudgment on his part. Mr. Dumaine acknowledged that he was the decision-maker in the decision to terminate Mr. Wells' employment. The termination letter was, however, signed by Mr. Alexander, the Acting Warden, but the letter was written by Mr. Dumaine.

The grievor's case commenced with calling as a witness Mr. Daniel Poirier, an inmate at Springhill Institution. He indicated that has known Mr. Wells since approximately 1993. Mr. Poirier met Mr. Wells when he was a security guard at the Highfield Square Shopping Mall. Mr. Poirier had a shop in the Shopping Mall at that time. He was a good friend of Mr. Wells; they went on a number of trips together, including trips to Boston and Montreal. He saw Mr. Wells regularly. He did not tell Mr. Wells that he was involved in the drug trade. This was not a fact that he publicized.

Mr. Poirier described his visit to "Don Cherry's Restaurant" with Constable Gilmore and Mr. Wells. He stated that Mr. Wells would not have known what he and Constable Gilmore were talking about when they discussed the drug deal. Mr. Poirier did not recall any mention of "poudre" or powder, or black or "noir".

With regard to the allegation that Mr. Wells had continued to see him after he became an inmate at the Springhill Institution, Mr. Poirier stated that he had gone to see Mr. Wells about a community assessment report on one occasion. He did not understand the system and Mr. Wells explained it to him. At the time in question, he did not yet have a case manager assigned to him. When asked how often he had gone to see Mr. Wells in Housing Unit #10, Mr. Poirier replied: "Four or five times, maybe."

With regard to the Elton John concert in Montreal which he attended with Mr. Wells and Mr. Sproul, Mr. Poirier stated that the reason he decided to fly back to Moncton was that he was a poor drinker and was not feeling well so he decided to let the other two drive back while he took an airplane.

In cross-examination, inmate Poirier admitted to having a criminal record dating back to 1977. The offenses in his pre-existing criminal record related to trafficking in narcotics. There were three charges and he was given three months on each charge. He was also convicted of possession of narcotics as well as assault,

mischievous, and possession of the proceeds of crime. He stated that he does not recall Mr. Wells ever indicating to him the inappropriateness of associating with him within the Institution. He also stated that Mr. Wells had said "Come up to the Housing Unit about 8 or so", on three or four occasions in order to give him a newspaper.

Mr. Wells gave evidence on his own behalf. He has worked at Springhill Institution for approximately nine years and at the time of his discharge was an acting correctional officer II. He stated that 90% of his job as a correctional officer involved interacting with inmates. He admitted that he was a good friend of Mr. Poirier and had socialized extensively with him. However, he denied knowing that Mr. Poirier was involved in drugs during the time of his association with him before Mr. Poirier was imprisoned. He also did not know that Mr. Poirier was an ex-convict.

He described the trip to Montreal which had occurred in October 1995. He indicated that a number of other people were also to attend the concert but they made their excuses the day before. He denied that Mr. Poirier had purchased his ticket and Mr. Sproul's ticket to the Elton John concert. He testified that he purchased his own ticket as well as Mr. Sproul's.

Mr. Wells confirmed that he had attended a luncheon at "Don Cherry's Restaurant" with Mr. Poirier and an undercover police officer whom at the time he thought was the owner of the "Jim Dandy Newsstand". Mr. Wells explained that he did not identify himself as a prison guard but as an installer of security alarms because he wished to install such an alarm in the "Jim Dandy Newsstand" and was looking to get the job. He ate his lunch and then turned away and started watching television. He heard no talk of drugs at "Don Cherry's Restaurant". The first time that he learned that Mr. Poirier was involved with drugs was the day after the drug raid. He met Mr. Poirier's wife who told him that Mr. Poirier was in jail for trafficking in drugs.

When asked by Constable MacDonald to see him at the police station, Mr. Wells stated that he went voluntarily, that he had nothing to hide and did not think he needed a lawyer. Mr. Wells told Constable MacDonald that he did not know that Mr. Poirier had been in the drug trade. He admitted to Constable MacDonald that he had known Mr. Poirier for about three years but stated that he had no knowledge that

Mr. Poirier was a drug dealer. He had only recently become aware of this when he learned that Mr. Poirier had been incarcerated, but he had not known until then. Constable MacDonald told him that the interview was being videotaped and Mr. Wells agreed to have the interview taped. He was not given a copy, nor did he ask for a copy of the tape. Later, he learned that the audio portion of the tape was not working during the time of the interview.

Mr. Wells denied ever telling Constable MacDonald that he had known that Mr. Poirier was a drug dealer. Shortly after meeting with Constable MacDonald, Mr. Wells arranged to meet with the IPSO at the Institution. The IPSO did not tell him to stay away from Mr. Poirier. He did not see Mr. Poirier when he first became an inmate because Mr. Poirier was in Reception and he was in Housing Unit #10. He did not go looking for Mr. Poirier. On four or five occasions, however, Mr. Poirier came looking for him. On one occasion, Mr. Poirier wanted advice on his community assessment. He wanted to know how it would affect his chances for parole. On about three occasions, he gave a newspaper to Mr. Poirier when asked to do so by him. When Mr. Poirier came to see him in Housing Unit #10, he would enter the front door and walk up the stairs and Mr. Wells would see him at the top of the stairs. Mr. Wells denied that Mr. Poirier was off-limits when he came to the top of the stairs because, basically, all of the correctional officers let inmates come to the top of the stairs; they were not stopped at the line just inside the door.

Mr. Wells stated that when he received his letter of suspension (Exhibit E-18) he was given no explanation other than the letter itself. Within 10 minutes, he was escorted off the property and it was not until August 1, 1996 at a meeting between management and himself and his lawyer, Mr. Letcher, that he was given the allegations. At this meeting, Mr. Wells told Warden Dumaine that the audio portion of the taped interview between Constable MacDonald and himself would show that he in fact had never admitted that he had known Mr. Poirier to be a drug dealer. Shortly thereafter, it was discovered that the audio portion of the tape was no good.

Mr. Wells stated that now he knows that he did something wrong in associating with Mr. Poirier to the point that he did in the Institution. At the time, however, he was not aware of the concerns about this. Nevertheless, he did try to keep a distance;

“It was not like I spoke to him every day”. Mr. Wells admitted that he had been disciplined on several previous occasions.

In cross-examination, Mr. Wells, when asked whether or not he had been trained as a correctional officer to be alert and keep his eyes and ears open to detect criminal activity on the part of others, admitted that he had been and also that he had experience in this during the eight years he served as a mall security guard. In the light of this, he was asked in cross-examination if he had not had suspicions about Mr. Poirier. Mr. Wells admitted that he did have such suspicions and on one occasion had asked Mr. Poirier if he was involved in drugs but accepted Mr. Poirier’s word that he was not.

The last witness, Mr. Norman Copeland, a correctional officer II, was unable to attend the hearing and give *viva voce* evidence. Certain points that Mr. Copeland wished to make were allowed into evidence by stipulation of the employer.

Mr. Copeland, a correctional officer with approximately 18 years of experience, worked on a regular basis with Mr. Wells but did not necessarily work with him every day. He enjoyed a good relationship with Mr. Wells and he did not notice anything unusual about Mr. Wells’ relationship with Mr. Poirier. He cannot recall seeing him with Mr. Poirier and, in fact, does not know who Mr. Poirier is.

The policy for inmates from other units, according to Mr. Copeland, is that they cannot go past the top of the stairs. The rule that they must stop at the door has never been enforced. If an inmate is coming to see one of the officers, it is not a big deal. The problem arises when an inmate comes to see another inmate.

#### Argument for the Employer

The facts are clear and each allegation in the letter of discharge has been proven on a preponderance of evidence. Mr. Wells carried on an inappropriate relationship with a drug dealer in Springhill before and after the latter’s incarceration there. He had known and associated with a drug dealer for approximately three years. He admitted this to Constable MacDonald. Constable MacDonald documented this in Exhibit E-3. He attended a lunch at “Don Cherry’s Restaurant” and ate his lunch less than one foot and a half from Mr. Poirier and an undercover police officer while they

discussed a drug deal. These acts so compromised Mr. Wells' integrity as to make him ineffective in his position. When he became suspicious of Mr. Poirier, he asked Mr. Poirier if he was dealing in drugs and accepted Mr. Poirier's answer that he was not without checking further. As a correctional officer, he had means at his disposal to establish the truth of this or not. Mr. Wells placed a fellow officer, George Sproul, in a compromising situation by taking him to Montreal to see an Elton John concert at which the expenses were covered by a drug dealer.

#### Argument for the Grievor

It was argued that Mr. Wells would have no difficulty in properly carrying out his functions as a correctional officer should he be returned to his position. During the three years that Mr. Wells socialized with Mr. Poirier, he did not know that Mr. Poirier was involved in drugs.

Constable MacDonald is not correct when he states that Mr. Wells told him that Mr. Wells knew Mr. Poirier was a drug dealer during that time but had not realized that he was dealing on such a large scale. At no point did Mr. Wells ever try to hide the fact that he had been friends with Mr. Poirier.

The grievor's representative argued that Mr. Wells was telling the truth when he stated that he heard nothing about drugs at the luncheon at "Don Cherry's Restaurant".

His association with Mr. Poirier at the Institution was in all innocence. He was not aware that there was any problem in allowing inmates to come to the top of the stairs other than being restricted to the line just inside the door.

#### Reasons for Decision

Mr. Wells admitted to a close friendship with Mr. Poirier over a period of several years during which time they travelled together, attended a number of social events together and spent much time in each other's company. Although Mr. Wells denied knowing that Mr. Poirier was a drug dealer during this time, he admitted that it had occurred to him that he might be but accepted Mr. Poirier's word that he was not without doing any further checks. He also denied admitting to Constable MacDonald that he had known Mr. Poirier was a drug dealer but not on such a large scale as he

was convicted of. Regardless of whether or not Constable MacDonald may be mistaken or have misunderstood, I am satisfied that the evidence establishes on the balance of probabilities that at some point well before Mr. Poirier's arrest Mr. Wells was aware that Mr. Poirier was a drug dealer. Mr. Wells is an astute individual who is experienced both as a security guard and a correctional officer and considering the extent of his socialization with Mr. Poirier which I heard in evidence, it would have been next to impossible for Mr. Poirier to have hidden all evidence of his drug activities from him, especially since Mr. Poirier was so careless as to invite him to lunch with a person whom he believed to be a drug client.

If he was trying to hide his drug dealing from Mr. Wells, he would have kept him well away from a luncheon with a person he thought was a client who was working on a very large drug deal with him unless Mr. Wells was already aware of his drug related activities. I find, on the balance of probabilities, that Mr. Wells socialized with Mr. Poirier knowing him to be a drug dealer. There was at this lunch a lengthy discussion of a drug deal which took place between Mr. Poirier and his supposed client, in reality an undercover police officer. Although Mr. Wells took no part in this discussion, the discussion took place at a small table with all three people sitting around this table within three feet of each other. Although Mr. Wells distanced himself from this conversation by at one point turning away, I am satisfied on the balance of probabilities that Mr. Wells was well aware of what was going on.

Although Mr. Wells went to the IPSO and informed him of what was happening when he knew Mr. Poirier was being sent to the Institution where he worked, Mr. Wells did not keep an appropriate distance from Mr. Poirier as an inmate.

There was evidence that Mr. Wells allowed Mr. Poirier access to the building that he was working in and possibly showed him favouritism by giving him newspapers when Mr. Wells was finished with them. On at least one occasion, Mr. Wells spent at least one-half hour with Mr. Poirier dealing with his community assessment report when it was not assigned to Mr. Wells. If this is what they were discussing, Mr. Wells made no report of it as he was required to do. The witnesses expressed conflicting opinions as to whether or not this amounted to improper conduct. I note Mr. Wells in his testimony admitted that he now knows that he went too far in his association with Mr. Poirier.



Mr. Poirier was incarcerated for very serious drug offenses and had been a very close friend of Mr. Wells on the outside. For this reason, Mr. Wells should have been extra cautious about ensuring that he maintained his distance from Mr. Poirier in the Institution.

Standard 2 of the “Standards of Professional Conduct” (Exhibit E-10) specifies that: “Staff must take care, both on and off duty, to present themselves as responsible law-abiding citizens.” Mr. Wells’ knowing association with Mr. Poirier places him in violation of this standard.

In the *Flewweling* case (Board file 166-2-14236) as in this case, the majority of the conduct giving rise to the disciplinary action arose away from the workplace. The adjudicator stated, at pages 15 to 17:

*The test commonly applied by arbitrators to determine whether management has the right to discharge an employee are (sic) set forth in the frequently cited case of Re Millhaven Fibres Ltd., Millhaven Works, and Oil Chemical and Atomic Workers Int’l, Local 9-670 (1967), 1(A) Union-Management Arbitration Cases, 328 (Anderson).*

*In that case at page 329, Judge Anderson sets forth rules that have become known as the Millhaven criteria and his words are worth repeating here:*

*There are a number of arbitration cases which deal with disciplinary matters arising out of the conduct of an employee at a time when he is not in the Plant. Generally speaking, it is clear that the right of management to discharge an employee for conduct away from the Plant, depends on the effect of that conduct on Plant operations.*

*In other words, if the discharge is to be sustained on the basis of a justifiable reason arising out of conduct away from the place of work, there is an onus on the Company to show that:-*

- (1) the conduct of the grievor harms the Company’s reputation or product*
- (2) the grievor’s behaviour renders the employee unable to perform his duties satisfactorily*

(3) *the grievor's behaviour leads to refusal, reluctance or inability of the other employees to work with him*

(4) *the grievor has been guilty of a serious breach of the Criminal Code and thus rendering his conduct injurious to the general reputation of the Company and its employees*

(5) *places difficulty in the way of the Company properly carrying out its functions of efficiently managing its works and efficiently directing its working forces.*

Mr. Flewwelling's grievance against his discharge was denied and his application for judicial review was ultimately dismissed: *Flewwelling and Public Service Staff Relations Board et al* (1985), 65 N.R. 349.

The adjudicator in the *Flewwelling* case (supra) indicated in his decision that in his opinion it was only necessary that the employer show that one of the Millhaven consequences has flowed from the employee's conduct in order to warrant discipline. The second criterion, "the grievor's behaviour renders the employee unable to perform his duties satisfactorily" applies here. I must conclude that Mr. Wells by his conduct so damaged his credibility as to make him ineffective in carrying out his duties as a correctional officer. Furthermore, I am satisfied that the bond of trust between the grievor and his employer has been irreparably damaged.

I have considered all relevant mitigating factors and conclude that the employer's penalty of discharge is not unreasonable in the circumstances.

For all these reasons, this grievance is dismissed.

**Rosemary Vondette Simpson,  
Board Member**

OTTAWA, November 25, 1997.