

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

JOHN HARRY LEADBETTER

Grievor

and

TREASURY BOARD
(Solicitor General Canada - Correctional Service)

Employer

Before: J. Barry Turner, Board Member

For the Grievor: Robert L. Barnes, Q.C.

For the Employer: Jock Climie, Counsel

Heard at Moncton, N.B.,
March 16 to 18, 1999

DECISION

John Leadbetter, former Operations Manager, CORCAN Industries (derived from the words Corrections Canada), classification AS-06, at the federal Springhill Institution, Correctional Service Canada (CSC), Springhill, Nova Scotia, is grieving the termination of his employment effective November 6, 1997. He was suspended without pay from November 5, 1997 to July 13, 1998. His grievance was referred to adjudication on November 3, 1998. The undated letter of termination, that I believe the grievor received on July 17, 1998, signed by Robert Babineau, Assistant Deputy Commissioner, Atlantic Region, and Ann Marie Sahagion, Chief Executive Officer, CORCAN, Ottawa, reads:

We have completed a careful review of the evidence pertaining to the matter of you requesting employees under your supervision to construct 6 wooden boxes for your personal use, you organizing the subsequent unauthorized removal of those boxes from the institution compound and eventual unauthorized placement of these into your personal vehicle. Comments made by you and your representative in relation to allegations of misconduct, namely theft of Government Property, have also been considered.

Based on the evidence gathered, and from your own admission, you had wooden boxes constructed for your personal use, and you did not see the need to obtain permission from your superiors. This action did not follow the established process and thereby implicated three of your subordinates and inmates.

The foregoing acts are considered serious breaches of conduct because they consist of the theft of government property, use of inmate labor in an illegal act for personal gain, and improperly directing your staff and other employees in carrying out these unlawful acts. Also, these directly conflict with your responsibilities as a senior manager at Springhill Institution. As the Operations Manager of CORCAN and the direct supervisor of the three shop instructors mentioned above, this misconduct is of the most serious level.

From meetings held with you, it is not believed you appreciate the seriousness of your actions. Based on the foregoing, and even after taking into consideration your employment record, the seriousness of the occurrence necessitates the termination of your employment. Your behavior has resulted in a situation which your superiors no longer have the confidence in your ability to maintain professional relationships and to manage the CORCAN operation.

Therefore, by virtue of the authority delegated to the undersigned pursuant to Article 11(2) of the Financial Administration Act, you are informed that you are hereby terminated from your employment with the Correctional Service of Canada effective 0800 hours November 6, 1997.

You have the right, in accordance with your collective agreement, to present a grievance relating to this action directly to the final level of the grievance procedure.

Mr. Leadbetter is requesting the following corrective action:

Discipline to be balanced with the event, be reflective of other similar events and my employment reinstated.

The hearing lasted two and one-half days with eight witnesses testifying and 21 exhibits submitted into evidence. I granted a request for the exclusion of witnesses.

The following Agreed Statement of Facts was submitted by the parties:

AGREED STATEMENT OF FACTS

1. *At some time in late August or early September 1997, the grievor approached Mr. Smith to enquire about having some boxes made.*
2. *On or about October 30, 1997 Mr. Smith made arrangements to have four small boxes and three large boxes constructed in the wood working shop. Inmate Whynot constructed these boxes with some assistance from Mr. Laurette (CORCAN shop instructor).*
3. *On or about October 30, 1997 the grievor approached Mr. Knowlton and made arrangements to have the boxes lacquored (sic) once they had been constructed.*
4. *On November 4, 1997 the grievor called the warehouse to enquire about having the boxes transported out of the institution and to the warehouse. He spoke with the Supervisor of Material Management, Ms. MacPherson who told the grievor that she would see about having it arranged.*
5. *On November 5, 1997 Mr. McLeod was working as the dispatcher at the warehouse. He left a message at CORCAN during the morning asking for the grievor to call him concerning pick-up of the boxes. The grievor returned Mr. McLeod's call sometime later that morning. Arrangements were then made over the telephone for the boxes to be picked up by an*

institutional vehicle. Mr. McLeod has indicated that he specifically asked the grievor whether the items to be picked up could be handled by an inmate. This enquiry was made due to the fact that some items that are to be transported must be handled by institutional staff only. According to Mr. McLeod, the grievor indicated that an inmate driver could be used for this particular task. Mr. McLeod then directed inmate Davis to go to CORCAN to pick up the boxes in the institutional pick-up truck.

6. On November 5, 1997 sometime before lunch, the grievor spoke with Mr. Williams (sheet metal instructor), and asked if he would help load some boxes onto a truck that was coming over to CORCAN from the warehouse. Mr. Williams requested an inmate working in the shop to assist himself and the inmate driver in the loading. These three men then loaded the boxes onto the truck.
7. The boxes were subsequently unloaded at the warehouse by the inmate driver and Mr. Dupuis (a staff member working in the warehouse).
8. On November 5, 1997 Mr. Coon (the acting Coordinator of Correctional Operations) received information that the grievor would be attempting to transport the boxes out of the institution on that very day. He arranged to have a correctional staff member notify him when the boxes were passed through security at the Principle Entrance. After receiving a call informing him that the boxes had been transported out of the institution to the warehouse, Mr. Coon proceeded to the warehouse. Upon arriving at that location, he observed the grievor and Mr. Dupuis loading the boxes into the back of the grievor's personal vehicle. Mr. Coon gave instructions to have the boxes unloaded and placed in the warehouse, and then directed the grievor to attend at the Warden's office immediately thereafter.
9. Only six boxes in total (three large and three small) were removed from the institution. Initially, there were three large and four small boxes constructed by inmate Whynot but one of the small boxes went missing before it could be moved outside the institution with the others.

Summary of Evidence

At the outset, Mr. Climie argued that, even though Mr. Leadbetter received a conditional discharge in court on November 10, 1998 after pleading guilty to theft under \$5,000 (Exhibit E1), and was put on 12 months probation (Exhibit E-2) after the parties made a joint recommendation to the court, I must not ignore the fact that theft of government property occurred. Mr. Climie referred me to the recent *Scott* decision (Board files 166-2-26268 and 166-2-26269) and to the *McLeod* decision (Board files 166-2-27845 and 166-2-28240) to substantiate his case.

Mr. Barnes agreed with most of the facts outlined by Mr. Climie and concluded that what this case is all about is mitigation of the grievor's discipline. He said the wood used by the grievor to have boxes built for himself was scrap wood that had little value, that Mr. Leadbetter's actions were all in the open, and that after I hear the full story, I will appreciate the prison practice of allowing employees to use the workshops and materials for their own personal requirements.

1. Donald Smith has been the Head Instructor in the industrial cabinet shop of CORCAN for the last seven years. In the fall of 1997, he reported to the grievor, and had inmates working under his supervision making furniture. Inmates can also make things for themselves in the hobby shop.

Mr. Smith testified the grievor asked him near the end of the summer in 1997 in the grievor's office, to make some wooden boxes for him from scrap wood. The shop was making 1200 wooden desks at the time for the Canadian Armed Forces. Mr. Leadbetter outlined the rough dimensions for seven boxes on a piece of paper (Exhibit E-3): four large boxes and three small ones. Witness Smith said he forgot about the request for one and one-half months until the grievor reminded him there was no panic to do the job. A couple of weeks later, Mr. Smith told inmate Whynot to make the boxes from two four feet by eight feet birch veneer three-quarter inch plywood sheets the inmate recently ruined on the saw by accidentally cutting the sheets on an angle. Mr. Smith assumed the scrapped sheets were enough material to build the boxes and "could not see Whynot cutting a fresh sheet but he could have". Mr. Smith said he watched inmate Whynot and Tom Laurette also of CORCAN start to build the first box before Mr. Laurette went on vacation in early November 1997.

Mr. Smith never saw the boxes again, nor did he lacquer them or transport them. He added Mr. Leadbetter never told him what the boxes were for, nor did he ask since he felt it “was not my place to ask”. He added it would have taken inmate Whynot about two to two and one-half hours to build all the boxes. Mr. Leadbetter only took three large boxes and three small ones out of the Institution.

During cross-examination, Mr. Smith reiterated he was asked to build the boxes from scrap wood; he was not ordered to do so. He added the grievor did not select the wood for the boxes, neither did he deal with inmate Whynot. Mr. Smith said the project “was not a secret since anyone could see what was going on”. He added it was also a practice in the paint shop for CSC staff to have some things painted as a training exercise for inmates supervised by William Knowlton, also from CORCAN.

Mr. Smith said the build-up of scrap wood was a fire hazard, got in the shop’s way, and that bags of it were given away as kindling to CSC staff with a gate pass, since a local landfill site would no longer accept it. Some was even given to Sunset Homes in Pugwash, Nova Scotia, a facility for the mentally retarded. Mr. Smith felt there was no economic value to the scrap wood.

He admitted that he took some five feet by eight feet wooden pallets home once to store his four-wheel drive all terrain vehicles on, as well as kindling, and was never disciplined for this. He added Mr. Laurette once used a CORCAN planer and sander on a tabletop Mr. Laurette brought from home.

During re-examination, Mr. Smith said when the grievor started as Operations Manager in 1994, there was a lot of scrap wood and there was still a lot at the time of the termination of Mr. Leadbetter’s employment. Now, under the new Operations Manager, Mr. John Alderson, scrap wood is sold for 50¢ a bag or \$5 a truck load to anyone. There is a waiting list for wood.

Mr. Smith testified that he got a gate pass for the pallets he took, and that Mr. Laurette did the work on the tabletop after Mr. Leadbetter was suspended. Mr. Smith believed Mr. Laurette was reported for the tabletop work.

2. William Knowlton has been the Head Instructor in the paint shop for over eight years. He testified that around October 30, 1997, the grievor asked him to lacquer

some wooden boxes. Mr. Knowlton said he told the grievor he would be on vacation but he would ask an inmate to do it, and that they would need two coats. He added Mr. Leadbetter thanked him. The grievor did not tell him why he wanted the boxes, nor did he question "the boss". The first time witness Knowlton saw the boxes was in the hearing room before me.

Mr. Knowlton said he has heard the odd inmate talk about Mr. Leadbetter's problem with the CSC, but he does not respond to inmate questions.

During cross-examination, Mr. Knowlton said he was aware of other CSC staff who were convicted but who remain with the CSC, such as Karen Comeau who was charged and convicted with break and enter but who is still with the CSC. He had also heard about a Zellers' bonus points problem with another employee at Springhill Institution, Mary Dee MacPherson.

Mr. Knowlton admitted that from time to time CSC staff would bring things to his shop for painting, and that this practice was pretty well known to everyone as a cheap way to train inmates. He added that sometimes a personal job request would sit for months until the timing was right to do it, for example, at the end of a production run.

Mr. Knowlton said no one was ever disciplined for these practices that have stopped since Mr. Leadbetter's employment was terminated. He said during his eight years as paint shop instructor the question of not doing work for staff was kicked around, but getting personal work done depended on who you were. Such service was not a secret.

Regarding the Tom Laurette tabletop work, Mr. Knowlton said he questioned the new Operations Manager Mr. Alderson on it after Mr. Leadbetter was gone, and was told staff can do this. He added a \$50 sanding belt was broken during the tabletop work and that CORCAN staff used equipment for free with permission. The witness was also aware of the free kindling practice for staff and that inmates cut the wood for kindling. He was not aware of a note from senior management, before the termination of Mr. Leadbetter's employment, not to supply kindling.

During re-examination, Mr. Knowlton said that he and the grievor felt it was a good idea for inmates to finish personal products as part of their training.

3. Eugene Williams has been the Head Instructor in the sheet metal shop for years. He testified his first involvement with the boxes was on a November 1997 morning when the grievor asked him to see that the boxes in the paint shop were loaded onto a truck to take them to the warehouse. He, the truck driver, and another inmate helped load them. He did not know what the boxes were for; he did not get a gate pass for them to leave the Institution because, as he said: "It is not my responsibility. Mr. Leadbetter's my boss. He tells me and I do it."

During cross-examination, Mr. Williams said by loading the boxes he was doing the grievor a favour since the paint shop supervisor was not there at the time.

Mr. Williams admitted that he had his personal lawn roller in his shop and welded some scrap metal onto it to fix a hole. The roller was taken away during the Leadbetter investigation. The investigation report described this free welding work as theft. Mr. Williams was never disciplined for it. He eventually got his roller back and never paid for the welding.

During re-examination, Mr. Williams did not think the grievor knew he had the roller in his shop even though it had been there a couple of weeks and was within sight. Mr. Williams did not try to hide the welding work but added he should have told Mr. Leadbetter about it at the time.

Mr. Williams brought the roller into the Springhill Institution in an institution vehicle through the main gate without a gate pass.

The warehouse is outside the prison walls. Some inmates are 'fence-cleared' to drive outside the institution in an institution vehicle.

4. Alan Alexander began work with the CSC in 1983 at Springhill Institution in the vocational shops as a teacher. He became the Deputy Warden at the Institution in January 1998. In the fall of 1997, he was on an assignment at Springhill Institution.

He first became involved in the grievor's situation on October 31, 1997 when Tom Laurette called him and asked him to visit the CORCAN work area to look at some

concerns Mr. Laurette had regarding unauthorized hobby work in Building 18. He testified that Mr. Laurette told him he felt he was between a rock and a hard place because of a lot of hobby work going on by inmates for staff that may become the thin edge of the wedge if rules are compromised with inmates. Mr. Laurette showed Mr. Alexander the freshly lacquered wooden boxes and other pieces inmates had worked on that were not ongoing production shop work.

Mr. Laurette was President of the local Union of Solicitor General Employees (USGE) at the time.

Mr. Alexander testified he reported what he had seen to the Institution Preventative Security Officer (IPSO), David Coon, who later told him that he (Mr. Coon) briefed the Warden and a surveillance was set up. Mr. Alexander was later told the grievor tried to remove the boxes. The witness said that Warden Babineau told him that Mr. Coon and a Debra Smith, Performance Insurance Department, CSC, Moncton, were going to head up the investigation into the grievor's activities regarding the boxes. Mr. Alexander however replaced Mr. Coon on the investigation board since he was available and knew Springhill Institution and its operations.

Mr. Climie attempted to introduce as evidence the entire investigation report. Mr. Barnes objected strongly arguing that much of it was untrue, inflammatory, too broad and irrelevant, and that if it is admitted in its entirety it would be prejudicial to his client and the hearing would turn into a bit of a circus. Mr. Barnes added the only issue for me to address is the wooden boxes that his client was terminated for, and not a lot of other issues raised in the investigation report.

Mr. Climie argued that I need to know the complete picture surrounding the wooden boxes, that the grievor had a chance to rebut the investigation report before it was written in final form, and that issues of integrity and performance by the grievor addressed in the report are important to put before me.

I reminded the hearing that Mr. Leadbetter was not terminated for incompetence and I did not want the hearing to go too far afield from what is actually before me. I indicated that I would accept relevant portions of the investigation report.

After some discussion, Mr. Climie agreed that for now at least, he would not insist on entering the entire investigation report into evidence.

Counsel for the employer asked Mr. Alexander if he concluded at the end of the investigation report that Mr. Leadbetter was guilty of theft to which he responded: "Yes, that was one finding."

Mr. Alexander identified a sketch of the wooden boxes (Exhibit E-4) that show the large ones to be 24" x 18" x 35½", slightly larger than the sketch on Exhibit E-3. The witness also identified an extract from a taped interview attended by Dave Coon, Debra Smith, himself and inmate Whynot on November 7, 1997 (Exhibit E-5).

Mr. Alexander recalled the incident of the table top that Mr. Laurette wanted to sand after the investigation was complete. The witness said an interim policy was then put out requiring all materials going into and out of the Institution to be signed for. Mr. Alexander said that Mr. Laurette asked him, as Deputy Warden at the time, to sign a pass to let him bring in some wood to sand on his own time without inmate help and that his supervisor at the time, Mr. Alderson, as acting Operations Manager, CORCAN, said Mr. Laurette could bring it in. Mr. Alexander signed the gate pass but never saw the wood.

When asked by Mr. Climie to explain why Mr. Leadbetter took exception to Mr. Alexander being on the board of investigation because of an alleged incident sometime around 1984/85, the witness replied that indeed the grievor called Debra Smith after his interview and told her that at one time inmates had made some stainless steel bushings for the grievor's sailboat with Mr. Alexander's knowledge and approval. Mr. Leadbetter felt this might prejudice Mr. Alexander's thinking during the investigation. Mr. Alexander testified Ms. Smith spoke to him about this allegation, that she took some notes and subsequently discussed it with the Performance Insurance Department where she works. He added the final investigation report says the grievor's allegation was not material to the investigation.

When asked to further explain the allegation, Mr. Alexander admitted that years ago he did in fact ask inmates to make some stainless steel bushings for Mr. Leadbetter for free without filling out the proper paper work. On a second occasion, when the grievor requested nylon bushings or bearings for a cart for a boat,

Mr. Alexander said the grievor was surprised when Mr. Alexander, a vocational teacher at the time and junior to Mr. Leadbetter, asked that the proper forms be filled out for the work so that it could be done by the book.

During cross-examination Mr. Alexander agreed that he was appointed to do the investigation even though he played a role in initiating the complaint. He agreed this was not a normal practice but said there are not many investigations either. He added he told Warden Babineau he would not volunteer for the task. The Warden felt that Mr. Alexander's integrity allowed him to sit on the investigation board.

Mr. Alexander could not recall any past frictions with the grievor or heated exchanges over any issues. He testified he was never told by the Deputy Commissioner that he wanted the grievor fired. He could also not say why Tom Laurette called him, but was aware Mr. Laurette operated a furniture shop out of his home. Mr. Alexander asked Mr. Alderson if the Laurette table top was personal or for his business and was told it was personal. The witness said he could have stopped Mr. Laurette from sanding the table top and now agrees that he should have. He added that Mr. Alderson allowed Mr. Laurette to do the work as long as he did it on his own time. Mr. Alexander agreed that the tools, the power, the belt and sand paper were not Mr. Laurette's and that Mr. Laurette did the work for free.

Mr. Alexander agreed that Mr. Leadbetter had been cooperative throughout the investigation. He did not agree that the wood used for the boxes was scrap but rather it was "material with a scuff on it".

Mr. Alexander was aware of the former free kindling practice but said it is now sold through CORCAN. Inmates cut the kindling and Institution vehicles are used to move it. He was not aware if a staff member who according to Mr. Barnes once took several hundred bags of kindling was ever disciplined. He was also aware of some wood that went to Sunset Homes in Pugwash and the lawn roller welding by Mr. Williams. He was not aware if Mr. Williams was disciplined for this.

Mr. Alexander said there is now a process in place for scrap wood, and that the investigation report was critical of the former kindling process since it was mostly the staff in the shops who were aware they could get free kindling. There was no policy or standing order regarding scrap at the time of the Leadbetter incident.

Mr. Alexander said the investigation report was a fact finding report, but he and Ms. Smith found that theft by the grievor and by others had occurred. Mr. Alexander said the report indicated that there should be a price on the scrap, and he feels that \$5.00 a load is below market value.

The witness was aware of someone within the CSC who was convicted of a domestic assault charge after pleading guilty but who has remained with the Service. He was also aware of an abuse of Zellers' bonus points by a supervisor from the stores at Springhill Institution but he did not know if the abuser was disciplined.

Although Mr. Alexander could not remember a telescope base made in the Institution for someone, he did say that at any one time there could have been four to six personal projects underway before these practices were changed. He tightened up past practices to almost zero tolerance but there was no zero tolerance memorandum or directive for scrap wood.

Mr. Alexander agreed that the investigation report found that movement of materials into and out of Springhill Institution with or without gate passes was inconsistent and that this caused confusion for the staff. Mr. Alexander agreed with this after looking at some typed notes shown to him by Mr. Barnes, notes of his but he could not recall where they came from. He added that a CSC employee Trevor Dill could have stopped the wooden boxes from leaving the prison gate in a vehicle driven by inmate Davis. Mr. Dill let them go because he was told they were for Mr. Leadbetter.

During re-examination, Mr. Alexander agreed the new Corrections and Conditional Release Act (CCRA) has contributed to a policy change at CORCAN whereby custom shop work is now paid for. Custom work can be done for institutional needs, non-profit organizations, and staff of the RCMP, the CSC, and the Parole Board.

Mr. Alexander explained that, as far as gate passes were concerned, there was a lack of understanding by Correctional Officers as to what needed a pass and what did not, especially regarding tools, scrap, material going for storage, and broken furniture.

When asked by Mr. Climie how one would characterize wooden boxes in order to get them out of the Institution, Mr. Alexander responded: “As an item needed to be stored at stores.”

With reference to Exhibit E-5, the inmate Whynot interview, Mr. Alexander remembered inmate Whynot saying he took a fresh sheet to build the boxes.

Mr. Alexander remembered where his typed notes came from that Mr. Barnes showed him earlier. He initially spoke into a dictaphone, had the tapes typed, resulting in the notes in question, but he later abandoned this process because it was unproductive.

Mr. Climie argued that at law, Mr. Leadbetter cannot claim before me that he did not steal anything as Mr. Barnes would have me believe that the grievor only took scrap material. Mr. Barnes said his intent is not to establish there was not a technical theft, but to put the grievor’s actions in the context of all the other shop practices and to argue the penalty of termination does not fit the crime.

Mr. Climie also referred to a result of the investigation report regarding inventory control of left over material used from CORCAN projects. Mr. Barnes argued witnesses were never questioned on this and that it is now unfair to put this before me. Mr. Barnes stated that in fact the claim that staff were deliberately falsifying inventory is a theory found in the investigation report that was never proven.

I indicated that I was not being asked to decide on the issue of CORCAN left over inventory practices, but the termination of the grievor’s employment as described in the employer’s letter of termination.

5. Carter Powis, Manager, Corporate Renewal and Area Director, Atlantic Region Operations CORCAN, for the last four years, testified that the grievor reported directly to the Warden of Springhill Institution and functionally to Mr. Powis. Mr. Powis oversees three federal institutions from his office in Cowansville, Québec. He normally visits Springhill Institution once a month.

Mr. Powis identified a generic job description for all persons at Mr. Leadbetter’s AS-6 level (Exhibit E-6). He said however that he has very little control over the day to day operations of a CORCAN location and depends heavily on the Operations

Managers. He said Mr. Leadbetter was responsible for around \$1.0 million of annual expenses.

Mr. Powis testified that the grievor would have to issue a gate pass for any inventory that would leave the shops area. He added it would be the Operations Manager's responsibility to follow CORCAN practices regarding scrap material. Although there is no written policy regarding scrap, Mr. Powis said scrap is left over material that may still be used and should be kept in inventory. He added: "It makes common sense and business sense to keep usable scrap."

The witness said he was not aware of the practice of using inmates to finish personal products but added: "It is not a bad way to train offenders". He was not aware of the scrap practices of Springhill Institution, nor was he aware of loose prison gate pass practices. He did say that Mr. Leadbetter should have stopped the widespread practice of correctional staff using shop equipment along with using scrap material for personal benefit.

Mr. Climie pointed to one of the large wooden boxes at the hearing and asked Mr. Powis if he thought it had been made from scrap to which he responded: "I'd find it difficult to believe since the pieces are too large." Mr. Powis was aware that at the time in 1997, CORCAN was producing pedestals and desks at Springhill Institution. The witness added he would not have scrapped the wood he saw before him at the hearing, and suggested it could have gone to the arts and crafts area.

Mr. Powis testified that the grievor should not have given the instruction to Mr. Smith to make the boxes in the first place; he said again that he could not see how a box the size of the one before him could have been built from scrap.

The witness said that he added two addenda to the grievor's last two performance reviews and identified one as Exhibit E-7, dated May 20, 1997, that rated Mr. Leadbetter as satisfactory but pointed out some unsatisfactory areas.

Mr. Powis referred to another CORCAN disciplinary problem that also resulted in a termination where a Quebec based employee sold his own tent garage to a contractor who was doing work for CORCAN. The contractor in turn sold the tent garage to CORCAN with the full knowledge of the original tent garage owner.

When asked how he would feel if Mr. Leadbetter was given his job back, Mr. Powis responded that he would find this very difficult since the grievor has violated the trust placed in him by the CSC and CORCAN, and that such a decision would be the wrong message to send to staff and inmates since the grievor should be a role model for everyone.

During cross-examination, Mr. Powis said that the position of Operations Manager at Springhill Institution has been permanently filled since he did not expect Mr. Leadbetter ever to be back there. He added that he and the Warden do not like acting positions either even though Mr. Leadbetter had acted as Operations Manager for one and one-half years.

Mr. Powis again described non-scrap material as that which may be used in another project within a reasonable time period and can be stored somewhere. He agreed that marked or scuffed wood could not be used for a CORCAN product and that larger pieces could be rendered as scrap but this was unlikely. He added that determining if small pieces should be scrap “is a judgment call”, especially since there is no written policy for scrap.

Mr. Powis was not aware that after the termination of the grievor’s employment someone brought in a table top to have it sanded. Mr. Powis felt this should not have been allowed under any circumstances. He added that even the spray painting should have been done only with permission.

When asked what would have happened if the grievor had called him to request permission to make some wooden boxes for his grandchildren, Mr. Powis said he “probably would have approved such a request if someone had costed out the work and if the grievor agreed to pay for it.” He added: “You do not use material for personal benefit.” Mr. Powis also said someone like the grievor’s boss should have issued a gate pass for the boxes but it was not the grievor’s fault if there was not a proper gate pass policy in place at the time.

Regarding the work performance addendum (Exhibit E-7), Mr. Powis said that the \$58 K reference under section 1) Financial, was in fact a planned loss and was not the grievor’s fault, and that the low number of employed offenders was because CORCAN at Springhill Institution lost the Dataquick client contract. He agreed that the

Warden wrote the grievor's last performance review and that Mr. Powis did not see it. Mr. Powis felt that the Warden's last rating of fully satisfactory for Mr. Leadbetter was "overly generous". He was not aware of how much attention the Warden gave to CORCAN at the Institution.

6. Ann Marie Sahagian, has been the Chief Executive Officer, CORCAN since January 1998. She previously worked at the Treasury Board as Director, Justice and Solicitor General portfolio for two years. She identified CORCAN's mandate (Exhibit E-8) and an extract from their 1996-97 annual report (Exhibit E-9). Ms. Sahagian added that inmates who have a CORCAN work experience have shown a 25 percent reduction in recidivism. CORCAN has a CSC mandate with respect to training offenders and a business model mandate to generate income (Exhibit E-10, an extract from CCRA regulations).

Mr. Powis reports to her. Below Mr. Powis are the Operations Managers who report to Wardens in each region.

The witness testified that the undated letter of termination (Exhibit E-11) was delivered to the grievor on July 13, 1998.

When asked by Mr. Climie if termination was appropriate for Mr. Leadbetter, witness Sahagian replied that the theft of government property was a serious breach of conduct, and the use of inmate labour by a senior manager of CORCAN was a bad example for inmates. She added the grievor breached his responsibilities and undermined the integrity of the organization; his behavior was totally unacceptable and she has no more confidence in him to carry out his duties.

Ms. Sahagian felt that to reinstate the grievor would be a bad message to send since a senior manager like Mr. Leadbetter should lead by good example. She added the professionalism of CORCAN would be called into question and its values undermined if he was reinstated. She denied that there had been any suggestion to terminate the grievor's employment before the results of the investigation were complete. She was asked to review all the information and make her own decision in the matter.

She had never met the grievor before this hearing.

During cross-examination, Ms. Sahagian said the termination letter was prepared by personnel services of the CSC in Ottawa after all the relevant information was sent from the Atlantic Region without a recommendation or any course of action suggested. She added that she and the former Warden, Mr. Babineau, had to agree to the termination.

The witness said it could have been appropriate to tell Mr. Leadbetter he would be terminated before the investigation was completed because he had already admitted his guilt. She could not say why it took from November 1997 until July 1998 to terminate his employment except that it may have taken that long to corroborate everything. She said a demotion was not considered, or a suspension without pay, since the matter was about a “trust relationship”.

In reference to paragraph 4 of Exhibit E-11, the termination letter that reads in part “...it is not believed you appreciate the seriousness of your actions ...” Ms. Sahagian based her thoughts on what Mr. Leadbetter said in the reports before her at the time, and on his behavior during the investigation where he never expressed regret for the impact his actions had on CORCAN itself, or on inmates, but only on himself. She added that his vacant position was filled because he did not have the authority to use wood for personal gain and that “theft of government property is theft of government property.”

The witness agreed that an Operations Manager does not do hands on shop floor work and that CORCAN encourages initiative, independence and management flexibility regarding judgment as in the private sector, but within the rules. One clear rule is to avoid any possible relationship with an inmate in order to protect yourself from a potential conflict of interest.

Ms. Sahagian said that section 109 of the *Corrections and Conditional Release Act Regulations* (Exhibit E-10) does not apply to CORCAN. Section 109 reads:

109. Goods that are produced, repaired or maintained or services that are provided by an inmate employed in a penitentiary vocational training program may be

(a) sold or donated to a charitable, non-profit, religious or spiritual organization; or

(b) where no such organization expresses an interest in the goods or services, sold to staff members.

Mr. Climie advised me that he would not pursue rebuttal evidence from the investigation report regarding bad performance reports of the grievor if Mr. Barnes would not lead evidence on the grievor's good performance. In effect, the parties agreed to disagree on performance matters. Mr. Barnes indicated however that he would introduce performance reviews for Mr. Leadbetter and dispute Mr. Powis' addendum (Exhibit E-7).

7. Robert Babineau, a 26 year CSC employee is now Assistant Deputy Commissioner, Atlantic Region, CSC, but was the Warden at Springhill Institution from June 1997 until February 1998.

He testified that Alan Alexander first reported to him that something was being built in the CORCAN shops that was going to be taken out of the Institution. A monitoring of the situation was set up to see when the wooden boxes were going to be removed. Mr. Babineau soon learned they were going to be removed on Wednesday, November 5, 1997. The IPSO, Mr. Coon, was also involved, and when he found out the boxes had been removed he went to the stores, caught the grievor with the boxes and told him to proceed to the Warden's office. The Warden told Mr. Leadbetter he was aware of what was going on and to come back to see him the next day whereupon Mr. Leadbetter was suspended without pay pending an investigation.

Mr. Babineau testified that at two meetings the grievor said he had the boxes made from scrap; the grievor admitted to a serious lack of judgment, was apologetic and asked for the matter to be dealt with without his being suspended. The witness said the grievor told him the boxes were for a family member and one was going to be tole painted. He met the grievor with his lawyer and another CSC person at a disciplinary meeting on December 11, 1997.

Mr. Babineau said at this meeting, during which the grievor asked him a few times if he was going to fire him, Mr. Babineau said certainly not until the investigation was completed and the grievor had had an opportunity to respond to it, but Mr. Babineau also added he told Mr. Leadbetter based on what he knew at the time of this meeting, he would terminate his employment.

The witness said during the period from June 1997 until November 1997 he had frequent contact with the grievor but only visited the shops twice to see what was going on. He relied on CORCAN to supervise the grievor, and did not feel it was his responsibility to enforce CORCAN policies regarding shop practices; that was the Operations Manager's responsibility.

Mr. Leadbetter had acted as Warden according to the witness.

Mr. Babineau said his involvement before signing the termination letter (Exhibit E-11) was to review the investigation report and the disciplinary report prepared by Bruce Megeney (Exhibit E-12). He changed the termination letter a little and spoke with Ann Marie Sahagian about it.

Regarding the reference in the termination letter to 'established process', the witness said there was a policy regarding the use of scrap wood and the removal of material from the prison for personal use. The witness referred to some sections on Exhibit E-13, Leisure Activities, and Guidelines for Arts and Crafts.

The sections referred to in Exhibit E-13 read as follows:

LEISURE ACTIVITIES AND PROGRAMS

3. *Institutions shall facilitate the sale or disposition of arts and crafts articles on behalf of inmates in accordance with the procedures described in the "Guidelines for Arts and Crafts".*

LEISURE TIME

4. *Leisure activities shall be supervised and/or coordinated by appropriate staff, and shall take place at times other than during the inmates' working hours.*

MATERIAL REQUIRED

...

3. *All materials required in the production of arts and crafts articles shall be paid for by the inmate. Materials for arts and crafts articles shall not be provided by the purchaser.*

SALE OF ARTICLES

4. *Arts and crafts articles produced by inmates may be sold to the public. For the purpose of these guidelines "public" includes Correctional Service of Canada employees and persons under contract to the Service.*
- ...
8. *Staff who purchase articles shall be required to sign a declaration indicating that the articles are for personal or gift-giving purposes and not for the purpose of resale.*

PARTICIPATION IN ARTS AND CRAFTS

11. *Arts and crafts activities shall only be conducted during an inmate's non-working hours.*

Mr. Babineau also identified a Standing Order for Arts and Crafts (Exhibit E-14) as another directive the grievor could have used to have his boxes built. In particular, sections 16, 36, 37 and 38 d. and e. that read:

GENERAL PROCEDURES FOR ARTS AND CRAFTS

- ...
16. *Scrap materials from industrial, vocational and maintenance shops for use in arts and crafts shall be obtained by the Arts and Crafts Coordinator. Inmates are not permitted to have any materials directly from any shop or work area of the institution.*

SALE OF FINISHED ARTICLES

36. *All finished articles an inmate wishes to sell shall be taken to the Arts and Crafts Coordinator who shall maintain a log of each finished article and have the inmate initial the log.*
37. *The price of finished articles shall normally reflect current market value but, at the least, shall be sold for no less than the price of the material required to make them.*
38. *The following are the approved methods for sale of the finished articles:*

...

Staff, People from Community

- d. *Staff and/or individuals from the community wishing to purchase finished articles shall have the approval of the Arts and Crafts Coordinator who shall provide form SI/ES 705, "Arts and Crafts Product Request", to the individual to complete, Price, completion date, payment, pick-up/delivery shall be arranged by the Arts and Crafts Coordinator.*
- e. *The Arts and Crafts Coordinator shall provide proper receipts and additionally staff shall obtain form SI/ES 002, "Institutional Gate Pass", signed by the Coordinator Social Development.*

The witness also identified a 1994 Standing Order about Institutional Gate Passes (Exhibit E-15) particularly section 3 that reads:

3. *A section head or his substitute shall ensure an Institutional Gate Pass has been completed for any item that is to be removed from his area of responsibility prior to such item leaving his section/department. Buildings outside the fence, namely A-1, A-4, and A-5 are the responsibility of the supervisor in charge of each area. The Principal Entrance staff shall not permit any item to pass through their area unless accompanied by the signed Institutional Gate Pass.*

Mr. Babineau testified that he was not aware of some of the weaknesses regarding gate pass practices but when he became aware of them, he tightened them up in December 1997. He also said he would expect a senior manager like the grievor to report weaknesses to him and that for a senior manager to exploit a weakness is a very serious breach of a primary function that would reduce reliance on such a person.

Mr. Babineau also testified that the grievor had three subordinates and inmates involved in the boxes from their construction, to painting, to transporting. None of these persons was disciplined by Mr. Babineau since he had left the prison by the time the investigation report came out. He did discuss the Leadbetter situation however with staff relations within the context of a recent adjudication decision in *Melcher* (Board file 166-2-27604).

When counsel for the employer referred again to the termination letter (Exhibit E-11) regarding the grievor's not appreciating the seriousness of his actions,

Mr. Babineau said the grievor appeared nonchalant at his disciplinary interview and did not accept full responsibility or accountability for his actions as a senior manager, and did not recognize the seriousness of implicating others or how he could have compromised his position with inmates.

Counsel for the employer referred the witness to the Mission Statement of the CSC (Exhibit E-16) and asked if the grievor's actions helped offenders become law-abiding citizens, to which Mr. Babineau responded: "No they do not. We must show leadership and set a good example." The Mission Statement in Exhibit E-16 reads:

The Correctional Service of Canada, as part of the criminal justice system and respecting the rule of law, contributes to the protection of society by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and humane control.

Mr. Climie also referred the witness to the Core Value 3 of the Mission Statement that reads at page 12:

Core Value 3

We believe that our strength and our major resource in achieving our objectives is our staff and that human relationships are the cornerstone of our endeavour.

GUIDING PRINCIPLES

Because our relationship with offenders is the most critical aspect of our work, we recognize that individuals possessing values consistent with our Mission, effective interpersonal skills, and an understanding of social justice, are essential in accomplishing our Mission.

...

We lead by example.

Mr. Climie also referred to the CSC Code of Discipline (Exhibit E-17) and pointed out through Mr. Babineau, in particular sections 4 and 5 that read in part:

**4. STANDARD FOUR
RELATIONSHIPS WITH OFFENDERS**

Infractions

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

...

- *improperly uses his or her title or authority for personal gain or advantage;*

...

- *gives or receives, any gift, gratuities, benefits or favours, or engages in personal business transactions with an offender or ex-offender or the offender's or ex-offender's friends or relatives;*

- *hires an offender to perform any work or provide any service without first obtaining the written permission of his or her supervisor;*

...

**5. STANDARD FIVE
CONFLICT OF INTEREST**

Infractions

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

...

- *Improperly uses the services of another employee, the property of the Service, or anything produced by offender labour at any time, for activities that have not been officially approved.*

Mr. Babineau also identified the CSC Standards of Professional Conduct (Exhibit E-18) and was referred to some sections, in particular:

**2. STANDARD TWO
CONDUCT AND APPEARANCE**

...

Discussion and Relevance

...

Employees who commit criminal acts or other violations of the law, particularly if the offences are repeated or serious enough to result in imprisonment, do not demonstrate the

type of personal and ethical behaviour considered necessary in the Service.

...

**3. STANDARD THREE
RELATIONSHIPS WITH OTHER STAFF MEMBERS**

...

Discussion and Relevance

...

Staff shall not inhibit the work of fellow employees or coerce members to participate in illegal activity or misconduct.

...

**4. STANDARD FOUR
RELATIONSHIPS WITH OFFENDERS**

...

Discussion and Relevance

...

Inappropriate relationships include, but are not limited to, concealing an offender's illegal activity, using inmate services for personal gain, and entering into business or sexual relationships with offenders, their families, or their associates. ...

**5. STANDARD FIVE
CONFLICT OF INTEREST**

Staff shall perform their duties on behalf of the Government of Canada with honesty and integrity. Staff must not enter into business or private ventures which may be, or appear to be, in conflict with their duties as correctional employees and their overall responsibilities as public servants.

Discussion and Relevance

Staff cannot use or appear to use their position for personal gain or advantage. This usually means receipt of financial benefits, gifts or favours from persons conducting, or who are intending to conduct, business with the Government or the Department.

...

Mr. Leadbetter had signed for and acknowledged receipt of both the Code and Standards on July 30, 1993 (Exhibit E-19).

Mr. Babineau was aware of other staff problems such as the Zellers' bonus points and the break and enter matters, but he said they were not as egregious as the grievor's situation. He expanded on the Zellers' case by saying the person involved was not aware that she could not purchase CSC items from Zellers and put the bonus points on her personal account. She returned all the points. He said her direct supervisor, the Assistant Warden Management Services, could have disciplined her but did not. Mr. Babineau was not at Springhill Institution at the time but he believed a policy was in place for such matters and sent out a reminder memorandum. Regarding the break and enter case, Mr. Babineau, who again was not the Warden at the time, said a Correctional Officer, Karen Comeau, went into the home of her boyfriend's former wife to retrieve a coat that he left there. The former wife was annoyed by this and had her charged with break and enter. She was convicted.

When asked if he would reinstate the grievor, Mr. Babineau said he would have a hard time to put his trust in him as a senior manager, and that the level of faith the staff and inmates would have in the CSC would be seriously questioned. He felt the reputation of the institution would be badly affected if Mr. Leadbetter returned.

During cross-examination regarding Karen Comeau's break and enter conviction, Mr. Babineau said her action was serious since it fell under the Code of Discipline (Exhibit E-17) and she was a Peace Officer. He agreed that some inmates she would deal with would have also been convicted of break and enter and may have heard about her situation. Mr. Babineau added she has since been promoted to a Unit Manager position. He was also aware that she was the sister-in-law to the Warden at Springhill Institution at the time. He did not know why she was never disciplined. Mr. Babineau was not aware that she actually broke into the house to get the coat. He thought the door was open.

Regarding the Zellers' bonus points incident, Mr. Babineau agreed that such conduct would fall under the Standards of Professional Conduct (Exhibit E-18) that reads in part on page 15:

**6. STANDARD FIVE
CONFLICT OF INTEREST**

...

Staff cannot use or appear to use their position for personal gain or advantage. This usually means receipts of financial benefits, gifts or favours from persons conducting, or who are intending to conduct, business with the Government or the Department.

...

The employee involved in the Zellers' bonus points incident was a middle manager who handles a lot of supplies but was also not disciplined by the CSC.

Mr. Babineau admitted he did not have detailed knowledge of the above two incidents. He was also aware of a Wayne McLean from the Springhill Institution who was convicted of assault at a bar but still works at the Institution. He recalled another incident of a dog being taken from a parked car by a Correctional Officer on a hot day. The dog belonged to the spouse of an inmate in the Institution at the time. The dog was returned.

Lastly, Mr. Babineau was also aware of unauthorized long distance phone calls made from the Institution and agreed that was theft as well. The monies for the calls were collected but no one was dismissed for this.

Regarding lax gate pass problems when he was Deputy Warden at Springhill Institution, Mr. Babineau said he was not aware of this.

Mr. Babineau identified a memorandum he sent in December 1997 to all staff regarding gate passes after the Leadbetter incident (Exhibit G-1). He acknowledged that policies were not being followed but were in place.

During a meeting on December 11, 1997 with the grievor and his lawyer at the time, when asked why he told the grievor that based on what he knew at the time, he would terminate him, Mr. Babineau said: "Mr. Leadbetter insisted on getting an answer to his question."

Mr. Babineau said when he first met with the grievor about the wooden boxes on Wednesday, November 5, 1997 he told the grievor he did not have to talk at all, but

Mr. Leadbetter volunteered information that the boxes were to be toy chests for his grandchildren. The witness added they met again on November 6, 1997 and the grievor apologized. Mr. Babineau told him there would be an internal investigation only and no police involvement. He added: "The grievor admitted a serious error in judgment." Mr. Babineau said that after reviewing the incident with divisional headquarters it was decided to get the police involved.

Mr. Babineau did not know of any other CSC employees who were ever disciplined for using scrap wood. He agreed that at 57 years of age, the prospects for re-employment for Mr. Leadbetter were not good, and that the grievor was a few months shy of the service required to get a full pension. He could not explain why the termination was back dated.

Mr. Babineau could also not explain why the letter of termination was given in July 1998. He added that even though the investigation was finished in February 1998, it took time for Mr. Leadbetter to respond to the report to prepare for a disciplinary interview, and for Mr. Babineau to discuss the situation with CORCAN. The witness could not recall if he told the Deputy Commissioner in December 1997 that he was leaning towards termination. The witness was not involved in filling the grievor's position after the termination of his employment and would not speculate why this was done. He never told anyone at Springhill Institution that the grievor would not be back there.

Mr. Babineau agreed that the grievor had a favourable work record and that, since all of the incident was in the open now, Mr. Leadbetter could not now be compromised by an inmate regarding the incident. He also said CORCAN employees knew that government property was being used to construct the boxes for someone, particularly since the shops did not have boxes on their production schedule at the time. Mr. Babineau agreed with Mr. Barnes that one could not conclude that a theft was in the making, but only that what was going on was against CSC/CORCAN policies.

Mr. Babineau concluded by testifying that he would have no difficulty working with Karen Comeau, Wayne McLean, the employee involved in the Zellers' bonus points incident or any others who had similar problems.

During re-examination, Mr. Babineau could not say if Karen Comeau was a manager in 1996 at the time of her break and enter incident.

7. John Leadbetter has spent most of his life in the small town of Springhill, Nova Scotia and is well known there. Springhill Institution is the largest employer. He supports his spouse and two partially dependent children. His career in the public service began in 1969; he came to Springhill Institution in 1974 and became confirmed as the Operations Manager in 1995. At the termination of his employment he reported to Warden Babineau and Carter Powis.

The grievor identified a series of performance reviews as Exhibit G-2, with an explanatory summary sheet that he had prepared for a March 1998 meeting with Mr. Babineau. His last performance review by Warden Babineau gave him a fully satisfactory rating.

The grievor said he had worked for Alan Alexander as a procurement officer years ago. He described their working relationship as “mutually respectful”. The grievor explained that early in their working relationship he and Mr. Alexander disagreed over a situation regarding the deduction of room and board for inmates working on a tree nursery project. Mr. Alexander deducted the money and the grievor disagreed with this. Later all inmates were reimbursed the deductions but the fallout caused animosity between the grievor and Mr. Alexander. Mr. Leadbetter added that in August 1996, while Mr. Alexander was Acting Warden, he and Mr. Alexander disagreed and became upset about the suitable number of inmates capable of working on a data entry project. Mr. Leadbetter concluded a lot of them would not “cut it”. At the end of one week’s work, only three of 29 remained on the project. The grievor said that at the time of Mr. Alexander’s appointment to conduct the investigation, Mr. Leadbetter did not have enough information as to what was going on.

Mr. Leadbetter explained that, as in January or February 1997, CORCAN received a large order from Kingston for the military in Gagetown, he ordered \$30,000. worth of wood. The project order was cancelled but in the late summer CORCAN received an order for birch laminated student desks. He decided to make the desks from the wood he had ordered for the cancelled project earlier in the year. In late August 1997, the grievor asked Don Smith from the cabinet shop to make some wooden boxes for him

from scrap wood. The grievor's intentions were to give two large boxes to his grandchildren and a third one was to be tole painted and given to a Springhill school to be raffled with credit for the box going to CORCAN. He did not tell this to Mr. Smith who only wanted to know the dimensions. Sometime in October Mr. Leadbetter asked Mr. Smith if the boxes were ready. Mr. Smith said he had forgotten about the request. Mr. Leadbetter testified he told him this was not a problem and walked away.

Finally on Tuesday, November 4, 1997, the grievor was told his boxes were ready. Since no Institutional vehicle was available to transport them to the stores, he did so the next day with the help of Eugene Williams. At this point the IPSO, Mr. Coon, arrived and told the grievor to report to the Warden's office. Mr. Leadbetter testified that if there had not been enough scrap wood to make the boxes, he would have forgotten about them because he did not want them to be too small. He only really examined them at this hearing and noted one had scuffing on it and that one butt end was a different colour.

When asked by Mr. Barnes what he did with leftover wood, Mr. Leadbetter said it is a judgment call at the end of a run. He and Mr. Smith would sort out the leftovers and keep some for residual value and some was cut up for kindling. He added that, if they accumulated too much scrap, this gave rise to concerns about a fire hazard and impeded work flow. Mr. Leadbetter agreed with Mr. Powis in that what becomes scrap material is a judgment call. He said he had seen pieces larger than the ones used to make the boxes scrapped especially since they cannot be sanded if they are dented. He had no knowledge of the miscut pieces by inmate Whynot, nor did he know if inmate Whynot used a fresh piece. He said that Don Smith handles the kindling with inmates, and a lot of Correctional Officers would have seen kindling leaving the Institution.

On November 5 in the Warden's office with Mr. Coon, the grievor said he explained about the boxes even though he was told he did not have to say anything. The next day, November 6, they all met again and the grievor was informed he was being put on leave without pay. Mr. Leadbetter said he told the Warden he had committed a serious error in judgment but had no criminal intent for what he did. He was advised then that there would be an internal investigation without the police. Mr. Leadbetter gave the Warden his pager, his keys and left the Institution.

With reference to Exhibit E-11, the undated termination letter, Mr. Leadbetter testified he received it on July 17, 1998. He could not believe nor understand how it could have been written that he did not appreciate the seriousness of his actions. He said he had been charged criminally at this point and his career was in jeopardy. He added of course it was serious and he fully appreciated this.

Regarding potential inmate influence, the grievor said this would not be possible since all was and is out in the open regarding the incident. He commented that even Officer Comeau has been promoted since her incident. He added that a lot of material passed out of Springhill Institution without a gate pass such as furniture and some saw blades that needed sharpening. He said this had been going on for 20 years and what passed the gate depended sometimes on what officer was on gate duty.

As far as the boxes were concerned, Mr. Leadbetter said he could have asked the Warden for a gate pass and he had no doubt the Warden would have signed it.

Mr. Leadbetter testified that he never told the staff the boxes were for his personal use.

The grievor added that the case created bad publicity in Springhill and that no one believed he stole the boxes. When he was charged in December 1997, he was very shaken by this. When he first read in a document regarding the incident that he had been dealing with inmates, he felt this was inflammatory and very serious. His first court appearance was adjourned in December. He appeared again on February 17, 1998 but the case was again adjourned until May 1998 since he had not received any requested documentation from Springhill Institution about his case. By May he still had no documents and was well beyond the 30 day time limit under the *Access to Information Act* to have received something; therefore he entered a plea of not guilty. He said he appealed five times to the Information Commissioner for documents and at one point was asked to send \$1,600. for documentation.

Finally, on November 10, 1998, Mr. Leadbetter pleaded guilty and received a conditional discharge (Exhibit E-2). He said this whole mess has had a bad affect on him in the community like a "wet shroud over me"; it has caused him stress; he began to abuse alcohol, developed health problems, and all in all the situation was a disaster.

He has incurred large legal expenses, exhausted his savings, received employment insurance from July 1998 until January 1999, is now living on his pension of \$1,900. monthly and has a problem with superannuation. He fell short by a few months of being eligible for a 25 year service pension, and if he had stayed on until age 62, he would have received a \$42,000. annual pension compared to \$29,000. now. He also did not receive his severance pay of \$31,000.

Mr. Leadbetter said he would have no problem whatsoever if he was to go back to CORCAN. He admitted everything openly and has had 57 years of lawful living. He added he has learned that a single thoughtless act without criminal forethought can alter your life unbelievably but the chance for a recurrence is zero percent. He concluded that years before the wooden boxes incident he had a small rack made once to store windows on, a metal cover plate for a pulley, and some bushings made for his boat with Alan Alexander's knowledge.

During cross-examination by Mr. Climie, when asked what he had done wrong, Mr. Leadbetter said he had stolen government property in that the crown felt the wood used to make the boxes had residual value. He did not believe it did. He added that no one can give away government material and the boxes are still government property. The grievor felt the boxes could not be equated to kindling because they have value added, but that "kindling is also the property of the crown that cannot be given away." He could not equate his theft to a scale or something but put it in the same category as the crown, that is theft under \$5,000. He could not place a degree on his wrongdoing but agreed his actions were very serious.

Mr. Leadbetter testified that it was never explained to him that to be found guilty he would have to have had a guilty intent regarding his actions.

When asked whom he expected to build the boxes, the grievor said he expected Don Smith to build them but an inmate could probably have built them. Mr. Leadbetter said that Mr. William Knowlton's testimony was not exactly what the grievor recalled. He added Mr. Knowlton asked him if he wanted the boxes lacquered to which the grievor responded: "Yes." Regarding the loading of the boxes, the grievor could not recall if Mr. McLeod asked him if the items could be handled by inmates.

Mr. Leadbetter denied that he dealt with inmates in the overall incident and stated that his request to Mr. Smith was not an order. He said Mr. Smith could have refused to make the boxes if there had not been enough scrap wood, but the grievor agreed it would be reasonable to assume that Mr. Smith would make the boxes.

Mr. Leadbetter agreed that he breached Standard Five, Conflict of Interest in Exhibit E-19, Code of Discipline, by improperly using the services of another employee for an activity that had not been officially approved as well as breaching Standard Four, Relationships With Offenders whereby he also improperly used his authority for personal gain. He also agreed he breached Standard Five, Conflict of Interest of Exhibit E-18, Standards of Professional Conduct, whereby he used his position for personal gain.

Mr. Leadbetter agreed with Mr. Powis' definition of scrap and underlined the fact that determining what is scrap is a judgment call. He added that he had no reason to expect that good wood would be used to make the boxes and that he did not know what inmate Whynot was thinking when he made the boxes. Mr. Leadbetter could not see imperfections in the wood other than a dent on one side of the box and one end that was a different colour of wood; he observed this at the adjudication hearing. If good wood was used, Mr. Leadbetter could not say who should be accountable. He added the wood cost around \$42.00 per four feet by eight feet sheet, and that almost three sheets would have been needed to make the boxes. Mr. Leadbetter added the issue in his mind was not how much wood was needed but where it came from. At the time of the work there was an order for 750 desks and about 200 pedestals to be made.

Mr. Leadbetter said he first saw the finished boxes in the paint shop on Monday, November 3, 1997, and did not examine them closely.

Regarding the Zellers' bonus points incident, Mr. Leadbetter said the person involved would have used her personal Club Z card since at the time the CSC did not have its own card. He concluded that this incident was a government entitlement that the person personally benefited from. He could not say if the dog incident was similar to what he did. He did agree however that even though some items like saw blades

and surplus furniture left the Institution without gate passes, the wooden boxes should have had a gate pass and that their departure was an “unauthorized exit”.

Mr. Leadbetter said that since the termination of his employment he has received \$21,000. compensation for unused vacation leave credits; \$10,600. in employment insurance benefits, and \$9,800. in pension funds. He has not sought other employment but still has his home.

The grievor testified that during his trial, he never spoke to the judge and therefore had no occasion to advise him that he was grieving the termination of his employment.

Mr. Barnes objected to the unfairness of this line of questioning since he said the crown prosecutor discussed the grievor’s situation with the CSC and should have told the judge about the grievance.

Mr. Leadbetter added that the crown prosecutor and the CSC agreed that, if he pleaded guilty, they would make a deal.

During re-examination by Mr. Barnes, when asked to explain what “dealing in some way with inmates” meant to Mr. Leadbetter, he said this means that an inmate has compromised you in some way regarding things like drugs, alcohol, or helping an inmate on the outside. The grievor said that regarding the box work done for him, no one asked him for any favors in return.

When asked about the extent of the enforcement of section 3 of Exhibit E-15, Standing Order for Gate Passes, that is the need to issue a gate pass for any item removed from someone’s area of responsibility, Mr. Leadbetter responded it is not enforced 100 percent of the time.

Argument for the Employer

Mr. Climie argued the onus before me has shifted since the grievor admitted he stole government property. This admission is therefore prima facie grounds for the termination of his employment as was determined in the *Dixson* decision (Board file

166-2-555). He also argued that since the CSC is unique and different, this case of theft should be held at the high end of the spectrum of seriousness regarding whatever mitigating factors I am asked to consider. Counsel argued that the grievor tried to diminish his guilt by saying he had no criminal intent, and there was no secret in his request to Don Smith especially since Mr. Leadbetter testified he expected scrap wood to be used to build the boxes. Mr. Climie said, assuming that I accept the grievor's claims to mitigate his wrongdoing, Mr. Leadbetter still requested a subordinate to build him something for personal gain, and that just like casting a stone in a pool, the grievor is responsible for all the ripples. He argued the grievor should have ensured minimum impairment to Springhill Institution by overseeing the use of scrap and no inmate labour.

Mr. Climie argued the size of the pieces of wood used could not have been scrap and therefore at best the grievor is guilty of an act of willful blindness. Counsel referred me to inmate Whynot's reliable hearsay evidence since he had no reason to lie in Exhibit E-5, the extract from the investigation report, where inmate Whynot said he used good sheets to build the boxes.

Mr. Climie also argued the grievor clearly violated both the CSC Code of Discipline (Exhibit E-17) and the Standards of Professional Conduct (Exhibit E-18). He added the kindling issue is a red herring in this matter. Counsel argued that, since the grievor was the Operations Manager and only the Warden could tell him what to do, the grievor had no fear in what he did and therefore felt no need to keep it a secret, especially since he knew his men would do what he said. Counsel argued that if indeed there were loose practices within CORCAN, this is also the fault of Mr. Leadbetter as an experienced senior manager.

Counsel concluded that if Mr. Leadbetter really felt he was not responsible for the actions of Don Smith and inmate Whynot, then all the more reason why he should not be Operations Manager. He argued I should also weigh heavily the lack of remorse and lack of appreciation for the seriousness of his actions shown by Mr. Leadbetter who seemed more concerned about how the situation has affected him and not CORCAN or the CSC.

Mr. Climie argued that, even though the grievor admitted to a serious error in judgment, he was caught red-handed and therefore had no choice in how he could or should have responded. Counsel asked me therefore to pay close attention to the various breaches of the Code of Discipline and Standards of Professional Conduct by the grievor.

Counsel argued that the grievor's claim of inconsistent application of discipline for other CSC incidents is really a non-starter. He added that Mr. Smith knew or ought to have known the boxes were not for CORCAN but he said nothing. He argued people were told to do something and they did it, but these actions should not be interpreted as a condonation of the grievor's initial request. He reminded me that for the table top sanding Mr. Laurette received permission to do it and also got a gate pass.

Regarding the Zellers' bonus points, the dog incident, long distance phone calls, and the break and enter by an off-duty CSC officer, Mr. Climie argued there is no direct cogent evidence regarding these incidents; none of them involved the use of staff and inmates or the theft of government property by a senior manager.

Mr. Climie argued the transcript of the grievor's trial (Exhibit E-1) is very telling, since it shows the judge did not know Mr. Leadbetter might be reinstated. He argued this tests the credibility of the grievor since he hoped to be treated more leniently by telling the judge he had lost his job.

Counsel concluded by saying it would be untenable to return the grievor to his former position since his superiors have lost confidence in him, especially since everyone involved (staff and inmates) know what he has done. Counsel said, even though he too has sympathy for the grievor's situation, this should not sway me in my decision.

Mr. Climie referred me to: *Collective Agreement Arbitration in Canada*, Third Edition, Palmer, sections 8.40, 8.41, 8.44; *Lynch* (Board file 166-2-27803); *Cudmore* (Board file 166-2-16517); *Sharma* (Board file 166-2-14588); and *Laplante* (Board file 166-2-18001).

Argument for the Grievor

Mr. Barnes argued that modern thinking over the years on an issue like the one facing me has changed, and that, if I do not reduce the penalty, there will never again be room to mitigate the penalty for a low level theft under similar circumstances. He agreed there was a theft by the grievor, but the burden lies with the employer to justify the penalty of termination of the grievor's employment. He concluded that, if I uphold this penalty, my decision will set a new standard for trivial misdemeanors. Mr. Barnes argued that if the theft had been serious, neither the crown attorney nor the judge would have agreed on a conditional discharge, especially since the judge felt the grievor had already been punished. However Mr. Barnes added Mr. Leadbetter should not walk away unscathed since the impact of all this has not gone unnoticed at the Springhill Institution.

Counsel for the grievor argued Mr. Leadbetter had no criminal intent when he asked Don Smith to make some boxes whenever possible from scrap material. Even Mr. Smith said he told inmate Whynot to use scrap material and he in fact used some miscut pieces. Mr. Leadbetter therefore had no *mens rea* as in *Re MacMillan Bloedel Limited and IWA Canada* (1993), 33 L.A.C. (4th) 288. He could have monitored his request more closely, but he trusted Mr. Smith. Counsel reminded me that the issue of scrap was a question of fire safety, storage, and judgment as to what was scrap in the first place. He said the boxes were of no fixed dimension and could in fact have been smaller.

Mr. Barnes referred me to *MacDonald v. Treasury Board (National Defence)* (Board files 166-2-15227 and 15228) in his briefing book and the 10 factors governing mitigation referred to by counsel for the employer in that decision:

1. *The previous good record of the grievor - Re United Steelworkers of America, Local 5297, and Frontenac Floor and Wall Tile Ltd. (1957), 8 L.A.C. 105.*
2. *The long service of the grievor - Re U.A.W., Local 28 and C.C.M. Co. (1954), 5 L.A.C. 1883.*
3. *Whether or not the offence was an isolated incident in the employment history of the grievor - Re Amalgamated Ass'n of Street, Electric Railway and Motor Coach Employees of America and Sandwich,*

- Windsor & Amherstburg Railway Co. (1951), 2 L.A.C. 684.*
4. *Provocation - Re United Brotherhood of Carpenters, Local 2537, and KVP Co. Ltd. (1962), 12 L.A.C. 386.*
 5. *Whether the offence was committed on the spur of the moment as a result of a momentary aberration, due to strong personal impulses, or whether the offence was premeditated - Re U.A.W., Local 112 and DeHavilland Aircraft of Canada Ltd., being an award of Professor Bora Laskin dated March 13, 1959 (unreported).*
 6. *Whether the penalty imposed has created a special economic hardship for the grievor in the light of his particular circumstances - Re U.R.N. Local 127, and Ontario Steel Products Ltd. (1962) 13 L.A.C. 197.*
 7. *Evidence that the company rules of conduct, either unwritten or posted, have not been uniformly enforced, thus constituting a form of discrimination - Re Retail, Wholesale and Department Store Union, Local 414, and Dominion Stores Ltd. (1961), 12 L.A.C. 164.*
 8. *Circumstances negating intent, e.g. likelihood that the grievor misunderstood the nature or intent of an order given to him, and as a result disobeyed it - Re United Electrical Workers, Local 524, and Canadian General Electric Co. (1957), 8 L.A.C. 132.*
 9. *The seriousness of the offence in terms of company policy and company obligations - Re Mine, Mill and Smelter Workers, Local 598, and Falconbridge Nickel Mines Ltd. (1956), 7 L.A.C. 130.*
 10. *Any other circumstances which the board should properly take into consideration, e.g. (a) failure of the grievor to apologize and settle the matter after being given an opportunity to do so - Re U.A.W., Local 456, and Mueller Ltd. (1958), 8 L.A.C. 144; (b) where a grievor was discharged for improper driving of company equipment and the company, for the first time, issued rules governing the conduct of drivers after the discharge, this was held to be a mitigating circumstance - Re Int'l Brotherhood of Teamsters and Riverside Construction Co. (1961), 12 L.A.C. 145; (c) failure of the company to permit the grievor to explain or deny the alleged offence - Re International Brotherhood of Teamsters, Local 979, and Leamington Transport (Western) Ltd. (1961) 12 L.A.C. 147.*

He reviewed them as follows: for factors 1, 2, 3, and 6 the grievor wanted to work to age 62 for pension purposes; for factor 7, the CSC practices for scrap material were not uniformly enforced, and the spray painting was a good training opportunity for inmates. Mr. Barnes commented that, when there are loose practices, there can be abuse as well, and I need to understand the overall context relating to what the grievor did. He added many persons gained from abuses and the lax enforcement of gate pass rules as expressed by the Warden in Exhibit G-1. This December 1997 memorandum regarding gate passes was a ball dropped by the Warden not by the grievor; for factor 8, the grievor did not disobey an order; for factor 9, yes the Code and Standards were violated; for factor 10, the grievor offered a quick apology, even though the Warden told him he did not have to say anything. Mr. Leadbetter acknowledged all his wrongdoing in the Warden's office, in court, and in this hearing.

In an effort to treat everyone fairly, Mr. Barnes reminded me that even though Mr. Laurette's behaviour is somewhat different, he still came into CORCAN to sand his personal table top after the grievor's incident had become known. Counsel reminded me that witness Alexander was not comfortable with this when he testified.

Counsel concluded that the grievor will never repeat his behaviour again since he has learned a very difficult lesson.

Mr. Barnes argued that the CSC got over Officer Karen Comeau's criminal break and enter problem, a similar offence to the grievor's. As a peace officer, she has had no subsequent problems with inmates and was not disciplined even though former Warden Babineau testified she violated the Code of Discipline (Exhibit E-17). Mr. Barnes wondered why Mr. Leadbetter was treated so harshly when other employees who committed wrongdoing (Zellers' bonus points, assault, abuse of long distance phone calls) were not disciplined at all. He concluded this leaves one with the impression of lack of fairness.

Regarding the arbitral jurisprudence referred to by Mr. Climie, Mr. Barnes argued none of them are even close to what is now before me. The *Lynch* decision (supra) is overwhelming theft; the *Sharma* decision (supra) is an arson matter that is as serious as break and enter; the *Cudmore* decision (supra) involved a "repeated" offence, and in the *Laplante* decision (supra), pictures were sold for profit. Mr. Barnes

argued that for serious theft termination is correct, but for an isolated incident involving a theft of minimal value by someone close to retirement who admitted his guilt and had a good work record and suffered pension losses, compassion is clearly called for.

Counsel concluded what Mr. Leadbetter did was not for personal gain, was not part of a conspiracy, and he has been severely punished already. He asked therefore that the grievor should receive no more than a three-month suspension.

Rebuttal Argument by the Employer

Mr. Climie argued that if the grievor is reinstated he would be subject to the normal repayment of monies earned since the termination of his employment and that, if he is not reinstated, he may be given some compensation that would also have an impact on monies he received after termination.

With respect to the 10 factors referred to by Mr. Barnes in the *MacDonald* decision (supra), Mr. Climie agreed with number 1 except for the grievor's performance review for his last year; with numbers 2 and 3; number 4 did not apply; regarding number 5 he commented the boxes were to be built over a period of months and this was not a spur of the moment decision; number 6 normally applies to extreme economic hardship, but the grievor is still capable of working; regarding number 7, Mr. Climie does not agree with the loose practices claim by the grievor since Mr. Leadbetter helped create such practices; number 8 does not apply since the grievor was not ordered to do anything; he said number 9 is very serious because of the dangerous offenders at the Institution; he concluded number 10 does not apply since the seriousness of the grievor's actions is what was needed to be recognized, not the consequences of his actions.

Mr. Climie reminded me about the scrap wood confusion, and that inmate and staff labour should not be forgotten as a value that was also exploited by Mr. Leadbetter. As far as the gate pass is concerned, counsel argued the grievor knew the boxes would get through the gate, and therefore exploited a weak point in the security at Springhill Institution and violated a standing order in doing so.

Lastly, Mr. Climie argued with respect to the other incidents referred to throughout the hearing, that what is before me regarding them is hearsay or rumours, and not hard facts to hold against the employer in my decision.

Decision

Mr. Leadbetter's employment was terminated in July 1998 for an incident going back to early November 1997. The termination of employment was made retroactive to November 6, 1997. The employer's letter of termination (Exhibit E-11) indicates that termination was selected for the following reasons; the grievor stole government property, that is scrap wood that was used to make wooden boxes; he used inmate labour in an illegal act for personal gain, primarily inmate Whynot who made the boxes and inmate Knowlton who lacquered them; CORCAN shop instructor Laurette helped build one of them; finally, the grievor improperly directed staff, and other employees in carrying out these unlawful acts. As a senior manager, the CSC viewed his actions as being at the most serious level.

So do I; however there is more to this theft than meets the initial adjudication eye. This became apparent after arguments by the parties, by the admission of the grievor's guilty plea to theft under \$5,000 (Exhibit E-1), and by Mr. Barnes' agreement that the case before me is more about mitigation than anything else. Theft did occur, but was the ultimate punishment of termination justified after closely examining all of the circumstances surrounding the wooden boxes? I think not. In fact, I find the combination of events and circumstances before, during, and after the wooden boxes incident to be tainted with inconsistency, conflict and hypocrisy.

Mr. Climie is partly correct when he argued that many of the references to other incidents referred to during the hearing were never substantiated by hard evidence, but only by hearsay and rumours. However, none of these other incidents was denied by the employer's witnesses. In fact, most of them were explained in sufficient uncontested detail, that I can conclude serious inconsistency of policy applications by management often occurred from gate passes to use of CORCAN shops, and that the imposition of discipline for other incidents did not occur.

I will now review the relevant evidence since I believe this is essential to the outcome of my decision.

Cabinet shop instructor Smith testified the grievor requested, not ordered him, to make the wooden boxes from scrap wood. The use of scrap wood, especially for kindling, is a practice that I believe is anything but a red herring as Mr. Climie would have me believe. In fact, I believe the practice of kindling being cut by inmates for staff use contributed to the cultivation of a help yourself culture within the Institution, that not only tempted staff to use CORCAN material and facilities for their own purposes, but conditioned and ultimately condoned it. Witness Smith said Mr. Laurette, the person who told Mr. Alexander about the boxes in the first place, helped build one of them. I believe Mr. Smith. Mr. Smith also said the grievor never selected the wood for the boxes and did not deal with inmate Whynot. Again, I believe him. I do not believe the grievor played a role in selecting the scrap wood used, although he knew what scrap wood would probably be used.

Witness Knowlton, from the paint shop, testified that staff had personal items painted by inmates, and that Mr. Laurette while sanding a table top after the Leadbetter incident, broke a \$50 CORCAN sanding belt. Witness Williams from the sheet metal shop testified that he brought his personal lawn roller into the Institution without a gate pass and welded it.

I believe some of the most telling testimony came however from witness Alexander. Mr. Alexander identified an excerpt from the investigation report, in particular the interview with inmate Whynot (Exhibit E-5), where the inmate said he took some of the wood for the boxes from his scrap pile and some from the actual pile, that is good uncut wood. Even Mr. Climie referred to Exhibit E-5 as reliable hearsay evidence. This demonstrates to me scrap wood was used for the boxes, and that inmate Whynot took it upon himself to use good wood. Mr. Leadbetter had requested scrap wood only be used.

I also have some serious concerns about Mr. Alexander's role in the investigation. Mr. Alexander had a conflict with the grievor many years ago regarding bushings for the grievor's boat, and another incident with the grievor as early as August 1996 regarding the suitable number of inmates to do data entry. He had prior

knowledge about the boxes as told to him by Mr. Laurette before IPSO Coon caught the grievor at the warehouse. Because of these events, I believe Mr. Alexander had difficulty being objective regarding the boxes incident, and should not have allowed himself, or been allowed to replace Mr. Coon on the investigation board with Ms. Smith. This lack of objectivity was made even more apparent when Mr. Alexander admitted he had signed for Mr. Laurette's table top work after the boxes incident in November 1997 involving Mr. Leadbetter, especially since he knew Mr. Laurette ran a furniture shop out of his home. Mr. Alexander was the person who told IPSO Coon about the boxes before they were transported. He was also in my opinion fully aware of the help yourself culture I referred to earlier when he admitted he knew a staff member had once taken several hundred bags of kindling. Mr. Alexander also testified that at the time of the boxes incident, there was no policy regarding scrap wood, that Officer Dill could have stopped the boxes at the gate but staff were confused about what needed a gate pass and what did not, and that he was also aware of other incidents like the Zellers' bonus points one, and the assault one.

Mr. Powis confirmed that there was no written policy regarding scrap at the time of the incident. He even added using scrap was "not a bad way to train offenders". Warden Babineau said there was a policy regarding scrap wood, but I never saw it. Mr. Powis also said that the designation of wood as scrap was a judgement call, and that he probably would have approved a request for the boxes if they had been costed and paid for. This type of request did not seem to be the practice at the time. In any event at the end of the day, inmate Whynot chose the wood, not Mr. Leadbetter. Mr. Powis also admitted that it was not the grievor's fault if a gate pass policy was not fully or properly enforced at the time of the incident. Gate pass clarification (Exhibit G-1) was issued by Warden Babineau in December 1997 after the Leadbetter incident.

Warden Babineau testified the boxes were to be made from scrap wood, that Mr. Leadbetter willingly volunteered information on November 5 the day he was caught, that the grievor admitted to a serious lack of judgement in the matter and was apologetic on November 6, 1997 in the Warden's office. Warden Babineau said even though he was not the Warden when all other incidents referred to took place, there was no discipline meted out for the Zellers' bonus points incident, for the removal of the dog incident, for the abuse of long distance phone calls, or for the break and enter

incident. He believed officer Comeau charged in the break and enter incident was the sister-in-law of the warden at the time. Warden Babineau also confirmed my observation of inconsistent application of discipline when he said he did not know of any other CSC employees who were ever disciplined for using scrap wood. The Warden's admission that he has no difficulty working with the persons involved in all the other incidents, but feels Mr. Leadbetter should not be reinstated, is in my opinion contradictory, inconsistent, and unfair.

Warden Babineau also did not know why the termination was back dated to November 1997 (Exhibit E-11). He agreed that everything about this case is now out in the open, and that Mr. Leadbetter could not be compromised by the inmates regarding the incident should he be reinstated. I find it difficult to believe Ms. Sahagian's claim that if Mr. Leadbetter is reinstated, the professionalism of CORCAN would be called into question and CORCAN values undermined. Ms. Sahagian could not adequately say why it took nine months to terminate the grievor's employment.

After giving considerable thought to the evidence adduced before me and the submissions of the parties, I feel comfortable in reaching the conclusion that Mr. Leadbetter is still capable of performing the duties of his position; his performance evaluations (Exhibit G-2) were fully satisfactory even though Mr. Powis expressed some concerns, and he is still suitable to work for CORCAN. In reaching this conclusion, I am supported by the fact that the only willful blindness (Mr. Climie's reference) before me is the help yourself culture at the Springhill Institution. What I do see, is a situation similar to the decision in *Melcher* (Board file 166-2-27604), also a CSC matter, where adjudicator Chodos concluded in part:

... That is, management by its actions or its lack of action in effect condoned the practice of staff taking institutional property for personal use...

I might add that management at Springhill Institution also condoned the personal use by employees of institution facilities.

I also believe that, if CORCAN and the Institution can continue to employ staff who have been involved in questionable incidents without discipline and without jeopardizing the security or the integrity of their operations, or the bond of trust needed between employees and employer, they can accommodate Mr. Leadbetter

whose error in judgement has already been publicized and atoned for. The grievor was charged with theft, pleaded guilty, and received a conditional discharge of 12 months probation. His employment was also terminated.

I am comforted in my conclusion by the obiter of the learned court judge at the grievor's trial where the transcript (Exhibit E-1) reads in part:

I've heard the expression there's a little larceny in all of us.

The CSC/CORCAN practices at the Springhill Institution substantiate the court's observation.

In the case before me, I also subscribe to the reference by Mr. Barnes to *Re Canadian Broadcasting Corporation and Canadian Union of Public Employees* (1979), 23 L.A.C. (2d) 227 where Harry W. Arthurs wrote:

...

Is discharge the only possible response to employee misconduct involving such a breach of trust?

Counsel for both parties submitted extensive, but of course not binding, arbitral authority on this point. I have examined all authorities cited, and I believe that the following summary accurately reflects their significance. The older cases generally (but not inevitably) treated theft or dishonesty as an offence which warranted automatic discharge; more recent cases, especially those decided by arbitrators subscribing to the theory of "corrective discipline", do not treat dishonesty as per se grounds for discharge; and various mitigating factors have been identified as justifying the substitution of a lesser penalty for discharge in such cases. ...

In *Re MacMillan Bloedel Limited and IWA Canada* (1993), 33 L.A.C. (4th) 288, arbitrator H.A. Hope, Q.C. wrote:

...

In summary, the offence giving rise to the grievor's dismissal, while it constituted a clear act of theft, was seen as something less by the grievor because he rationalized it at the material time as representing more a departure from rules governing the removal of scrap than theft. That view of the circumstances is not supportable in retrospect, but the evidence supports the conclusion [page 306] that it accurately represents the state of mind of the grievor and

speaks positively to the question of whether he is capable of realizing his wrongdoing and maintaining an acceptable standard of conduct in the future.

I do not believe Mr. Leadbetter had any criminal intent when he requested Mr. Smith to make the boxes. Unfortunately his situation ended in criminal charges based on the evolution of a help yourself culture, and a particular incident for which he was singled out. Do I believe he is a criminal? No. Do I believe he has learned his lesson? Yes. Is he likely to do this again? I think not. Is the CSC, the Springhill Institution, or CORCAN likely to allow the exploitation of its goods and services to continue as it has in the past? I hope not. The “loose practices” referred to by both Mr. Barnes and Mr. Climie were also cultivated by Mr. Leadbetter’s behaviour, but the help yourself culture was accompanied by management’s selective blindness to various personal activities and inconsistent application of CSC policies.

Mr. Leadbetter should however not go unscathed in this matter, even though he has already undergone considerable personal hardship. He was wrong and he caused grief for CORCAN and the Springhill Institution by breaching various sections of the Code of Discipline (Exhibit E-17) and the Standards of Professional Conduct (Exhibit E-18). I particularly single out the Standing Order for an Institution Gate Pass (Exhibit E-15) issued in 1994, section 3 that reads in part:

A section head or his substitute shall ensure an Institutional Gate Pass has been completed for any item that is to be removed from his area of responsibility prior to such item leaving his section/department. ...

Not getting a pass was a serious exploitation of a gate pass weakness by Mr. Leadbetter. I also believe it was serious for the Warden not to be aware of such a weakness at the time.

I have therefore concluded that the termination of Mr. Leadbetter’s employment was excessive discipline under all the circumstances, and order the employer to reinstate him forthwith in his former position by substituting for the discharge a three months suspension without pay or other benefits. I suggest the boxes be returned to CORCAN and made into kindling.

I will remain seized with this matter for a period of 45 days from the date of this decision in the event the parties encounter difficulties in implementing this award.

**J. Barry Turner,
Board Member.**

OTTAWA, April 29, 1999.