

**Date:** 20020125

**Files:** 166-2-30267  
166-2-30268  
166-2-30269

**Citation:** 2002 PSSRB 9



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**DONALD WAYNE LARSON**

Grievor

and

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

Employer

***Before:*** [Evelyne Henry, Deputy Chairperson](#)

***For the Grievor:*** Giovanni Mancini, Counsel, UCCO - SACC - CSN

***For the Employer:*** John Jaworski, Counsel

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Heard at Kingston, Ontario,  
November 19 - 22, 2001.

## DECISION

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[1] M. Donald Larson is a correctional officer 01 (CX-1) employed at the Joyceville Institution. On May 18, 2000, he grieved an indefinite suspension dated April 3, 2000. On June 9, 2000 he grieved that the employer had violated the discipline procedure and filed another grievance for failure to give him a grievance hearing.

[2] The three grievances were referred to adjudication. The first two relate to alleged violations of the CX collective agreement, article 20 grievance procedure and article 17 discipline and the third relates to the suspension.

### Evidence for the Employer

[3] Warden Donna Joyce Morrin was called as the employer's first witness. She has been the Warden, in an acting or full capacity, of the Joyceville Institution, since December 1996. She worked at the Millhaven Institution as Deputy Warden and Associate Deputy Warden for two years. She was the Deputy Warden for the Prison for Women in Kingston from 1989 for approximately six years. Warden Morrin started her career as a parole officer at the National Parole Board in 1975. She has occupied various positions in the Correctional Service of Canada at the regional headquarters, at the Prison for Women, at Collins Bay Institution and at national headquarters.

[4] As Warden, Ms. Morrin is responsible for the overall operations of the prison's security and operations; its programs and corporate services; as well as the overall well-being of its staff, its inmates and the community, from a focus point of safety and security.

[5] Joyceville Institution is a medium security establishment for male offenders with a population of 450 inmates. The inmates are rated at the moderate risk level for escape, public safety and institutional adjustments. Inmates convicted of more serious crimes tend to be in higher security institutions but can be found at lower security institutions depending on risks.

[6] There are 307 positions for indeterminate employees and 40 contractors (mainly in chaplaincy, maintenance and elsewhere for temporary services). Of the 307 there are approximately 170 correctional officers (CXs). There are 72 CX-1s, 72 CX-2s, 14 CX-3s and one CX-4. A number of term employees account for the fluctuation in the number of employees.

[7] Warden Morrin is responsible for discipline and is the ultimate authority for discipline at Joyceville Institution. She shares some authority with the managers of the institution depending on the severity of the sanctions. All disciplinary actions come to her for information but she retains responsibility for action in the more serious disciplinary cases.

[8] Warden Morrin introduced as Exhibit E-1 *A Guide to Staff Discipline and Non-Disciplinary Demotion or Termination of Employment for Cause* (Guide) prepared by the Correctional Service of Canada's National Headquarters. The Guide is provided to those in authority and is meant as a guideline for managers to ensure consistency and fairness. Warden Morrin pointed to paragraph D on page 4 of Exhibit E-1, which mentions the *Standards of Professional Conduct* (Exhibit E-2) and the *Code of Discipline* (Exhibit E-3). She also indicated that the process to be followed for investigation is described starting at page 20 (of Exhibit E-1) until page 25.

[9] Warden Morrin indicated that Mr. Larson was employed at Joyceville Institution as a correctional officer I, generally called a CX-1. She then described the key activities of Mr. Larson's job description, which was entered into evidence as Exhibit E-4.

[10] Warden Morrin stated that not all CX posts at Joyceville involved the carrying of firearms: all armed posts are CX-1 posts; they are exterior and perimeter posts as opposed to inside posts. In an emergency CX-2s and other personnel that are trained in the use of firearms would be issued such. Other weapons, such as restraint equipment and chemical agents may be used in specific situations but not on a regular basis.

[11] Warden Morrin indicated that CXs are peace officers; she referred to page 4 of Exhibit E-3 where it is indicated that "an employee has committed an infraction if he or she: ... fails to take action or otherwise neglects his or her duty as a peace officer; ..."

[12] Warden Morrin then introduced the Commissioner's Directive 003 entitled "*Peace Officer Designations*" which indicates that members of the Correctional Service employed in a penitentiary are designated as peace officers. The peace officer status confers increased powers and responsibilities on employees to respond to situations where others are breaking the law.

[13] Warden Morrin described the static security of a penitentiary, which is ensured by physical barriers, restraint equipment, arms and such. The dynamic security is based on human interaction with inmates through negotiation, motivation and counselling, in short the creation of positive interaction with inmates to create a safer environment. The real focus of security at Joyceville Institution is dynamic security. It is carried out at all levels but the highest level of interaction is at the front line level of the CX-1s and CX-2s, parole officers, teachers and shop instructors. The primary source of interaction is conducted by CXs who are with inmates 24 hours a day.

[14] Mr. Larson came to Joyceville Institution from Collins Bay Institution on September 30<sup>th</sup> 1999 after a period of time off. On his file was the Information Kit Checklist (Exhibit E-6), signed by Mr. Larson on April 6, 1992 which indicates that he was provided with a copy of the Code of Discipline (Exhibit E-3). Also on his file was a Declaration (Exhibit E-7) which indicates he has received the Standards of Professional Conduct (Exhibit E-2) and the Code of Discipline and that he undertakes “to maintain, in the course of my employment, the standards of professionalism and integrity that are therein set forth.”

[15] Warden Morrin read an article in the Kingston Whig Standard of March 31<sup>st</sup>, 2000 (Exhibit E-8) that a Donald Larson had been arrested the previous day and charged with arson. She was told by a supervisor that he was one of her employees and then had the information verified by the Institution Preventive Security Officer (IPSO). She mandated Unit Manager Scott Edwards to conduct a fact finding investigation (Exhibit E-9). Mr. Edwards was the Acting Unit Manager of the Unit where Mr. Larson was then working. He was a senior manager reporting to the Warden through the Deputy Warden. Warden Morrin discussed with Mr. Edwards the status of Mr. Larson and directed him to contact the IPSO for information. She then reported the matter to the Deputy Commissioner for Ontario. At the time, Deputy Commissioner Brendan Reynolds was absent and being replaced by Ross Taller.

[16] Warden Morrin was informed orally by IPSO Jeffrey Moulton that Don Larson had been arrested and charged with arson and breach of probation and that his bail hearing was occurring on that day, March 31<sup>st</sup>, 2000. She then issued an order (Exhibit E-13) that Mr. Larson not be allowed into the institution or hired for overtime until they heard from him and were able to assess the situation.

[17] Warden Morrin did not have any discussion with Mr. Larson. She stated that Mr. Larson was on shift and “supposed to be working at that time” on March 31<sup>st</sup>, 2000.

[18] During the course of the day (March 31<sup>st</sup>, 2000) Warden Morrin had a meeting with Deputy Warden Cecil Vrieswyk, Mr. Edwards, Staff Relations and Mr. Taller who was attending via teleconferencing.

[19] Warden Morrin stated that Mr. Larson was scheduled to be working on the weekend; that is why she decided to suspend him without pay pending investigation. She was advised that Mr. Larson had someone call in for annual leave on March 30<sup>th</sup> and that he had booked off sick on March 31<sup>st</sup> and on both occasions he had not mentioned the charges or the incident. Warden Morrin did nothing else over the weekend.

[20] On Monday, April 3<sup>rd</sup>, 2000 she received the fact finding investigation report (Exhibit E-10) from Mr. Edwards. She reviewed it, discussed it with Deputy Warden Vrieswyk, consulted with Staff Relations and A/Deputy Commissioner Taller and decided to issue the memorandum of suspension (Exhibit E-11) dated April 3<sup>rd</sup>, 2000.

[21] Warden Morrin asked security at regional headquarters to do a review of officer Larson’s enhanced reliability clearance level that all officers must maintain in order to work for Correctional Service Canada.

[22] Warden Morrin indicated that the last paragraph of Exhibit E-11 was advising officer Larson he may be subject to disciplinary action. She answered “no” to the question: “Did officer Larson call you?” She does not recall speaking with him directly or how the memorandum of suspension was delivered to officer Larson.

[23] After April 3<sup>rd</sup>, 2000 the investigation by Scott Edwards was still ongoing. Requests for information were made to various people including formal access to information requests to the Crown Attorney’s office and to the police. Information was denied because the matter was still before the courts. Her office made a request to the Office of the Fire Marshall for its report. They are still waiting for a response.

[24] Warden Morrin did not hold a disciplinary hearing. She had no discussion with officer Larson since March 30, 2000. She has received correspondence from him but

has had no oral contact. She cannot recall having heard about officer Larson's arrest on the radio.

[25] When officer Larson was assigned to Joyceville Institution, Warden Morrin was advised that he was on probation following a conviction on a firearms offence. She introduced officer Larson's Probation Order (Exhibit E-12) from his personal file. According to it, officer Larson is allowed to use firearms in the course of his duty only.

[26] Warden Morrin suspended officer Larson because she felt his continued presence was a risk to the security and safety of the Institution. He has been charged with a serious offence and with breaching probation, the probation related to a weapons offence, which was a conviction. She felt he was unable to perform the duties of his job relevant to controlling inmates and interacting with inmates. She also felt that a non-inmates contact post, being an armed post involving the use of weapons, was inappropriate in that she had lost the level of trust in Mr. Larson to allow him at the Institution.

[27] Warden Morrin stated that the issue of the feelings of the staff towards Mr. Larson was not a factor in his suspension. The issue of inmate sentiment was a factor in that officer Larson may be vulnerable to reaction from inmates; this could place him at risk and potentially his fellow workers. Those are the reasons for his suspension.

[28] In cross-examination, Warden Morrin stated she learned of Mr. Larson's conviction for the weapons offence when he came to work at Joyceville. He had been discharged at Collins Bay due to the conviction but was being reinstated and assigned to Joyceville Institution. It was in September 1999. It was kept confidential to allow Mr. Larson a new start.

[29] Warden Morrin stated that this previous conviction was a factor because the charges related to a breach of probation and the previous conviction was for a weapons offence. This affected the level of trust. The charge was an offence in itself; the second charge, the first having resulted in conviction, made it a factor in considering the new criminal charges.

[30] When asked why it wasn't mentioned in the suspension memorandum (Exhibit E-11), Warden Morrin stated that it was; that the word "charge" was intended to read "charges", and that the missing "s" was a typographical error.

[31] When Mr. Larson came to Joyceville Institution in September 1999, she felt the handling of firearms was not a problem because his probation allowed it. She had no reason to doubt Mr. Larson or his ability, "we did not feel it was a risk", but a charge of arson and breach of probation makes it a risk. One incident occurred and he was given the benefit of the doubt and a new beginning; the new criminal charge is equal to "strike two".

[32] Warden Morrin indicated that Mr. Larson's failure to notify management that he was in jail when he asked for annual leave and sick leave for March 30 and 31<sup>st</sup>, 2000 was not a factor in the decision to suspend him indefinitely. It is a factor that will be dealt with later. The court decision will only be a factor.

[33] Warden Morrin had not seen a copy of the criminal charges against Mr. Larson but could obtain a copy. She has lost confidence in Mr. Larson but does need more information to discharge him. Without the information, it may be unfair to discharge him. Without disclosure from Mr. Larson, she does not have the information. Warden Morrin did not interview Mr. Larson but stated that Mr. Edwards did. If Mr. Larson is acquitted, the matter will no longer be before the court; the fact finding will be completed. Theoretically, depending on the information, Mr. Larson could regain the confidence of the Warden.

[34] Warden Morrin knows that the exact charge is arson but no details were released to her. She has not been able to get it so far. Warden Morrin stated that Mr. Edwards has tried to contact Mr. Larson since his suspension but Mr. Larson was unwilling to speak to him and suggested he direct his questions to his advocate, a co-worker Mr. Roy Tremblay.

[35] Warden Morrin stated that Scott Edwards was doing the fact finding and that he had indicated that Mr. Larson wasn't coming forward. Mr. Edwards had asked to meet with Mr. Larson to be interviewed but he was not able to do it.

[36] Warden Morrin indicated that she had called the Fire Marshall recently. She hoped that information would become available to finish the fact finding investigation

and wrap-up the disciplinary action. The preliminary hearing of the trial was delayed again; therefore, she attempted to get a copy of the Fire Marshall's report to try and understand the situation but has not received an answer yet. Periodically the employer has gone back to the Crown Attorney, and to the police but she hadn't approached the Fire Marshall until recently.

[37] The employer made three or four requests in writing and many by phone to the police and the Crown Attorney but has not continued to contact Mr. Larson for his version. Mr. Larson is free to contact the employer but for the employer to contact him could be construed as harassment. He was given every opportunity to do so. The police and the Correctional Service of Canada are in partnership so the employer continues to ask for information but is getting nothing new from the police. The police did not advise them when they arrested Mr. Larson and did not contact them.

[38] When asked about Mr. Larson's performance appraisals, Warden Morrin stated that he was employed from September 1999 to March 2000, which is too short a period to assess him. As for the performance appraisals at Collins Bay Institution, Warden Morrin did not review them; to her, they were not relevant. When he came to Joyceville, his record showed a serious breach at Collins Bay Institution but he had a clean record at Joyceville Institution. At Joyceville Institution, he started with a clean slate and with no restrictions on his duties. It was not common knowledge that he had a previous conviction. The employer had no issue with his performance at Joyceville Institution. Warden Morrin stated that the incident that led to Mr. Larson being fired from Collins Bay and later reinstated was a weapons offence while he was weapons instructor; that speaks to performance.

[39] Pursuant to point 4 of the fact finding investigation, Warden Morrin wrote a letter to Mr. Larson on April 29, 2000 (Exhibit G-1) in reply to a letter from Mr. Larson dated April 14, 2000. The letter of April 29, 2000, reads :

*This will acknowledge receipt in my office on April 20, 2000 of your letter of April 14, 2000. You have identified Mr. Roy Tremblay as your advocate and have requested that he be provided with the information regarding complaints made against you. You have also requested that any future questions be directed to you or to Mr. Tremblay. Your request is acknowledged and unless you advise otherwise, Mr. Tremblay will be considered as your official representative.*



*Several complaints were received from staff about working with you under the current circumstances. This information is contained in a single document. Note that this issue is subsequent to and in no way related to the decision to suspend you without pay. The issue was raised during the course of a conversation in the Warden's office with Myron Thompson, M.P., Daryl Stinson, M.P., Mr. Tremblay, Mr. Paul Bell and two management representatives. Mr. Tremblay asked if you were aware of these complaints to which I replied that I believed that you were. This response was based on information provided to me that the author of the Fact Finding had been asked by Mr. John Edmunds, USGE V.P., what was happening as he claimed he would be seeing or speaking to you imminently. Mr. Edmunds was advised of the suspension status and the complaints raised by staff. Apparently Mr. Edmunds was unable to relay this information to you as he had intended.*

*We are currently awaiting a formal policy/legal opinion as to whether the single document related to this issue can be shared directly with you or if you must access it through Access to Information and Privacy. Your representative will be advised as soon as is practical following receipt of this opinion.*

*I trust this answers your immediate concerns. I note that you have been conversing with Unit Manager Scott Edwards regarding issues related to the Fact Finding and you are requested to continue to direct questions to him as he continues to update the investigation.*

[40] Warden Morrin reiterated that staff feelings were not a factor in the suspension but that the inmates' feelings were. If inmates have knowledge of a transgression by staff, they may use it to put pressure on the officer or his co-workers. She did not mention it in the letter of suspension because the letter was written as soon as possible to give notice that the fact finding was going on. All the reasons were not put in there, only the main reasons which are that Mr. Larson was charged and that the employer lost confidence in him.

[41] Mr. Edwards did not make a recommendation on what discipline should be taken. Warden Morrin received a suggestion from the Deputy Warden and Acting Deputy Commissioner. She could not make a final disciplinary decision and the only "decision to make was his return to work". Warden Morrin's lack of trust in Mr. Larson was an issue but she had insufficient information to fire him.

[42] The memorandum of suspension dated April 3, 2000, from Warden Morrin to Mr. Larson mentions:

*Please be advised that in light of the recent criminal charge I am suspending you without pay until further notice. I have requested a fact finding investigation and a review of your enhanced reliability status, which is necessary for you to conduct your duties as a Correctional Officer.*

*Until this enhanced reliability review is completed you will not be permitted access into Joyceville Institution or any part of the grounds attributed to Joyceville Institution.*

*The Regional Screening and Clearance Board will conduct the enhanced reliability review. I suggest if you have any questions that you contact the Office of Bud Bannon at Regional Headquarters, as he is the Chairman of this Board. I note that upon the completion of their review the Board will notify you in writing of their decision.*

*You are hereby notified that pending the results of the fact finding investigation, corrective action or disciplinary action may be imposed.*

[43] Warden Morrin indicated that the enhanced reliability investigation could not be done until the fact finding investigation is completed. Mr. Larson's enhanced reliability status has not been revoked.

[44] In re-examination Warden Morrin stated that when Mr. Larson was sent from Collins Bay Institution to Joyceville Institution, she had no choice in taking him. The weapons offence occurred while Mr. Larson was a weapons trainer and related to work while he was being transported to and from a shooting range.

[45] Warden Morrin introduced Mr. Larson's letter of April 14, 2000 to her (Exhibit E-14) which reads:

*It has come to my attention that you have allegedly received complaints from some staff members that they do not wish to work with me for whatever reasons. It has also come to my attention that you have allegedly shared this information with me.*

*This is not the case as this has never been brought to my attention or shared with me by yourself or any of your management team. I would like a copy of the alleged complaints for my records so that they may be shared with my advocate Roy Tremblay, my Union Representatives, MP*

Myron Thompson's Office and also my Civil Lawyer Mr. Gabriel. I would also like the date that you allegedly shared this information with me.

I trust that you will be expedient in the delivery of this information to my advocate Mr. Roy Tremblay so that this unfortunate matter may be cleared up as soon as possible and so that we won't have to get any further people involved in this unfortunate misunderstanding.

It has also come to my attention that you feel I did not make an effort to contact your administration as to my situation upon being arrested. That is not true. On Thursday I did phone and book Annual Leave as I was suppose to be out on bail that afternoon according to the arresting Officer. Upon reaching the Police station I was unjustly detained and not brought before the Justice of Peace in a timely and fashionable manner. At 5:15 p.m. approximately the arresting Officer came and interviewed me at which time I pointed out that I needed to get in touch with work so I could let them know what was going on. He stated to me that he would be in touch with the Institution and would let them know what had happened. As I was being detained I was not entitled to any calls.

The next day my Fiancee attempted to reach the Institution and got the Sally Port Officer. She didn't know what to book me off on so she asked the Officer what he thought. He said he had no opinion and put her through to Gary in Human resources. She got his answering machine and left a message. He called her back and said he had nothing to do with booking people off. Officer Mason Murphy also booked me sick for that day. Also my ex-wife Lorrie Larson phoned and talked to some one about my situation. At this point in time I am not privy to the conversation that she had or who she spoke to but just that she did call.

On Friday my bail hearing was in the afternoon and I did not get out of the Court house until 5pm or so. At this point in time management would have been out of the Institution. I did call the Institution during the weekend to find out what was going on and that is when the Keeper had informed me that there was a suspension memo and that I was not permitted on the property of Joyceville. The Keeper was Kevin Watt.

Upon reading this letter I hope that all your questions have been answered and that the information provided will help you to clarify what has transpired. I would also appreciate it if in the future you had any questions, that you would direct them at myself or my advocate Mr. Roy Tremblay.

[46] Mr. Mason Murphy is a CX-2 officer at Joyceville Institution and Gary Thomson is a Human Resources Clerk who works in the office that maintains leave records.

[47] Scott Edwards has been a Unit Manager at Joyceville Institution since October 2001. Previously he was Acting Unit Manager for approximately two years, twelve months at Pittsburg Institution and twelve months at Joyceville Institution. He started his career with the Correctional Service in October 1989 as a parole officer at Joyceville Institution.

[48] Mr. Edwards, the manager of unit 4, is responsible for approximately 130 to 145 inmates, as well as supervising parole officers, correctional supervisors and correctional officers. Mr. Edwards is also responsible for the visits and correspondence sections.

[49] On a day to day basis the correctional supervisors (CX-3s) are in charge of the unit and staff. They complete the appraisals of the CX-1s and CX-2s, which Mr. Edwards would review with the CX-3s. Mr. Edwards would ensure that the institutional search plan was carried out and that the CX-3s deal with minor charges. He is responsible for ensuring that actions taken by CX-1s and CX-2s are appropriate and in accordance with their job descriptions; and that parole officers complete their case work for the timely release of reports. Mr. Edwards is responsible for the conditional release of inmates for transfer to higher or lower security classifications. As Unit Manager, Mr. Edwards is excluded from the bargaining unit and takes part in management meetings with unions and personnel committees. Mr. Edwards is accountable to the Deputy Warden.

[50] Mr. Edwards is responsible for responding to orders initiated by the Warden in matters of discipline. He has seen the Guide to Staff Discipline (Exhibit E-1). He was directed by a memorandum from Warden Morrin (Exhibit E-9) to conduct a fact finding investigation into the events relating to the grievor, Donald Larson, who worked in his unit.

[51] Mr. Edwards discussed his mandate with Warden Morrin who informed him that Mr. Larson had been charged with two counts, one of arson and one of breach of probation. He spoke with the IPSO, Jeff Moulton, to confirm that indeed Mr. Larson had been charged with these two counts. Mr. Moulton provided the date the arrest took place; then Mr. Edwards checked the duty roster (Exhibit E-15) to verify when

Mr. Larson was scheduled to work and the “book off sheet”. Mr. Larson was scheduled to work the evening shifts of March 30<sup>th</sup> and 31<sup>st</sup>, 2000. He was marked on annual leave March 30<sup>th</sup> and on sick leave March 31<sup>st</sup>, 2000.

[52] As he was gathering the facts, the CX-3, Mr. Germain, advised Mr. Edwards that a staff member, John Cross, had come forward thinking it was not a good idea for Mr. Larson to come back to work, that he could put himself in a compromising situation. Mr. Edwards asked Mr. Germain to put it in writing, which he did in a memorandum dated March 31, 2000 (Exhibit G-2) which reads:

*On Friday March 31<sup>st</sup>, 2000 I was approached in my capacity as desk keeper by CX-1 John Cross who expressed concerns about another Correctional Officer. CX-1 Cross Stated that he does not feel safe in the presence of Officer Larson and feels that as a result of the incident in which Officer Larson has been charged with, that perhaps his ability to make decisions is impaired. Officer Cross also stated that these concerns are being echoed by other staff but did not mention who they were because he stated he did not attain their permission to use there names.*

*Submitted for your information and action.*

[53] Mr. Edwards spoke to officer Bill Kennedy of the Kingston Police Force, on April 3<sup>rd</sup>, 2000, who advised him that Mr. Larson had been arrested and had spent a night incarcerated, that he had had a bail hearing and had been released on a \$500.00 bail surety.

[54] Mr. Edwards tendered notes taken of a follow-up call he made in June 2000 (Exhibit E-16) and a print-out document (Exhibit E-17) which are the notes he entered into his computer as events unfolded in relation to his investigation. Mr. Edwards inputted into his computer any contact at all he made, any discussion, any phone call, any new information he received; anything to do with the case which he received he added as a chronology or personal record of what transpired. He never deleted anything. Any time he added something it was done that same calendar day.

[55] The discussions of April 3<sup>rd</sup> with officer Kennedy and Mr. Larson went into the fact finding report (Exhibit E-10). After he completed Exhibit E-10 he started on the chronology, Exhibit E-17.

[56] Mr. Edwards contacted Mr. Larson in the morning of April 3<sup>rd</sup>, 2000 and advised him that he was conducting a fact finding investigation. They discussed Mr. Larson's leave. Mr. Larson had booked annual leave for March 30<sup>th</sup> and another officer, Mason Murphy a CX-1, had booked him off sick the next day. His fiancée had attempted unsuccessfully to contact the appropriate officer and was put through to Gary Thompson. Mr. Larson stated that police officer Kennedy had informed him that he would call the institution. Mr. Edwards told the grievor of his suspension and verified his current address.

[57] Mr. Larson was honest with Mr. Edwards; he confirmed the arson and breach of probation charges. Mr. Larson started on details about the charges stating he had nothing to do with the arson and would take a polygraph on it. Mr. Edwards advised him that, if he told him any information, it could possibly be used against him in court and he may wish to consult with his lawyer before he said anything. Mr. Larson decided to say no more without the presence of his lawyer. Mr. Larson suggested Mr. Edwards contact his probation officer and offered to provide the name and number. Mr. Larson had mentioned that from 11:30 a.m. to 20:00 p.m., while in police custody, he had nothing to eat nor gone to the toilet. His bail hearing had taken place the next day.

[58] After talking to Mr. Larson, Mr. Edwards drafted his fact finding investigation report (Exhibit E-10) dated April 3, 2000, which reads:

1. *As requested, I conducted a Fact-Finding Investigation into the arrest of Correctional Officer 1, Donald Wayne Larson, which took place on March 30<sup>th</sup>, 2000 in Kingston Ontario*
2. *On March 31, 2000 A/IPSO Jeff Moulton, via the O.P.P. Penitentiary Squad, confirmed that Mr. Larson had been arrested at 11:50hrs by the Kingston City Police. Mr. Moulton further informed me of the following charges for which Mr. Larson had been arrested (Police Reference No. 99-33559):*
  - *One count of Arson*
  - *One count of Breach of his Probation (a previous Pointing a Firearm conviction resulted in a condition to keep the peace and be of good behaviour - probation expiry is February 26, 2001)*

3. *On March 31, 2000 an Officer approached Correctional Supervisor Chris Germain and stated that it would not be a good idea for Officer Larson to return to work at Joyceville Institution. The Officer stated many staff members felt this way but had not given him permission to state who they were. CS Germain authored a memorandum detailing this conversation (See attachment C).*
4. *On April 3, 2000 at approximately 09:30hrs, I contacted COI Larson via telephone and advised him I was conducting a fact finding investigation into his current situation. He was informed this was being undertaken at the request of the Warden. He subsequently verified the fact he had been charged and held overnight at the Kingston Police Station on March 30<sup>th</sup> 2000. He also added he was released on \$500.00 surety on Friday March 31, 2000. During our discussion he noted that he had requested annual leave for his Thursday shift on March 30, 2000. He added he had another staff member book him off on sick leave on March 31<sup>st</sup> as his fiancée, who had contacted the Institution, was unable to reach the security office to secure him further leave. It is worth noting that Mr. Larson claimed that Officer Kennedy, of the Kingston Police Force, had told him that the Institution would be contacted to advise them of his situation. At this point in our conversation I advised him that he had been suspended from the Institution until further notice and that a letter authored by the Warden outlining the reasons why he had been suspended would be sent to his home. Mr. Larson did not raise any objections other than that he hoped he would not be suspended without pay. He provided me with his current address. It is worth noting that COII Linda Paquette had previously advised Officer Larson of his suspended status. This notification took place on Saturday April 1<sup>st</sup>, 2000 when he had called into the Institution to determine whether he was able to return to work following his release on surety the previous day.*

### **FINDINGS**

1. *Donald Wayne Larson, Correctional Officer I at Joyceville Institution, was charged with one count each of Arson and Breach of Probation.*
2. *Officer Larson failed to immediately notify the Institution after he was arrested. In addition he requested annual leave from Correctional Supervisor Margaret Rose after his arrest by stating, "it was for a family emergency." The following day Mr. Larson attempted to get his fiancée to obtain further leave but having*

*failed, he had another employee request sick leave for him. It is evident that Mr. Larson could not fulfill his shift commitment on March 31, 2000 due to his incarceration and a scheduled bail hearing.*

3. *Staff has expressed their displeasure with Mr. Larson as he has caused discredit to our service in terms of public perception (i.e. expected standards of behaviour and professionalism - see attachment C).*
4. *Due to the media coverage associated with this case (i.e. radio and print media - see attachment B) and the negative feelings of staff, it may be difficult for Mr. Larson to return to work in his former capacity.*

**RECOMMENDATION:**

*Having taken all of the above into consideration, I must recommend that a Disciplinary Hearing take place. Any action taken should be completed in conjunction with the date of suspension from duty without pay, as per the memorandum (attachment A) authored by the Warden of Joyceville Institution.*

[59] A copy of the report was taken to the mailroom in the afternoon on April 3<sup>rd</sup> and sent to Mr. Larson by registered mail; the original was provided to the Warden.

[60] Following the report, Mr. Edwards was not instructed to conduct a disciplinary hearing. Mr. Edwards considered his fact finding completed and started to create Exhibit E-17. Any contacts he had with Don Larson are put in his chronology. Mr. Larson contacted him twice, once in the Spring to advise that he was not going to court until the Fall, and again to ask who authorized him being laid off on leave without pay.

[61] On October 23, 2000, Mr. Edwards made a formal request for information to the Kingston City Police (Exhibit E-19). He had been instructed by the Warden to gather all information. He received a reply on November 30, 2000 denying his request (Exhibit E-20). He did not appeal the denial.

[62] Mr. Edwards contacted the Crown Attorney's office also on October 23, 2000 to request information (Exhibit E-21). This was denied on November 9, 2000 (Exhibit E-22).



[63] Mr. Edwards identified his note on the memorandum dated March 31, 2000 from Warden Morrin addressed to "Principle Entrance Joyceville Institution" entitled "Suspension of Officer Don Larson from the Institution" (Exhibit E-13) which reads:

*Effective this date Officer Larson is no longer permitted to enter the Institution for any reason. Should he attend the Correctional Supervisor should be contacted immediately. Submitted for your action.*

[64] This memorandum was copied to the Security Office. Mr. Edwards added a note "Correctional Supervisors do not hire for O.T. (obviously !!) and do not allow him to enter until further notice." This he signed on March 31, 2000. Mr. Larson was scheduled to be off on rest days from April 1<sup>st</sup> to 4<sup>th</sup>, 2000; his next scheduled day of work was April 5<sup>th</sup>, 2000.

[65] Mr. Edwards did not speak to Mr. Larson's probation officer, nor did he speak to Marg Rose but he did speak to CX-2 officer Paquette. Ms. Paquette a CX-2 in the security office had advised Mr. Larson of Exhibit E-13. Mr. Edwards did not speak with John Cross directly.

[66] Mr. Edwards does not recall hearing about the events on the radio but if he recorded it in his report he must have heard it.

[67] Mr. Edwards did not have any involvement with the Fire Marshall's office but earlier in the month of the hearing, he had a meeting with Warden Morrin and learned she had authored a letter but he did not have any involvement.

[68] Mr. Edwards attempted to contact Mr. Larson and his representative Roy Tremblay to set up a grievance meeting but failed to meet because of a lock-down at the Institution and then because Mr. Tremblay had to pick his dry cleaning and then he was unavailable. In conversation with Mr. Tremblay he was told that Mr. Larson had no job; he could not get legal aid and that he needed to borrow money.

[69] In cross-examination Mr. Edwards stated that his role was never explained by the Warden other than to conduct the fact finding investigation. He kept the chronology (Exhibit E-17) on his own accord. He had directions from the Warden on any steps that he took. He recorded every conversation he had with the Warden regarding Mr. Larson. There was never a discussion when Mr. Larson would come back or when this situation would be concluded. Mr. Edwards does not remember if the

subject of returning Mr. Larson to work was ever discussed. After July there was no suggestion that he ever meet with Mr. Larson to have his version. Mr. Edwards contacted Mr. Larson for the purpose of the fact finding and contacted his representative for the purpose of the grievances; in his view there were no outstanding issues.

[70] Mr. Edwards had never seen Mr. Larson's probation order (Exhibit E-12). He did not discuss Mr. Larson's probation with the Warden. Mr. Edwards wasn't privy to the fact that Mr. Larson had been on probation. He learned of it when he learned that Mr. Larson had been charged with breach of probation.

[71] Mr. Edwards took issue with Mr. Larson's statement that Mr. Edwards had turned down his investigation request because Mr. Larson did not work there and that the point was "mute". Mr. Edwards had turned down the investigation request because the letter of suspension (Exhibit E-11) did not mention that Mr. Larson was suspended because of officers' statement. Mr. Edwards confirmed that the suspension was due to the fact finding investigation.

[72] Mr. Edwards was mandated on March 31<sup>st</sup> to conduct a fact finding and he delivered it on April 3<sup>rd</sup>, 2000. The urgency was due to the fact that Mr. Larson was due to report to work two days later.

[73] When asked what inmates might do in dealing with an officer charged with a criminal offence, Mr. Edwards stated that in the past when officers had been charged criminally, there had been comments made by offenders. The officers were then assigned alternate posts of duty, outside posts or perimeter posts.

[74] To questions from the adjudicator Mr. Edwards indicated that he did not check Mr. Larson's file to see what sort of work he could do in the Institution. Mr. Edwards did not check the roster nor the vacancies in the Institution to see what jobs existed where Donald Larson could be placed. Mr. Edwards did not check Mr. Larson's leave credits to see if he could exhaust his leave prior to being placed on leave without pay.

[75] Chris Germain is a correctional supervisor (CX-3) at Joyceville Institution. He has been with the Correctional Service for approximately 10 years and an indeterminate CX-3 just over two years.

[76] Mr. Germain authored the memorandum (Exhibit G-2). On March 31<sup>st</sup>, 2000, Mr. Germain was the correctional supervisor in charge of the Institution. He was approached by officer Cross who said that he and some other officers had been discussing the charges against Mr. Larson. Officer Cross stated he didn't feel safe working with Mr. Larson, and if the latter returned, he would refuse to work with him. Mr. Germain asked Mr. Cross to put his comments in writing and informed him that he would have to advise his supervisor. Mr. Cross stated that he only spoke for himself.

[77] Mr. Germain did not speak with any other staff on this issue and received no comments, complaints or statements from any other officer.

[78] When Mr. Germain spoke with Deputy Warden Cecil Vrierwyk, he did not express that Mr. Larson should be suspended nor his attitude towards Mr. Larson.

[79] Mr. Germain is aware that other correctional officers have been accused of criminal offences. He is aware that in some cases criminal charges were pending and the officers were not suspended. Mr. Germain named two officers; one who was found guilty of impaired driving and another convicted of dangerous driving causing harm to two people. To his knowledge, neither was suspended. A third name was suggested to Mr. Germain who agreed that the officer was accused of impaired driving and not suspended.

[80] In cross-examination, Mr. Germain stated that he was not mandated to conduct fact finding investigations, nor did he review the officers' personal file to see if discipline was taken.

[81] Mr. Germain does not recall if his discussions with officer Cross occurred before or after he saw the memorandum (Exhibit E-13) posted at the main entrance.

[82] Jeff Moulton has been the Institutional Preventive Security Officer (IPSO) for approximately 18 years. His responsibilities are collecting, collating and disseminating information pertaining to the security of the Institution; conducting investigations and reporting incidents to the national headquarters. He is also the liaison with the external police agencies, namely the Ontario Provincial Police (OPP) penitentiary squad. The OPP penitentiary squad is a team of officers from different agencies that look after federal correctional institutions in the Kingston area. The OPP has a number of officers on the squad; so has the Kingston City Police, the RCMP and the Correctional

Service of Canada has two officers allocated to that squad as well. Mr. Moulton is not one of them.

[83] Mr. Moulton reported the Larson incident to CSC regional and national headquarters (Exhibit E-24) at 12:00 noon on March 31<sup>st</sup>, 2000 in the following terms:

*Correctional Officer 1, Don Larson has been charged with Arson and Breach of Probation.*

*He is currently suspended from access to Joyceville Institution pending a review of his enhanced reliability status.*

*Officer Larson is currently in custody and is having a Bail Hearing this date.*

Mr. Moulton was directed by the Warden to share this information with regional and national headquarters.

[84] Mr. Moulton contacted the OPP penitentiary squad and asked if Officer Larson had been charged, the status of the charge and, as directed, reported it.

[85] Mr. Moulton obtained on November 20<sup>th</sup>, 2001 a copy of the charges and bail hearing document (Exhibit E-25), which he saw for the first time on that day. He obtained the document from the OPP penitentiary squad.

[86] Mr. Moulton spoke to Mr. Edwards after the fact of his report (Exhibit E-24). He received a copy of Mr. Edwards fact finding investigation.

[87] In cross-examination, Mr. Moulton indicated that he obtained the information contained in his report (Exhibit E-24) in the morning of March 31<sup>st</sup>, 2000. He reported it to the Warden then generated the report after the Warden informed him that Mr. Larson had been suspended pending review of his enhanced reliability status.

[88] Ms. Linda Paquette is a CX-2 at Joyceville Institution since 1985. She was a clerk at Millhaven Institution from 1980 to 1985.

[89] Ms. Paquette was working as second in command on April 1<sup>st</sup>, 2000. She received a call from Don Larson who asked if there was anything on paper saying he was not allowed in the Institution and she said 'yes'. Ms. Paquette was referring to Exhibit E-13 when she answered his question.

[90] Mr. Larson has been employed with the Correctional Service of Canada for ten and a half years and at Joyceville Institution for six months.

[91] Mr. Larson was arrested on March 30<sup>th</sup>, 2000 at approximately 11:00 a.m. when police officers came to his home and asked to speak to him. Mr. Larson asked if he needed a lawyer and was told no; he asked them in the house because it was raining so they arrested him in front of his son and fiancée. They handcuffed him. He asked if he could call work to let his employer know what was going on; they agreed but his hands were handcuffed behind his back so detective Kennedy held the phone and dialed the number. Mr. Larson gave him the number, which was the keepers' hall.

[92] Keeper Rose answered the phone; she was not the grievor's direct supervisor. Mr. Larson was not familiar with her so he told her he had a family emergency and asked for annual leave. The police officer then hung up the phone and informed Mr. Larson that he would be out that afternoon.

[93] Mr. Larson was taken to the police station where he was charged and placed into a cell to await bail hearing. He was given one phone call to his lawyer and never saw anyone until about 6:00 or 6:30 p.m. that evening. While in the cell he called for assistance as he had to use the facilities and there was no toilet paper but no one responded. At 6:00 or 6:30 p.m. detective Kennedy came to see him again to tell him he had missed bail hearing and he would be detained there overnight. He asked to call his fiancée but was told he already had his phone call.

[94] Mr. Larson was taken to the courthouse the next morning for his bail hearing. It was around 5:00 p.m. before everything was done. He arrived home around 5:30 p.m. on March 31<sup>st</sup>, 2000. He was tired, cold and hungry. He knew management had gone home from the Institution so he went to bed with plans to call the next day. Mr. Larson did not know about the calls made to the Institution on his behalf until he got home. His fiancée told him she took it upon herself to try and get him some leave but could not get through to anyone in authority so she phoned Mason Murphy who told her he would take care of it.

[95] On Saturday, April 1<sup>st</sup>, 2000, Mr. Larson called to get hold of Kevin Watt who was not available. He asked Ms. Paquette if there was anything in writing stating he could not get into work. She said 'yes' and described the memorandum to that effect and suggested he call back on Monday.

[96] On Monday, April 3<sup>rd</sup>, 2000, Scott Edwards called him and asked if indeed he had been charged. Mr. Larson answered 'yes' and what the charges were. Mr. Edwards asked questions about the arson but cautioned him not to say too much without his lawyer. Mr. Edwards asked him about the breach of probation. Mr. Larson told him everything he could about his probation; his probation conditions and offered his probation officer's number. He stated to Mr. Edwards that his probation record was in good standing.

[97] Mr. Edwards had mentioned that he was asking for information because he was doing the fact finding investigation and that Mr. Larson was suspended until further notice. Mr. Larson had said: "Hopefully not without pay" to which Mr. Edwards said he wasn't sure and that a letter would be sent to him by the Warden.

[98] Mr. Larson received the memorandum of suspension (Exhibit E-11) at home on the 4<sup>th</sup> or 6<sup>th</sup> of April. He is not sure of the exact day. After he received the memorandum he spoke with Roy Tremblay and filed a grievance. Mr. Larson introduced the four grievances and replies as Exhibit G-3. Mr. Larson filed two grievances on May 15<sup>th</sup> after receiving a partially completed fact finding investigation report. The report initially sent to him did not contain the annexes. One grievance was resolved and withdrawn after he received copies of annexes that were missing from the fact finding investigation report.

[99] Mr. Larson filed grievance number 8795 (Board file 166-2-30269) because Management had found him guilty before he had a chance "to say my say in Court". Mr. Larson did not have a chance to explain his circumstances properly. He went as high as the Commissioner of the Correctional Service to offer a meeting with him and his lawyer to tell his side of the story and mediate a return to work arrangement. Mr. Larson said he made a verbal offer through Roy Tremblay to the Warden to sit down and talk and was refused.

[100] Mr. Larson filed grievance 8911 (Board file 166-2-30268) after management refused to set a grievance hearing off the Institutional property for him to attend. Grievance 8912 (Board file 166-2-30267) was submitted after consultation with the union when it was noted that the employer was not following Treasury Board's discipline policy. Mr. Larson did not request a specific redress as he believed the corrective action was to return to duty with compensation for lost pay.

[101] Mr. Larson said he tried to get hold of the Warden several times to no avail so he used Roy Tremblay as his contact. After the initial fact finding the Warden would not meet with him and his lawyer; he had no contact from the Warden's office.

[102] Mr. Larson explained that the probation order (Exhibit E-12) provided conditions that he not initiate contact with Mr. Dickson, a correctional officer, unless in the context of his duties. This was before he went to Joyceville. Before he went to Joyceville, there was a meeting where Director of the Correctional Service Mr. Reynolds met with Mr. Larson, Roy Tremblay and John Edmunds. He was told of his conditions for going to Joyceville Institution and that it would be with a clean slate, a new start, that the incident would not be held against him and the management team at Joyceville was fully aware of his situation and condition.

[103] After he started at Joyceville, Mr. Larson was told directly by Keeper Kenny Allen that Wayne Dickson, the officer noted in the probation order, phoned the Joyceville Institution's keepers' hall and enquired about his employment and work situation. Mr. Larson made a complaint about this to the Deputy Commissioner but nothing was done.

[104] Mr. Larson indicated that his suspension without pay has caused him financial and social losses. He is currently on social services because employment is hard to find which causes him humiliation and hardships. He has had to go to the food banks in town. Mr. Larson gets headaches regularly from stress and so does his fiancée.

[105] In cross-examination Mr. Larson indicated he was hired at Collins Bay Institution in January 1992 where he worked until April 1998. He was suspended approximately one year then went to work at Joyceville Institution at the end of September 1999 where he worked six months.

[106] Mr. Larson identified his signature on Exhibit E-7 and agreed that, if he signed he had received the Standards of Professional Conduct and the Code of Discipline, he must have received them even if he can't recall.

[107] Mr. Larson confirmed that his duties are as described in the work description of CX-1 in Exhibit E-4. Mr. Larson is a qualified weapons' instructor who was responsible for training others in the use of firearms at Collins Bay. His Weapons Instructor Certificate was never revoked by the Correctional Service of Canada but at Joyceville

there was already a full complement of weapons' instructors at the time he went to work there.

[108] Mr. Larson was shown Exhibit E-8, the newspaper clipping, and stated that he had read it before.

[109] Mr. Larson indicated his performance appraisal (Exhibit G-4) at Joyceville Institution was rated satisfactory and that he was told by the correctional supervisor that was because he did not know Mr. Larson well enough. Mr. Larson sent it back for reappraisal and has not heard anything to this point.

[110] Mr. Larson was unable to say at what time he went to the courthouse on March 31<sup>st</sup>, as he did not have the privilege of having a clock near him; he believed it was early morning. In court, he did not meet his lawyer; he met the duty counsel. He did not ask the duty counsel to contact the Institution believing that detective Kennedy had done so.

[111] Mr. Larson was not scheduled to work on Saturday, April 1<sup>st</sup>, 2002. On April 3<sup>rd</sup>, Mr. Edwards called him and mentioned the newspaper article and confirmed that he was the Donald Larson referred. Mr. Larson indicated that his father owned the mobile home mentioned in the article. Mr. Larson does not believe he had conversation specific about the charges because Mr. Edwards had cautioned him not to talk about it without his lawyer present. Mr. Larson did not talk about it and Mr. Edwards did not ask anymore after he cautioned him.

[112] Mr. Larson wrote a letter dated April 14, 2000 (Exhibit E-14) to which the Warden wrote back on April 29, 2000 ( Exhibit G-1 ). Mr. Larson spoke to Mr. Edwards subsequent to this letter on at least two occasions; May 17<sup>th</sup> being the last contact at which time Mr. Edwards directed him to phone the Warden or contact her for any other information as he considered the fact finding investigation complete. Mr. Larson did not write to the Warden to seek a meeting; he asked Mr. Tremblay to seek a meeting but no meeting ever took place.

[113] On August 4, 2000, Mr. Larson wrote a letter to Warden Morrin (Exhibit E-26) which read:



*Attn: Warden Donna Morrin*

*Please consider this my official request for an investigation into the alleged allegations made by staff member CX John Cross. Mr. Cross has made allegations that he and other staff members do not feel safe working with me or around me. This allegation has never been investigated by your staff and has been used in a Fact Finding dated 3 April 2000 that has lead to my suspension.*

*Myself and my advocate Roy Tremblay have previously requested a investigation into these allegations and have been turned down by your Unit Manager Scott Edwards. He has stated that since I do not work there it is a "mute" point in doing an investigation.*

*I also find disturbing the letter that you sent to me dated 29 April 2000. In this letter you refer to "several complaints" and go on to state that "this issue is subsequent to and in no way related to the decision to suspend you without pay". In reviewing the Fact Finding I note that on the document dated 31 March 2000 there is a comment that states "noted used for decision". There does appear to be a conflict in your statement and I would appreciate a comment about this from you.*

*In closing I would like to again ask that a proper Investigation be done into these allegations of staff feeling unsafe working around me and that all the rules and regulations that are in place to protect me from a biased and harassing report be following and adhered to.*

*For your consideration and response.*

[114] Mr. Larson recognized his signature on the probation order (Exhibit E-12) dated August 27,1999 where he was found guilty of pointing a firearm and discharged on probation. Mr. Larson had been discharged from employment at Collins Bay Institution. Mr. Larson stated his discharge was settled "under financial duress" and the deal achieved through union representation was a one-year suspension and to be transferred to Joyceville Institution.

[115] When Mr. Larson wrote to the Commissioner of the Correctional Service on November 06, 2000 (Exhibit G-5) he had received the final level reply denying his grievance on October 19, 2000. The response to his request November 24<sup>th</sup>, 2000 (Exhibit G-6) came after his grievance was referred to adjudication on November 21<sup>st</sup>, 2000. Mr. Larson attended the final level hearing of his grievance in

Ottawa where he was represented by a union representative. His request to have his lawyer attend was denied; only the union was allowed in attendance.

[116] Mr. Larson presently lives with his fiancée. Both he and his fiancée had just finished school. Mr. Larson has just completed a six-month Personal Support Worker course through an Employment Insurance program. Mr. Larson has sent résumés to several potential employers; he has no copies but can provide a list of where he sent his résumé; employment is hard to find.

#### Arguments for the Employer

[117] Counsel for the employer reviewed the evidence and found noteworthy that on March 30<sup>th</sup>, 2000 despite his eight years of service, Mr. Larson did not ask to speak to the Personnel Department or the Deputy Warden but chose to speak to the Keeper and told her it was a family emergency; knowing full well he was arrested. There is no issue here with Mr. Larson's absence on March 30<sup>th</sup> and 31<sup>st</sup>, 2000 but it is interesting to note that when released at approximately 5:00 p.m., Friday, the 31<sup>st</sup>, he makes no effort to contact anyone upon release. Also of interest is the fact that it is Mr. Edwards that called Mr. Larson on April 3<sup>rd</sup>, 2000.

[118] During his conversation with Mr. Larson, it is true Mr. Edwards suggested it might not be wise for Mr. Larson to talk but Mr. Larson chose to take Mr. Edward's advice notwithstanding that Mr. Edwards is not a lawyer and was not investigating on behalf of the police.

[119] After the letter of suspension was issued, the employer contacted the Kingston police and the Crown Attorney and was politely denied information because the matters were before the courts. The evidence of Mr. Edwards was that he didn't make any further enquiries because of the advice received from the Freedom of Information Division that because of ongoing criminal proceedings they would not receive information.

[120] Subsequent to April 3<sup>rd</sup>, 2000 Mr. Larson spoke to Mr. Edwards on two occasions, a fact corroborated by Mr. Larson and noted in Exhibit E-17, those notes being made and inputted into the computer as events occurred. On neither of those occasions was there any discussion of substance of the criminal charges; the only

information provided by Mr. Larson was that the charges were still pending before the courts.

[121] Mr. Larson testified that he wanted to meet with the Warden, that he made attempts to contact the Warden in this regard. The Warden indicated that she never spoke with Mr. Larson. When pressed Mr. Larson indicated those calls were about pay cheques a month late and obtaining the balance of the fact finding investigation report. Asked if he ever made his request in writing to explain his side Mr. Larson thought he might have but there was no letter produced. Mr. Larson wrote on two occasions, once on April 14 at Exhibit E-14 and once on August 4<sup>th</sup> at Exhibit E-26. In neither of those letters does Mr. Larson ever request a meeting with the Warden and in neither of these letters does he talk about the substance of the criminal charges.

[122] On the other hand, Mr. Edwards told us that he made attempts to meet with Mr. Larson and Mr. Tremblay and he met with excuses as to why they couldn't meet. Mr. Edwards as part of this process responded to the grievance, on the fourth page of Exhibit G-3, "...this author notes that attempts to meet with Mr. Larson on June 7, 8 and 9<sup>th</sup> were made but to no avail. Unfortunately when contacted the subject was unavailable to meet on the seventh due to a lawyer's appointment and personal commitments involving his child. Attempts were unsuccessful on June eighth and ninth because his representative was unavailable to represent him". Mr. Tremblay did not testify. He could have come and given evidence. What we have is the evidence of the Warden and of Mr. Edwards. Mr. Larson in this regard stated that his request was to have a meeting off site from Joyceville but has produced nothing in writing. The only requests in writing are in relation to the problems of harassment etc.

[123] In his letter to the Commissioner of the Correctional Service (Exhibit G-5) there was a request turned down by the Assistant Commissioner, Personnel and Training, but it is interesting to note that at that time, Mr. Larson had had an opportunity to attend at the final level hearing with a representative.

[124] The employer relies on the *Boisvert* case (Board files 166-2-23435 and 26200). The *Boisvert* case involves a CX employed at Archambault Institution in a similar situation. Officer Boisvert was charged and suspended; he pleaded guilty and his employment was terminated. He was a good employee with 15 years of service and a member of the facility's emergency team with no discipline record. He was charged with theft and possession of stolen property, Boisvert's sole brush with the law.

Similar to what we have here there was a newspaper article and the grievor alleged he wasn't given an opportunity to provide information. This is dealt with in paragraph 78 and 79 of the decision:

78. *The grievor claims that the employer did not give him a chance to explain himself and is attempting to make a distinction between his case and the Skibicki case (supra) on this basis, among others. In my opinion, it should also be noted that in Skibicki, the grievor could have fully exonerated himself had he not withheld information at his disposal from his supervisor. In the present case, the discussion would have concerned mitigating factors only.*
79. *However, in the specific context of this case, it matters little that the grievor had no chance to explain himself. This is not to say that I accept the grievor's version. I make no finding in that regard since, in my opinion, it is of no importance in the present context. In any event, any procedural error would be corrected by the de novo hearing before me: Tipple v. Canada (Treasury Board), Federal Court case A-66-85.*

[125] The employer also refers to the *Fleming* case (Board files 166-2-13488 and 13489), involving a CX employed at Beaver Creek Correctional Camp. Mr. Fleming was suspended; shortly thereafter he was discharged. As in *Boisvert* he pleads guilty and is sentenced to three years probation. The employer refers to page 15 at paragraph 45 of the decision:

*The employer in the present case appears to have fallen between two stools. I believe that the employer acted prematurely, without sufficient and reliable evidence, when it discharged Fleming on January 27. The fact that Fleming was committed to trial on the charges of possession and trafficking under the Narcotic Control Act did not entitle the employer to make a presumption of guilt. In the circumstances, it should have allowed the suspension to stand until after Fleming's trial and conviction ( cf para 14 above). The concern about delay or possible delay that influenced the employer in Rogers, et al (supra) was not a factor in this case. While I consider this to have been an error on the part of the employer, I nevertheless find that the error was essentially procedural rather than substantive and therefore does not fatally undermine the employer's case. If the grievor had been prejudiced by the employer's premature action, the remedy was readily available in the present proceedings.*

And at paragraph 47:

*Without going into a laborious point-by-point analysis of the Millhaven "criteria", it is obvious in this case that Fleming's conviction on the charge of trafficking in marijuana impinges directly on the employment relationship. Not only was Fleming a peace officer whose duty is to uphold the law, but his duties as a correctional officer required him to be in daily contact as guard, monitor and counselor of prisoners, some of whom were serving sentences for crimes similar to the one for which Fleming was convicted. The employer had a legitimate concern that Fleming's continued employment in this position would reflect adversely on the operations and integrity of the CSC in general and, more particularly, on the operations and reputation of the Beaver Creek Correctional Camp. The employer's decisions to suspend and discharge Fleming were just and reasonable in the circumstances.*

[126] What the employer is told in *Fleming* is not to discharge until matters go to trial but instead to suspend indefinitely.

[127] The employer refers to the *Flewellling* case (Board file 166-2-14236) which involved a peace officer criminally charged who was suspended January 1982 and discharged upon conviction. The grievor appealed the conviction and a new trial was ordered. The employer quoted the excerpt of the suspension letter from page 4 of the decision which reads:

*After considering all the information brought before me on this matter, it is my decision that you are hereby suspended indefinitely, without pay, pending the outcome of your trial, at which time your case will again be reviewed.*

and from the reasons for decision on page 7:

*I believe that the grievor's conduct giving rise to these criminal charges is incompatible with his role as an international surveillance officer. I believe that, while the grievor is, strictly speaking, only a peace officer for purposes of his dealings with the various fishery acts and regulations, he nonetheless must act from time to time in a police-like fashion. Surely, the grievor's behaviour cannot be said to have done anything other than to have hurt the general reputation of his employer and at the very least, his own character and reputation have been brought into serious doubt.*

*The fact that the employer restrained itself from discharging in the first instance is a tribute to its sense of fairness.*

*Surely, the employer, faced with the fact that an international surveillance officer employed by it was charged with having in his possessions sizable quantities of drugs prohibited by law, cannot be held to have grievously or seriously misconducted itself by suspending the affected employee until such time as it could further delve into the matter.*

[128] Section 434 of the *Criminal Code* provides: “Every person who intentionally or recklessly causes damage by fire or explosion to property that is not wholly owned by that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.” If found guilty, Mr. Larson could be sentenced up to 14 years. The charges against Mr. Larson are very serious.

[129] The safety of the citizens of this country is ensured by individuals like Mr. Larson. His job requires a significant amount of trust and faith in the individuals carrying out this kind of function. It is imperative that a person in Mr. Larson’s position be held to a high standard because the Institution and the community count on him and his fellow officers as a front line defence. If Mr. Larson’s trust is in question, his integrity is in question as the above cases said; there is a serious problem with him in that job in the Institution. Warden Morrin testified that every job in the Institution involved contacts with inmates and firearm involvement. Even those positions without contact with inmates could require it in case of an emergency.

[130] The employer then referred to the jurisprudence in *Re Phillips Cables Ltd. and United Steelworkers, Local 7276* (1974), 5 L.A.C. (2d) 274, and more specifically page 282, third, fourth and fifth paragraphs, page 283, the second paragraph, at page 284, the second paragraph.

[131] The employer referred to the case in *Re Dominion Stores Ltd. and Retail, Wholesale and Department Store Union, Local 414* (1974), 6 L.A.C. (2d) 373, more specifically the third and fifth paragraphs of page 374, and the second paragraph at page 379.

[132] The employer attempted to find out about the charges and was unable to do so because the matter was before the courts. The case law says the employer does not have to do more than call the police.

Arguments for the Grievor

[133] The central issue is to determine the fairness of the indefinite suspension imposed by the employer. Mr. Larson is accused of arson and, by the same token, of breach of probation. It is important to note that Mr. Larson has not been convicted; he has not even been tried. Also, the alleged crime has nothing to do with the employer's business or its premises.

[134] One can understand concern in a prison setting of such a situation, but the employer has taken a *de facto* position that Mr. Larson cannot return unless acquitted. Mr. Larson is a CX-1 arrested on March 30, 2000, and released on March 31 on \$500 bail. It is significant to note the reaction of Warden Morrin on March 31, 2000; she directed IPSO Moulton to contact the OPP penitentiary squad and to share information with the Regional and National Headquarters. She directed Mr. Edwards to do a fact finding investigation and she suspended Mr. Larson's right to access to the Institution. Had these three initial directions been followed by an inquiry into Mr. Larson's version it would, at the very least, be an attempt to objectively study the situation on its merits.

[135] In not going forward and seeking the grievor's version and all of the facts, the only conclusion is that the Warden's mind was made up.

[136] A warden's concerns are very understandable when an employee is accused of a serious offence. In a penitentiary, this is not a situation to brush off the table without careful consideration. As understandable as it may be, it is indicative of a predetermined solution that there be no significant inquiry in what Mr. Larson had to say. Quite frankly, when directed the actions taken on March 31 amount to checking whether the "Donald Larson" reported in the newspaper article was the Donald Larson employed at the Joyceville Institution. The Warden was away the weekend of April 1 and 2; she suspended Mr. Larson indefinitely on April 3, 2000, on the same day that the fact finding report was produced.

[137] Looking at the findings on page 2 of the fact finding report (Exhibit E-10), Mr. Edwards agreed quite candidly that the first finding was a given. The second is really of no consequence since these are not the motives for which Mr. Larson was suspended. When asked, Warden Morrin did not put the second finding as the motives for the indefinite suspension. The third finding is hearsay; half fact and half opinion.

The fourth point is purely opinion. This is the fact finding asked for on March 31, and concluded on April 3, on which the Warden based a suspension without pay.

[138] It is the employer's over reacting to the nature of the charges which led to not weighing all possibilities and solutions that could have been adopted. Mr. Larson's grievance #8795 (Board file 166-2-30269) asks for immediate return to work, lost wages and pensionable time. Grievance #8911 (Board file 166-2-30268) requests a grievance hearing and grievance #8912 (Board file 166-2-30267) asks for procedural equity. Nineteen months have elapsed since the charges have been laid and there will be no preliminary hearing until the Spring of 2002. Mr. Larson has not been employed since. He has described his difficult family, financial and social situation because of the suspension and his extremely stressful existence on the whole.

[139] Since March 31, and since April 3, 2000, until today, the evidence shows the employer never searched for an alternative solution to the suspension for Mr. Larson.

[140] From the evidence, there is no adverse effect of continued employment, that is, evidence vis-à-vis the public, inmates or co-workers. The employer had not, to this very moment, provided a connection between Mr. Larson's conduct and the workplace.

[141] The employer did not demonstrate a connection between the code of conduct or the standards expected at the workplace and the arson charge and the ensuing breach of probation charge. It is important to note that the code of conduct is not breached simply by the accusation. The employer's "laissez-faire" approach seems to indicate it is waiting for Mr. Larson to become innocent, to be acquitted, before it revises the situation while, according to our constitution, he is innocent.

[142] The evidence does not show a serious impact of Mr. Larson's presence at the workplace and no detriment to inmates and fellow employees was demonstrated. In fact, all evidence leads to Mr. Larson being a good employee with no problems noted on his file.

[143] Mr. Larson has the right to work and earn a living. The employer unfairly cast a judgement and deprived him of the right to work and of his dignity.

[144] There is also no evidence that Mr. Larson is posing a risk. Nothing tangible was brought forward to the tribunal. The inherent seriousness of the charge is not



sufficient ground to impose an indefinite suspension. The quality of work does not become suspicious because of pending charges of which he is presumed innocent.

[145] The employer pointed in the evidence to Mr. Larson's previous charge of a firearms violation. It is important to note that both the employer and the judge involved in that case gave a suspended sentence and did not restrict Mr. Larson from using firearms for work-related purposes. While both could have, neither did.

[146] Concerning the accusation pending for arson, a \$500 bail was set. It is very light and should be taken, or considered, that the court process has seen fit to release Mr. Larson on bail pending his trial. This amount is very modest and no other onerous condition was placed on Mr. Larson. The importance of all this is indicative of the perception of the judge; he could have added to the condition. The judge had to know that Mr. Larson is a CX and he placed no restrictions vis-à-vis firearms; he had to evaluate the dangers of Mr. Larson being at large rather than incarcerated.

[147] In the reflection, highly unlikely, that inmates would reject Mr. Larson while on bail pending a hearing, there are other possible positions for him. At least the employer should have considered other positions. The employer should have considered placing Mr. Larson in outside positions where he does not have to be in contact with the inmate population. While it is not directly in evidence the employer could have considered the staff college and a whole series of other possibilities.

[148] There is no evidence that Mr. Larson present a danger to inmates or his colleagues. The hearsay evidence that some do "not feel safe" to work with Mr. Larson has not been substantiated. Warden Morrin's actions on March 31<sup>st</sup>, 2000, were immediate steps towards discipline. At the hearing she conjured up out of thin air the inmates' concern as the main reason for suspension without pay. That evidence was contradicted by Mr. Edwards in his testimony and his two written reports make no mention of inmates' concerns. This embellishment leaves no doubt that suspension without pay was and is the only thing that Warden Morrin considered.

[149] The new motive is like the few things that moved recently prior to the hearing like the check with the fire department. It is the same as Warden Morrin's sudden concern about what the inmates feel. It is to justify the suspension without pay.

[150] Warden Morrin was adamant that the word “charge” means “charges”, that an “s” is missing. It is remarkable that she never heard Mr. Larson on the merits of the suspension nor has anyone else at the Correctional Service of Canada.

[151] There is Mr. Germain’s testimony that other officers have been charged and while on duty no problems with inmates were established or brought up.

[152] The grievor referred to the *Cotter* case (Board file 166-2-16113) where a grievor was arrested and charged with second-degree murder in connection with the stabbing death of his estranged wife. He was given a notice of indefinite suspension. The employer had relied on the Standards of Conduct and testified that this action was necessary in order to protect the Department’s public image until an investigation could be completed and a trial of the charge could be held. The adjudicator allowed the grievance finding no connection between the matter with which the grievor was criminally charged and the workplace or the employer’s ongoing business operations. The adjudicator found that the seriousness of the charge, in itself, is not sufficient grounds for the employer to impose an indefinite suspension. The adjudicator stated in the paragraph before last: “Rather the decision seems to have been one of instantaneous, emotional response, perhaps a very understandable abhorrence to the circumstances in which the grievor was alleged to have been involved more so than a rejection of the grievor himself. The attempt was to keep the workplace free of any blemish with which it might become associated owing to the alleged wrongdoing of one of its employees.”

[153] The grievor asks to be reinstated with all his rights, salary, benefits and interest on amounts owing.

#### Reply of the Employer

[154] In reply the employer stated that the grievor attended the final level hearing of his grievance and he had the opportunity to present his case here at the hearing.

[155] The employer referred to the *Boyer and Marks* decision (Board files 161-2-516 and 517) and the decision of the Federal Court of Appeal in *Tipple v. Canada (Treasury Board)* F.C.A., [1985] F.C.J. NO. 818. Whatever unfairness, if unfairness occurred, is wholly cured by the hearing *de novo* before the adjudicator.

[156] There was a suggestion made that Warden Morrin suggested Mr. Larson cannot return unless acquitted. The employer cannot make a determination until all facts have been heard. The Warden said theoretically that trust could be regained, that the door is not slammed shut.

[157] The failure to report to work is not at issue but the way in which Mr. Larson is not being up front with the employer. The employer thinks employees should be more forthcoming.

[158] Mr. Germain made the comment that he had no access to the personnel files of the employees that were charged and he had no personal knowledge of the charges.

[159] The quality of Mr. Larson's work is not an issue in this case.

#### Reasons for Decision

[160] The two grievances of Mr. Larson alleging violations of the CX collective agreement failed to mention a corrective action requested. Counsel for the grievor did not address these grievances in his arguments. These grievances were somewhat incidental to the main issue of this case i.e. the grievance against the indefinite suspension without pay. I cannot make any findings with regard to these collective agreement grievances and therefore they are dismissed.

[161] The main issue to be determined here deals with an indefinite suspension pending the outcome of criminal proceedings. Although neither counsel referred specifically to the tests set out by the arbitrator in *RE: Ontario Jockey Club and S.E.I.U. Local 528* (1977), 17 L.A.C. (2d) 176 (Kennedy) these tests are widely accepted in the jurisprudence and were quoted as recently as September 2000 in *RE: Hamilton Regional Cancer Centre and Canadian Union of Public Employees, Local 3566* (2000), 91 L.A.C. (4th) 333.

The tests as set out at pages 178 and 179 of the former decision are as follows:

1. *The issue in a grievance of this nature is not whether the grievor is guilty or innocent, but rather whether the presence of the grievor as an employee of the company can be considered to present a reasonably serious and immediate risk to the legitimate concerns of the employer.*

2. *The onus is on the company to satisfy the board of the existence of such a risk and the simple fact that a criminal charge has been laid is not sufficient to comply with that onus. The company must also establish that the nature of the charge is such as to be potentially harmful or detrimental or adverse in effect to the company's reputation or product or that it will render the employee unable properly to perform his duties or that it will have a harmful effect on other employees of the company or its customers or will harm the general reputation of the company.*
3. *The company must show that it did, in fact, investigate the criminal charge to the best of its abilities in a genuine attempt to assess the risk of continued employment. The burden, in this area, on the company is significantly less in the case where the police have investigated the matter and have acquired the evidence to lay the charge than in the situation where the company has initiated proceedings.*
4. *There is further onus on the company to show that it has taken reasonable steps to ascertain whether the risk of continued employment might be mitigated through such techniques as closer supervision or transfer to another position.*
5. *There is a continued onus on the part of the company during the period of suspension to consider objectively the possibility of reinstatement within a reasonable period of time following suspension in light of new facts or circumstances which may come to the attention of the company during the course of the suspension. These matters, again, must be evaluated in the light of the existence of a reasonable risk to the legitimate interest of the company.*

[162] The evidence of this case reveals that the employer failed to ask itself the right questions before suspending Mr. Larson indefinitely.

[163] The employer submitted no evidence that Mr. Larson's presence at the Joyceville Institution could be considered to present a reasonably serious and immediate risk to the legitimate concerns of the employer. The Warden indicated in her testimony that she took into consideration the feelings of inmates and that she estimated that contact with inmates by an officer facing serious criminal charges was risky. Yet no explanation was given as to how this would be a risk. When questioned on this issue, Mr. Edwards suggested that inmates could make comments. Warden Morrin was adamant that the feelings of fellow employees were not considered in her decision to

suspend, although this was one of the items listed under “FINDINGS” in the fact finding report. Even if it were a consideration the evidence before me of employee feelings is hearsay of a rather vague nature.

[164] The employer had the onus to show it had legitimate concerns about the presence of the grievor at work following the criminal charges of arson and breach of probation being laid against him. If I were to find that the concern of continued contact of the grievor with inmates was a legitimate concern then I must look at the other tests.

[165] Did the employer take reasonable steps to ascertain whether Mr. Larson could be assigned to alternative duties. The evidence is quite clear that it did not. Mr. Edwards did not look at the roster, or the vacancies, or at the grievor's file to investigate any potential reassignment of Mr. Larson.

[166] Warden Morrin testified that she could not maintain the grievor in his position because of contact with inmates and that she could not assign him to outside posts because of the breach of probation charge. The probation order related to a firearms offence and the outside posts were all armed posts. Warden Morrin had reached this conclusion when it was confirmed to her that Mr. Larson was charged with arson and breach of probation. Warden Morrin had never requested to see the charges, nor the bail hearing documents which were available in April 2000 and which were obtained by the employer during the course of the adjudication hearing and produced as Exhibit E-25. Had the Warden seen these documents she would have known that the breach of probation did not relate to misuse of firearms and in no way precluded Mr. Larson from being assigned to an armed post.

[167] Even if I was to accept that Mr. Larson could not occupy an armed post there is no evidence that the employer even considered any other type of employment for Mr. Larson. The employer did not consider it before the suspension or after when the hardships faced by Mr. Larson were brought to its attention. The employer in this case does not meet tests numbers 4 and 5 mentioned in the *Jockey Club* decision (*supra*).

[168] The employer in this case did not even follow its own discipline procedure. Paragraph ‘g’ on page 22 of Exhibit E-1, “A Guide to Staff Discipline” states:

*g. Before an investigation is completed, the employee has a right to respond to, and provide any information about,*

*allegations made against him/her. Interview the individual(s) suspected of the act(s) and, therefore, obtain facts by hearing the employee's side.*

[169] On page 26, there is an entire section under D. Disciplinary Interview/Hearing dealing with the interview of employees to be disciplined. At no time did the Warden or Mr. Edwards meet with Mr. Larson to obtain his side, either prior to, or after, suspending him indefinitely. The telephone conversation with Mr. Edwards is a far cry from the disciplinary interview described in the guide.

[170] Mr. Edwards cautioned the grievor that anything he told him could be used in court against Mr. Larson. Anyone in his right mind would hesitate to say anything more without the presence of his lawyer in those circumstances. Having made that caution it was incumbent on Mr. Edwards to pursue his investigation with Mr. Larson in the presence of his lawyer. The onus is on the employer to meet with the employee and get his version not on the employee to seek such a meeting. I accept Mr. Larson's evidence that he did seek to meet with the Warden and/or the employer in the company of his lawyer. I do not find that the feeble attempts made by Mr. Edwards, during the grievance process to meet with the grievor and his representative constitute a valid attempt at meeting the grievor for a disciplinary interview.

[171] The onus was on the employer to show me with supporting evidence that it did set a disciplinary hearing and that the grievor failed to attend or that the employee was asked to provide specific information and had failed to do so as was the case in *Re: Hamilton Regional Cancer Centre (supra)*. In this case the employer has also failed to meet the onus of test number 3.

[172] The Warden has qualified the action she took as an administrative one. I disagree with her view; the indefinite suspension without pay in the circumstances of this case was not an administrative action. It might have qualified as such if all five tests were met but in the present case it does not meet any of the tests. Warden Morrin stated she had no choice except to accept Mr. Larson when he was transferred from Collins Bay Institution. The evidence is that he was transferred with a clean slate, a clear record. Yet when she learned that Mr. Larson was charged with arson and breach of probation, the Warden saw this as "strike two" with no other solution but to suspend him without pay. She did not even enquire into other possibilities, nor did she even attempt to meet with Mr. Larson. I therefore find that an indefinite suspension in these circumstances is unwarranted.

[173] The employer did not meet the onus that was placed on it to justify an indefinite suspension but that does not mean that the situation of an employee charged with a serious criminal offence can be taken lightly. I have struggled with the notion of what is an appropriate time frame during which an employer can find all the answers to meet the five tests above. The employer did not set its mind to the appropriate questions but had it done so it is certain that it would have required more than the three days it used for its so-called fact finding investigation. The time required often depends on the facts and would vary from case to case.

[174] The employer did not act out of malice; it was attempting to avoid the mistake made in *Fleming (supra)* where it discharged a grievor prematurely. I have therefore resorted to the employer's Guide to Staff Discipline for an indication of what an appropriate time frame might be. I have found at paragraph E.1(a), page 28 the following:

- a. This action must be handled in a timely manner and must be based on an objective assessment of all accumulated data. Except in unusual circumstances, the disciplinary action should be taken within one month of the infraction.*

[175] There is nothing in the evidence before me to indicate that the employer could not have concluded a proper investigation within a month of the infraction. Mr. Larson's grievance against the indefinite suspension is therefore allowed to the extent that he is to be reinstated in his position or an equivalent position as of May 1<sup>st</sup>, 2000 with full pay and benefits.

[176] Neither party raised the issue of the unusual delay in getting this grievance heard by an adjudicator nor of the implications of the requests for postponements of the adjudication hearing from various representatives. I take this to mean that the parties did not wish for this to be a factor in the determination of remedy and therefore I will not consider it.

[177] Counsel for the grievor requested that interest be ordered on the amounts owing to the grievor should the grievance be allowed but failed to provide any grounds on which I could base myself to grant such. I wish to point out that there is considerable doubt regarding the jurisdiction of an adjudicator appointed under the *Public Service Staff Relations Act* to award interest. In any case, in view of the nature of

this case, and in the absence of any good reasons why I should grant interest, the request is denied.

[178] My findings that the indefinite suspension was unwarranted in the present circumstances have no bearing on the action the employer may wish to take should the grievor be found guilty of the criminal charges against him or from the moment that all the facts surrounding the charges become available to the employer.

[179] In summary the two grievances against alleged violations of the collective agreement are dismissed. The grievance against the indefinite suspension is allowed and the grievor is to be reinstated within a week of the receipt of this decision and compensated for lost wages and benefits from May 1<sup>st</sup>, 2000. I remain seized of this matter in case the parties encounter any difficulties in implementing my decision.

**Evelyne Henry,  
Deputy Chairperson.**

OTTAWA, January 25, 2002.