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



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

BETWEEN

LISA BOUCHER

Grievor

and

**DEPUTY HEAD
(Correctional Service of Canada)**

Respondent

Indexed as

Boucher v. Deputy Head (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Linda Gobeil, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: Émilie Bouchard, counsel

For the Respondent: Marylise Soporan, counsel

Heard by videoconference,
January 19 to 22, 2021.
(FPSLREB Translation)

REASONS FOR DECISIONFPSLREB TRANSLATION

I. Individual grievance referred to adjudication

[1] On September 12, 2014, Lisa Boucher (“the grievor”) filed a grievance challenging a decision by the Correctional Service of Canada (“the employer”) to impose a three-day disciplinary suspension on her for events on February 9 and 10, 2014 (Exhibit E-1, Tab 6). The “[translation] Disciplinary Action Report” reads as follows:

[Translation]

...

The information gathered in the investigation allows the Board of Investigation to conclude that:

1. You let the inmate ... walk on all fours in cell block H toward the Heath Care Centre. By doing so, you violated the Code of Discipline, paragraph 4a), which states:

“An employee has committed an infraction, if he/she:

a) maltreats, humiliates, harasses, and/or is abusive, by word or action, to an offender or the offender’s friends or relatives;”

The Values and Ethics Code for the Public Sector promotes the value of respect for people and dictates expected behaviours. Through these actions, you failed to act in accordance with those behaviours, namely:

2.1 “treating every person with respect and fairness” and,

2.3 “did not help create and maintain a safe and healthy workplace.”

By doing so, you also violated the Code of Discipline, paragraph 2c), which states that:

“An employee has committed an infraction, if he/she:

c) acts, while on or off duty, in a manner likely to discredit the Service;”

2. You were insubordinate toward correctional manager Marc MONIER when you ignored instructions to provide the assistance of another inmate.

By doing so, you violated the Code of Discipline, paragraph 1h), which states that:

“An employee has committed an infraction, if he/she:

h) fails to promptly obey the lawful orders or commands of any other employee who is in charge or

The Board of Investigation finds that you committed misconduct by refusing to the assistance of an inmate or an escorting staff member to assist the inmate with his movement needs.

Given that you have no prior discipline in your file, the delays and circumstances of the imposition of the action, your years of service, and your denial of the facts, we conclude that a suspension of three workdays is appropriate in the circumstances.

This measure will be placed in your file for a period of two years, provided that you merit no other discipline within that period. You have been informed that if there is a recurrence on your part, you will incur more severe disciplinary or administrative measures that could lead to dismissal.

...

[2] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board to replace the former Public Service Labour Relations Board as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Subject to s. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2) before November 1, 2014, is to be taken up and continued under and in conformity with the *Public Service Labour Relations Act* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[3] The grievor referred her grievance to adjudication on January 16, 2015.

[4] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* and the *Public Service Labour Relations Act* to, respectively, the *Federal Public Sector Labour Relations and Employment Board Act* (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act*.

[5] The adjudication hearing of the grievance initially took place on July 24 and 25, 2018, before another panel of the Board. Unfortunately, the Board Member who made

up that panel passed away before being able to make a decision. Therefore, the matter was reassigned to me as a new panel of the Board. The hearing restarted before me from January 19 to 22, 2021.

II. Summary of the evidence

A. Background

[6] Some clarifications must now be made to facilitate reading this decision. The events that are the subject of this decision involve different areas of Donnacona Institution. Inmate X's cell was on the K side of cell block H, and the grievor was assigned to that post during the relevant periods. Controlled doors separate cell block H from the corridor leading to the Health Care Centre, and a correctional officer was assigned to that post during the relevant periods. Finally, some correctional officers were assigned to the corridor leading to the Health Care Centre during the relevant periods.

B. Confidentiality order

[7] At the hearing before me, to support their claims, the parties presented a plan of Donnacona Institution's cell block H, where the grievor was assigned during the events at issue. By common agreement, for security reasons, the parties asked me to seal the exhibits containing the cell block plan. For the following reasons, I granted the request.

[8] Although hearings and proceedings before the Board are public, and the Board has adopted a policy of transparency with respect to all its quasi-judicial activities, sometimes, situations arise in which public access to certain information may create a serious risk to people or, in a case like this, a correctional institution, in which everyone's safety is paramount and must be protected.

[9] Recently, in *Sherman Estate v. Donovan*, 2021 SCC 25, the Supreme Court of Canada reformulated the criteria to consider when deciding whether certain information should be protected, which in this case is the plan of cell block H at Donnacona Institution. The Court reformulated the criteria as follows at paragraph 38:

[38] The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order ([Sierra Club of Canada v. Canada (Department of Finance), 2002 SCC 41], at

para. 53). Upon examination, however, this test rests upon three core prerequisites that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

- 1) court openness poses a serious risk to an important public interest;*
- 2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,*
- 3) as a matter of proportionality, the benefits of the order outweigh its negative effects.*

...

[10] The security of correctional institutions is unquestionably an important public interest to be protected, and public access to the plan of cell block H at Donnacona Institution certainly poses a serious risk in that respect. Therefore, a sealing order is necessary to prevent such a risk because a less-restrictive measure would not prevent it. For example, ordering the parties to substitute a redacted plan of cell block H at Donnacona Institution in the Board's file for the one they adduced into evidence is not feasible in the circumstances. Finally, in this case, the advantages of sealing the plan in question (that is, preventing a risk to the security of a correctional institution) outweigh the negative effects of sealing it (that is, depriving the public of its right of access to a document adduced into evidence during a quasi-judicial proceeding). Therefore, I order sealed Exhibit B-A, Tab F-1, and Exhibit E-1, Tab 1, containing the plan of Donnacona Institution's cell block H.

C. For the employer

1. Stéphane Jaillet

[11] Stéphane Jaillet testified for the employer. He has been an assistant warden at Donnacona Institution since 2005 and has 29 years of service with the employer. At the request of Marc Lanoie, the institutional director of Donnacona Institution, Mr. Jaillet and the assistant warden, Mario Goulet, investigated the grievor's conduct on February 9 and 10, 2014.

[12] Essentially, the employer accused the grievor of refusing to help inmate X, who had leg injuries. The accusations against her are reported in detail in the investigation report that Mr. Jaillet and Mr. Goulet prepared (Exhibit E-1, Tab 3).

[13] In his testimony, Mr. Jaillet reviewed the investigation report. He explained that on February 9, 2014, the grievor was responsible for the range where inmate X and his fellow inmates were housed. That range has approximately 40 cells. Inmate X, who had leg injuries and other health issues, requested permission to be helped by inmate Y, who was to push his wheelchair to retrieve his medication from the Health Care Centre. The grievor told inmate X that inmate Y's assistance was not authorized by any memo and that he simply had to go to the Health Care Centre on his own, by operating his wheelchair. According to inmate X, the grievor allegedly said that he could get to the Health Care Centre by crawling. Although Mr. Jaillet did not verify this statement with the grievor, nevertheless, she reportedly said, "[translation] If I had to do it again, I'd do the same thing."

[14] Therefore, inmate X decided, after going down a few steps while upright and holding onto the handrail, to leave cell block H and to make the return trip to the Health Care Centre on all fours, refusing the help of fellow inmates along the way. This angered the other inmates, and some reacted by shouting insults at the grievor.

[15] It should be noted that the correctional officer assigned to the control post authorizes all unit entries and exits. However, I note that the grievor was not assigned to that post on February 9, 2014, and that inmates needing medication, such as inmate X, must go to the Health Care Centre. The visits there, known as "medical rounds", occur at specific times of the day and are controlled. Inmates are granted the authorization to go there in advance. Inmate X had to retrieve his medication from the Health Care Centre every day. Therefore, him leaving cell block H for the Health Care Centre on the morning of February 9, 2014, was not a new event.

[16] Correctional Officer Véronique Soucy was on duty at the control post located at the exit from cell block H on February 9, 2014, and she saw inmate X walking on all fours toward the Health Care Centre. She contacted the grievor to inform her of the situation.

[17] Mr. Jaillet testified that for the purposes of the investigation, he interrogated 10 witnesses and reported their testimonies, including that of the grievor. However, he

admitted that he did not speak with the medical attendant on duty at the Health Care Centre on February 9, 2014. In their conclusions, Mr. Jaillet and Mr. Goulet noted the following items against the grievor and Officer Morin, who was assigned to the post called “the hub” on February 9, 2014 (Exhibit E-1, Tab 3):

[Translation]

1. On February 9 and 10, 2014, Ms. Lisa Boucher deliberately allowed the inmate ... to walk on all fours from cell block H to the Health Care Centre.

...

2. On February 9, 2014, Ms. Lisa Boucher was insubordinate toward Correctional Manager Marc MONIER when she ignored instructions to provide the assistance of another inmate.

...

3. On February 9, 2014, Mr. Mickael MORIN did not intervene adequately with the inmate ... when he walked on all fours from cell block H to the Health Care Centre.

...

[Emphasis in the original]

[18] In his testimony, Mr. Jaillet related that on February 9, 2014, inmate X, who had a tendency to harm himself, asked the grievor whether inmate Y could push him so that he could go to the Health Care Centre and retrieve his medication. A few days earlier, inmate X had apparently inflicted additional injuries to his legs. He is a long-term inmate serving a long sentence.

[19] After checking with the attendant at the Health Care Centre, the grievor told inmate X that she had not received authorization to allow inmate Y to help by pushing inmate X's wheelchair to the Health Care Centre.

[20] The grievor then contacted the manager on duty, Marc Monier, who told her that she did not need authorization; she simply could choose someone on the range from inmate X's unit to push his wheelchair. This first conversation between the grievor and Mr. Monier was recorded and is reproduced in Exhibit E-1, Tab 2. Meanwhile, inmate X chose to go to the Health Care Centre on all fours. The grievor then sent a written report to Mr. Monier, informing him that inmate X had gone to the Health Care Centre on all fours.

[21] After reading the grievor's written report a few moments later, Mr. Monier called her to reiterate his disapproval of seeing inmate X walking on all fours in the corridor leading to the Health Care Centre (Exhibit E-1, Tab 2).

[22] Mr. Jaillet explained that the grievor should have asked another inmate to push inmate X's wheelchair, especially after someone in authority, Mr. Monier, informed her that she did not need written authorization. Even though she did not report to Mr. Monier, as a manager, he was in a position of authority over her. In cross-examination, Mr. Jaillet agreed that the grievor had offered inmate X a wheelchair but without suggesting the assistance of another inmate to push it. Mr. Jaillet said that because of a problem with his hands, inmate X had trouble operating the wheelchair by himself, and that someone had to push him.

[23] Mr. Jaillet explained that correctional officers like the grievor have some latitude to make decisions and that it is not always possible to provide a memo. According to him, by refusing to obey Mr. Monier's order to allow inmate X to be pushed by another inmate to get to the Health Care Centre, the grievor was insubordinate. In fact, she did not take Mr. Monier's instructions into account during their first telephone conversation (Exhibit E-1, Tab 2).

[24] According to Mr. Jaillet and the other witnesses, the distance between cell block H and the Health Care Centre is approximately 45 metres.

[25] Mr. Jaillet also testified that on February 10, 2014, inmate X once again went to the Health Care Centre on all fours. Mr. Jaillet agreed that he had no evidence that the grievor had seen inmate X leave cell block H on all fours during the second incident. The officer on duty in the corridor connecting cell block H to the Health Care Centre informed Patrick Caron, the grievor's immediate superior, and he went there. He intercepted inmate X, who was still on all fours and about halfway to the Health Care Centre. Mr. Caron convinced inmate X to sit in a wheelchair. A correctional officer then escorted inmate X to the Health Care Centre and then to his cell.

[26] According to Mr. Jaillet, by twice allowing inmate X to leave on all fours for the Health Care Centre, namely, on the return trip on February 9, 2014, and once toward the Health Care Centre on February 10, 2014, the grievor displayed insensitivity and violated the order of a superior officer, Mr. Monier, who had confirmed that written instructions were not required to allow another inmate to push the wheelchair of an

inmate who was in need. Correctional officers have some leeway and must use judgment.

[27] According to Mr. Jaillet, inmate X is in bad shape, and the grievor failed to show him humanity. She violated the institution's values. She failed to use judgment and to take institutional security into account. In fact, because of her refusal, the other inmates reacted and uttered threats against her. Inmate X has been at Donnacona Institution for a long time, and he has the support of his fellow inmates. Things should not be deliberately exacerbated. The grievor did not consider the potential repercussions of her decision. Her duty is to ensure the inmates' well-being. When questioned about inmate X's attitude, Mr. Jaillet confirmed that inmate X is a long-term inmate and that he could be manipulative.

[28] According to Mr. Jaillet, the grievor violated the employer's values and discipline codes. He confirmed that another correctional officer had been disciplined for the February 9 and 10, 2014, incidents, but that he was unaware of the details.

2. Mr. Caron

[29] Mr. Caron also testified for the employer. He is a correctional manager. In 2014, the grievor was under his supervision. In his testimony, he went over the February 10, 2014, incident. On that Monday morning, Nathalie Simard, the officer assigned to the corridor connecting cell block H to the Health Care Centre, informed him that inmate X was walking on all fours in the corridor. He then went to there and observed that the inmate was indeed crawling in the corridor toward the Health Care Centre. Mr. Caron asked an officer to find a wheelchair, and inmate X was escorted to the Health Care Centre and then to his cell.

[30] Mr. Caron questioned the grievor. She told him that she had completed an "Officer's Statement/Observation Report" on the February 9, 2014, incident (Exhibit BA-1, Tab F-5). After reading it, he decided that things could not be left as is; the grievor had shown a lack of humanity and judgment. According to Mr. Caron, it is unthinkable to allow someone in inmate X's state to walk on all fours to the Health Care Centre. The grievor should have intervened. Inmates are under the correctional officers' responsibility.

[31] According to Mr. Caron, it was up to the grievor to reason with the inmate and to convince him of the procedure to follow. Certainly, an inmate cannot be allowed to walk on all fours, particularly when the inmate has health issues and must go to the Health Care Centre every day. The grievor was responsible for helping him. The absence of written instructions did not justify a lack of humanity or dignity. In addition, Mr. Monier had informed her that she was to allow another inmate to push inmate X's wheelchair, even in the absence of written instructions.

[32] According to Mr. Caron, contrary to what the grievor said, there was no risk in allowing inmate Y to push inmate X's wheelchair to the Health Care Centre.

[33] In cross-examination, Mr. Caron agreed that on February 10, 2014, once he reached the Health Care Centre, inmate X alluded to some violent incidents that had occurred at Archambault Institution several years before. For that reason, Mr. Caron asked that inmate X be placed in segregation.

[34] Mr. Caron also agreed that correctional officers working in the control posts must open two doors to allow an inmate leaving a cell block to use a corridor.

[35] Mr. Caron also specified that no authorization from the institutional committee is required to use an inmate's services, because it is temporary. Thus, the grievor could have allowed inmate Y to help inmate X, as it was not a permanent arrangement. As for security, Mr. Caron insisted that an accompanying inmate never enters the Health Care Centre as such and that only an officer may enter. As for the rest, he said, "[translation] That's why we have officers." He also agreed that in the past, he and the grievor had had differences of opinion, which was one of the reasons he was not chosen to lead the investigation into the February 9 and 10, 2014, incidents.

3. Mr. Lanoie

[36] Mr. Lanoie was the employer's final witness. He was the institutional head of Donnacona Institution until 2018. In February 2014, he was informed of the February 9 and 10, 2014, incidents involving the grievor. Mr. Lanoie asked Mr. Goulet and Mr. Jaillet to investigate. The grievor submitted her comments (Exhibit E-1, Tab 4). Finally, Mr. Lanoie asked Patrick Lachance to impose the appropriate discipline (Exhibit E-1, Tab 5).

[37] Mr. Lanoie testified that after learning of the investigation's details, his view was that the grievor had engaged in misconduct, that she had not conformed to the code of values (Exhibit E-1, Tab 8), and that she had been insubordinate. According to him, her explanation cannot be retained that she had never compelled inmate X to walk on all fours and that he did so voluntarily. It is completely inhumane and wholly unacceptable to allow an inmate to walk on all fours to the Health Care Centre (Exhibit E-1, Tab 4).

[38] According to Mr. Lanoie, the grievor's decision not to provide another inmate's help could have had serious consequences. Inmate X enjoys a certain notoriety, and the other inmates reacted when they saw him walking on all fours. Consequences could have resulted, including an uprising of inmates. It is important to let inmates know that management does not endorse such behaviour from its correctional officers.

[39] When questioned as to whether physical restraints could have been used, for example, placing the inmate in a wheelchair by force, Mr. Lanoie maintained that the first step was to try to convince the inmate and offer the help of another inmate if using inmate Y presented a problem, as Mr. Monier suggested (Exhibit E-1, Tab 4, page 35). The grievor could also have asked an attendant from the Health Care Centre to help inmate X. According to Mr. Lanoie, the most distressing part of the matter is that the grievor maintained that if she had to do it again, she would do the same thing.

[40] Mr. Lanoie rejected the claim that once inmate X left cell block H, he was no longer the grievor's responsibility. According to Mr. Lanoie, the correctional officer remains responsible for the inmate even if the inmate has left his or her assigned area. In that case, the correctional officer must intervene or ask for help so that another correctional officer can intervene.

D. For the grievor

1. Ms. Soucy

[41] Ms. Soucy is a correctional officer whose position is classified at the CX-01 group and level. She was at Donnacona Institution in 2014.

[42] On February 9, 2014, Ms. Soucy was assigned to the control post of cell block H. Essentially, her role was to ensure the safety of the correctional officers on the floor. She operated the doors, which, among other things, allowed the inmates to leave the

cell block and use the corridor connecting cell block H to the Health Care Centre. On February 9, 2014, the grievor and Jimmy Bélanger, an officer whose position is classified at the CX-01 group and level, were assigned to cell block H.

[43] On the morning of February 9, inmate X appeared, to go to the Health Care Centre. At first, Ms. Soucy told him that he could not leave right away. Inmate X hopped back to his cell. She then noticed inmate X, who was still in cell block H, walking on all fours. The other inmates shouted insults at Ms. Soucy. She then contacted the Health Care Centre. Meanwhile, inmate X sat, holding his leg up, and spoke to the grievor. Ms. Soucy then allowed him to use the corridor connecting cell block H to the Health Care Centre. He was upright when he passed through the controlled doors. A few minutes later, some other correctional officers informed her that he had begun walking on all fours in the corridor toward the Health Care Centre.

[44] According to Ms. Soucy, management's written authorization is required to assign an inmate to push another inmate's wheelchair. However, she agreed that in emergencies, the authorization may be given verbally. Yet, inmate X was not authorized to have a fellow inmate push his wheelchair. Ms. Soucy stressed that Donnacona Institution is maximum security and that all movements "[translation] must be supervised".

[45] On February 10, 2014, Ms. Soucy was assigned to the same post. After being authorized to allow inmate X to leave cell block H to go to the Health Care Centre, a correctional officer on duty in the corridor connecting cell block H to the Health Care Centre informed her that inmate X was again on all fours, heading to the Health Care Centre. According to her, the grievor did not see inmate X on all fours in the corridor. Another inmate suggested that inmate X use a wheelchair; he refused. Ms. Soucy stated that inmate X then swore at the grievor. Ms. Soucy said that she was unable to intervene because she was armed in a control post, which she could not leave. Had she been on the floor, she would have intervened. However, she asked the grievor to deal with it. In her testimony, Ms. Soucy stressed that inmate X was manipulative. However, she praised the grievor's work and the fact that the grievor is "[translation] upstanding and has integrity".

2. Mr. Bélanger

[46] Mr. Bélanger is a correctional officer at Donnacona Institution. His position has been classified at the CX-01 group and level since 2012. He testified that he was on duty on February 9, 2014. He related that on that morning, a delay occurred collecting medications at the Health Care Centre. He offered inmate X a wheelchair, but he refused it. So, Mr. Bélanger did not insist. Inmate X did not seem to be in more pain than usual that morning. Normally, he went to the Health Care Centre several times a day. Then, Mr. Bélanger saw inmate X, who was still in cell block H, prepare to go down a few steps leading to the control post occupied by Ms. Soucy and then to the corridor leading to the Health Care Centre. Inmate X descended the few steps in a seated position. Mr. Bélanger then suggested that he use a wheelchair, which inmate X refused. Another inmate, witnessing the events, also offered one to inmate X, who again refused. Mr. Bélanger, who was busy on the computer, did not see inmate X leave cell block H. Meanwhile, the grievor was in the kitchen located at the back. According to Mr. Bélanger, inmate X was unhappy about not having immediate access to his medications. Mr. Bélanger did not see the inmate on all fours in the corridor. Had he, he would have contacted the Health Care Centre; he would not have allowed inmate X to walk on all fours. Mr. Bélanger said that he had never seen an inmate walk on all fours in the institution. He also stated that it is not safe in a maximum-security institution to allow another inmate, who has not been authorized in advance, to push an inmate's wheelchair. He repeated that Donnacona Institution is maximum security.

3. Vivianne Mathieu

[47] Ms. Mathieu also testified. She is a correctional officer, and her position has been classified at the CX-02 group and level since 1988. She is very familiar with inmate X, whom she described as manipulative and always trying to obtain privileges from correctional officers or fellow inmates. In her testimony, she revisited some episodes of violence and offences involving inmate X.

[48] According to Ms. Mathieu, the fellow inmates who are chosen, for example, to help or to push an inmate's wheelchair must be so authorized in advance. The cell block manager and a committee decide who among the inmates is authorized to perform this type of duty, which is paid. Ms. Mathieu said that she would not have allowed another inmate to push inmate X's wheelchair because no such authorization had been made. In cross-examination, Ms. Mathieu agreed that she would not have

allowed an inmate to walk on all fours; she stated that she would have done something, but she did not clarify. Ms. Mathieu was not at the institution on February 9 and 10, 2014.

4. Yann Garneau

[49] Mr. Garneau testified that he is a correctional officer whose position has been classified for 10 years at the CX-02 group and level at Donnacona Institution. In February 2014, he was the president of the union local at Donnacona Institution. In that role, he was involved in the events of February 9 and 10, 2014. According to him, inmate X has a long history, and he “[translation] knows the institutional ‘game’. He is aware of the consequences of his actions”.

[50] According to Mr. Garneau, the February 9 and 10, 2014, situations did not merit an investigation. Moreover, the investigation targeted only the grievor. Other correctional officers might have acted the way she did, but the employer’s investigation did not involve them. As for the procedure to follow when an inmate persists in walking on all fours, whether an immediate response is required has to be determined, taking everyone’s safety into account. The inmate’s cooperation must be gained and an attempt made to find a solution.

5. The grievor

[51] The grievor is a correctional officer whose position has been classified at the CX-02 group and level since 2010. She has been at Donnacona Institution since 2013. Her duties include supervising inmates and making the rounds. As of the February 9 and 10, 2014, events, she was assigned to cell block H, side K, under Mr. Caron’s supervision. Side K has 40 cells, all of which were occupied at the time.

[52] On February 9, 2014, when she arrived at 07:00, the grievor was briefed on the overnight events. There was nothing special to report for cell block H. According to her, had a particular health issue occurred during the night of February 8 to 9, 2014, she would have been informed on the morning of February 9 during the briefing. She also checked the activity log for the cell block, and it noted nothing special.

[53] After making the inmate count, the grievor went to the kitchen located in the back. She then received a call from Ms. Soucy, who informed her that inmate X was shouting at her and that he wanted inmate Y to push him to the Health Care Centre in

a wheelchair. Ms. Soucy reportedly informed the grievor that no written authorization had been made for inmate Y to push inmate X's wheelchair. The grievor went to the site and saw inmate X, who was then on the landing, about five steps above her. He repeated that he wanted a wheelchair, that he wanted inmate Y to help him get to the Health Care Centre, and that Ms. Soucy had not authorized it. According to the grievor, inmate X, who was then standing, was agitated, and he shouted and banged on a metal pipe. He was not in respiratory distress and provided no explanation as to his health status.

[54] After telling Ms. Soucy to wait before allowing inmate X to use the corridor connecting cell block H to the Health Care Centre, the grievor checked the cell block activity log for any mention of an authorization for inmate Y to push inmate X's wheelchair. There was none. She explained that when this type of authorization is provided, the Health Care Centre attendants have a copy of it, along with the correctional officers assigned to the control posts and in the corridor. On verifying, they all said that they had not received an authorization. The grievor also called the nurse at the Health Care Centre, who apparently told her that she had seen inmate X the day before and that he had no need of a wheelchair; he could use a cane.

[55] The grievor testified that to be considered an aide and, for example, to be authorized to push an inmate's chair, a fellow inmate must first complete an employment form, because the institution pays for this type of work. The employment application is then forwarded to Mr. Caron, who sends it to the preventive security area, which determines whether the inmate can perform the task. In the case of healthcare attendants who, according to the grievor, perform the duty of pushing wheelchairs, very specific criteria are applied before allowing a fellow inmate to carry out the job (Exhibit BA, Tabs 2 to 4).

[56] The grievor said that inmate Y was present during the February 9, 2014, incident and that he also shouted at her. She did not know him because he had been in cell block H for only a week.

[57] The grievor informed inmate X of the lack of authorization for another inmate to push his wheelchair and told him that he simply had to use his cane. She went to find a wheelchair and gave it to inmate X, who continued to insist that inmate Y push it.

[58] When he returned to his cell, inmate X rang the alarm. The grievor went to see what was wrong. Again, she told him to use his cane to get to the Health Care Centre. He continued to insult her.

[59] The grievor went to the kitchen, from where she heard Mr. Bélanger offer inmate X the use of a wheelchair, which he again refused.

[60] While the grievor was still in the kitchen, first Mickael Morin, who was on duty in the corridor connecting cell block H with the Health Care Centre, and then Ms. Soucy, informed her that inmate X was on all fours in the corridor, heading toward the Health Care Centre. She went to look and saw inmate X on all fours in the corridor. According to her, he had almost reached the Health Care Centre.

[61] The grievor testified that two other inmates had insulted her and that one of them, speaking about the grievor, had told Ms. Soucy that he “[translation] would break her face”.

[62] As for her first conversation with Mr. Monier, the manager in charge that day, the grievor said that he did not offer her a solution and that he only made suggestions, which did not help (Exhibit E-1, Tab 2). She then prepared an Officer’s Statement/Observation Report detailing the incident (Exhibit BA, Tab 5). She remitted the report to Mr. Morin, who was on duty in the corridor connecting cell block H with the Health Care Centre, who then gave it to Mr. Monier.

[63] When he received the grievor’s Officer’s Statement/Observation Report of February 9, 2014, Mr. Monier contacted her a second time (Exhibit E, Tab 2). According to her, he did not seem to understand the report.

[64] After Mr. Monier’s and the grievor’s second conversation, the inmate returned to his cell. The grievor did not see him return on all fours. She documented the incident in an Officer’s Statement/Observation Report (Exhibit BA, Tab 5). As for why she did not intervene physically when she saw that inmate X was returning to his cell on all fours, she explained that she had seen him standing and walking earlier in the morning and that he did not seem to be in distress but instead unhappy. Forcing him to sit in a wheelchair was contraindicated because he was recovering from surgery. Also, the other inmates would have reacted had she used force.

[65] According to the grievor, inmate X always tries to spin things to his advantage. He is manipulative. According to her, insisting specifically that inmate Y should push his wheelchair was suspicious and might have hidden something.

[66] On February 10, 2014, the grievor was again assigned to cell block H, side K, on the same schedule as the previous day. Inmate X was not mentioned in the morning briefing. At around 07:30, when she was in the kitchen, she heard on the radio, “[translation] What is that?” She received a call from Ms. Soucy, informing her that inmate X was again in the process of walking on all fours in the corridor connecting cell block H with the Health Care Centre.

[67] The grievor called Ms. Simard, who was on duty in the corridor connecting cell block H with the Health Care Centre that day, to alert her that inmate X was heading toward her and the Health Care Centre on all fours. Ms. Simard contacted Mr. Caron, who came over. Inmate X was escorted in a wheelchair by a correctional officer until he returned to his cell. He was then placed in segregation because he had uttered threats. Mr. Caron contacted the grievor to find out why inmate X had walked that way.

[68] With respect to the disciplinary investigation, the grievor testified that she was the last to provide her version of the facts. According to her, inmate X had never said that he had pain in his hands, and she never told him to walk on all fours. She insisted on the fact that she had had no written authorization to allow a fellow inmate to help another inmate by pushing a wheelchair. Several people offered inmate X a wheelchair; he always refused. She stated that she consulted and that she made the necessary verifications, given the situation. She maintained that she could have done no more.

[69] In cross-examination, the grievor acknowledged that in that past, inmate X had used the help of a fellow inmate to push his wheelchair. She also agreed that her colleagues had contributed approximately \$870 to her, which was equivalent to the salary she lost from the suspension.

III. Summary of the arguments

A. For the employer

[70] According to the employer, the facts of this case fully justify the three-day suspension imposed on the grievor. Even Ms. Soucy and Ms. Mathieu agreed that an inmate should not be allowed to walk on all fours. Instead, it should be addressed.

[71] Inmate X had health issues. He also had leg injuries and was taking medication regularly. Nevertheless, the grievor repeated at the hearing that written authorization was necessary to allow another inmate to push a wheelchair.

[72] According to the employer, the version of the facts that the grievor presented at the hearing, namely, the inmate had no respiratory issues and simply had a sore leg, is inconsistent with the version reported in the Officer's Statement/Observation Report that she prepared on February 9, 2014. In fact, in that report, she said that the inmate told her that he had trouble breathing. In addition, only at the hearing did she mention that inmate X gestured and banged on a metal pipe; her report said nothing about it.

[73] The employer argued that on February 9, 2014, the grievor simply refused inmate X's request to be accompanied by another inmate and that she let him leave for the Health Care Centre on all fours. However, he had informed her of his intention to walk on all fours, which he did.

[74] According to the employer, the grievor should have addressed the situation. She let things happen.

[75] According to the employer, inmate X was under the grievor's responsibility, and she could not claim that once he passed through the controlled doors, he was no longer her responsibility.

[76] According to the employer, the grievor stubbornly refused to allow inmate Y to accompany inmate X, despite her conversation with Mr. Monier. She told Mr. Monier only that inmate Y had not been authorized in advance to push inmate X's wheelchair and that inmate Y had to be paid to perform that task. She never raised with Mr. Monier the security-risk issue had she involved inmate Y. Only at the hearing was the risk of authorizing inmate Y mentioned.

[77] According to the employer, the order to grant inmate X's request to be accompanied was clearly communicated. The grievor simply chose not to carry it out.

[78] With respect to the events being repeated on February 10, 2014, the grievor was again responsible for inmate X. Once again, he went to the Health Care Centre on all fours. Only through Ms. Simard's and Mr. Caron's intervention did the situation end. The grievor denied observing inmate X walking on all fours. According to the employer, this explanation is not acceptable because she should have been vigilant,

given the events of the day before. Once again, she should have intervened and tried to negotiate other avenues with inmate X.

[79] According to the employer, the grievor failed with respect to her obligations in the entire matter; she should have intervened with inmate X when she was informed that he was walking on all fours. She could have tried to convince him to behave differently. She did not. She also violated the code of discipline and values. With respect to a correctional officer's responsibility, the employer referred me to *Ontario Public Service Employees Union v. Ontario (Community Safety and Correctional Services)*, 2016 CanLII 18727 (ON GSB).

[80] The employer also accused the grievor of insubordination when she did not follow Mr. Monier's order when he told her to allow inmate Y to push inmate X's wheelchair to the Health Care Centre.

[81] According to the employer, the three-day suspension was not unreasonable in the circumstances. The decisions in *Ranu v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 89, *Stene v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 36, and *Seamark v. Deputy Head (Correctional Service of Canada)*, 2017 PSLREB 56, were cited in support of the argument that the disciplinary action was reasonable, given the issues and the fact that the situation could have deteriorated. Also, the employer claimed that the Board should not intervene to change a disciplinary action if it was unreasonable. The decisions in *British Columbia (Government Employee Relations Bureau) v. British Columbia Employees' Union*, [1983] B.C.C.A.A.A. No. 207 (QL), and *Manitoba v. Manitoba Government and General Employees' Union*, 2012 CanLII 97760 (MB LA), were also mentioned to emphasize the high ethical standard that a correctional officer must meet.

B. For the grievor

[82] The grievor stressed that the incidents of February 9 and 10, 2014, occurred in a maximum-security institution. She also emphasized that it was up to the employer to prove not only the alleged offences but also the reasonableness of the imposed discipline. She referred me to *Basra v. Canada (Attorney General)*, 2010 FCA 24.

[83] Returning to the February 9, 2014, incident, the grievor argued that she had treated inmate X with respect at all times. After he asked to be accompanied by

inmate Y, she carried out the necessary verifications, in particular by reading the cell block H activity log to see whether such an authorization had been provided. None had been provided. She also called the Health Care Centre. The attendant there also told her that no such authorization had been made, that inmate X had been seen the day before, and that he was able to move on his own. Nor was anything mentioned during the morning briefing she received that day. According to the grievor, all the witnesses confirmed that written authorization was required for one inmate to help another. She offered inmate X the use of a wheelchair, which he was to operate. In that respect, she maintained that he had no pain in his hands, contrary to what the employer argued; the proof was that he had moved around on all fours, including on his hands.

[84] According to the grievor, everything proved that she had treated inmate X's request with respect and fairness. Although he was unhappy that his request was denied, he not appear in distress. She argued that she had not wanted to let herself be manipulated by him. She claimed that she was concerned by the fact that he specifically wanted inmate Y assigned to accompany him.

[85] According to the grievor, it is wrong to claim that an intervention can always be made, contrary to the employer's argument, even though the inmate had said that he would go to the Health Care Centre on all fours. According to her, in some situations, it is preferable to do nothing, to avoid an escalation. She argued that it would have been risky to grant inmate X's request that inmate Y accompany him to the Health Care Centre. She did not yet know inmate Y. There could have been a conspiracy.

[86] The grievor also argued that on February 9, 2014, she did not see the inmate leave cell block H on all fours. Only when he was three quarters of the way to his destination in the corridor connecting cell block H to the Health Care Centre did Ms. Soucy inform her of the situation. According to the grievor, her "[translation] intervention window" was then limited because inmate X had almost reached his destination. The grievor stated that she contacted her colleague Mr. Morin, who was on duty in the corridor. Mr. Morin reportedly told her that he would deal with the inmate. According to her, because inmate X was in the corridor, the correctional officer on duty in the corridor, not she, had to take responsibility for inmate X.

[87] The grievor maintained that it was unfair to assign her all the responsibility for the matter. According to her, the correctional officer on duty in the corridor connecting cell block H with the Health Care Centre was the person responsible.

[88] The grievor maintained that she never told the inmate, “[translation] “Go there on all fours.” She accused the employer of relying on inmate X’s statements instead of those of a correctional officer.

[89] With respect to the February 10, 2014, incident, the grievor maintained that on one hand, inmate X did not make an accompaniment request, and that on the other hand, she had simply never seen him walking on all fours in the corridor connecting cell block H with the Health Care Centre.

[90] The grievor rejected the employer’s suggestion that using force to put inmate X into a wheelchair could have been an option, instead of letting him walk on all fours. In the circumstances, using force would have been risky and could have led to serious reactions from the other inmates. Although the other inmates present showed their disagreement with the grievor’s decision to refuse to allow inmate Y to push inmate X’s wheelchair, it was far from an alarming situation, contrary to the claims of the employer’s witnesses.

[91] The grievor also rejected the employer’s argument that she was insubordinate when she refused Mr. Monier’s order. In that respect, she invited me to listen to the recording of her February 9, 2014, discussion with him. Given the tone of the conversation, it is clear that Mr. Monier did not order her to give in to inmate X’s request. In addition, inmate X had already left for the Health Care Centre before the conversation took place. As for the February 10, 2014, incident, Mr. Monier had no discussion with the grievor and therefore could not have given her any orders.

IV. Reasons

[92] In this case, the employer concluded that on February 9 and 10, 2014, the grievor deliberately allowed inmate X to travel on all fours from cell block H to the Health Care Centre; they are approximately 45 metres apart. The employer also accused her of insubordination by ignoring Mr. Monier’s instructions to assist inmate X. In response to the incidents, it imposed the three-day suspension on her.

A. The February 9, 2014, incident

[93] Essentially, the evidence is that on the morning of February 9, 2014, inmate X wanted to go to the Health Care Centre and that because of leg injuries, he requested that inmate Y push his wheelchair. No written authorization allowed employing inmate Y for that task.

[94] Although the grievor carried out the usual verifications to determine whether in fact the inmate could ask to be escorted by an inmate of his choice, I fail to understand why, once the grievor's colleague, Ms. Soucy, informed her that inmate X was walking on all fours in the corridor connecting cell block H with the Health Care Centre, the grievor did not address the situation by, for example, asking for help from colleagues. At the very least, she could have sought to dissuade inmate X from continuing to walk on all fours in the corridor. The evidence demonstrated that she saw him on all fours. She chose not to intervene.

[95] It is not for me to decide the operations or the assignment of responsibilities to the staff of a maximum-security institution. However, I can find that in this case, allowing the inmate to walk on all fours for a distance of about 45 metres was unacceptable.

[96] On February 9, 2014, the grievor was aware of the inmate's intention to go to the Health Care Centre on all fours, and she saw him do it after Ms. Soucy informed her. Her explanation is unacceptable that inmate X was already in the corridor connecting cell block H and the Health Care Centre, that he was close to his Health Care Centre destination when she saw him, and that therefore, he was no longer under her responsibility. I agree with the employer's witnesses that everyone is entitled to dignity and cannot be allowed to walk on all fours.

[97] In her testimony, the grievor said that after seeing inmate X walking on all fours, she spoke with Mr. Morin, who was on duty in the corridor connecting cell block H with the Health Care Centre. He assured her that he would deal with inmate X. Mr. Morin did not testify in this case. I also note that no mention of his purported assurance to the grievor was made in the Officer's Statement/Observation Report that she prepared on February 9, 2014, after the incident (Exhibit BA, Tab F-5).

[98] The grievor insisted that using force to put inmate X into a wheelchair was not an option under the circumstances. According to her, this option could have escalated things. Once again, it is not for me to determine the procedures of a maximum-security institution. However, I find that in this case, the grievor did not try to convince inmate X to move on his own using a wheelchair or to dissuade him from walking on all fours. Nor did she try to find a colleague to intervene. Her response was unacceptable that inmate X was no longer her responsibility once he had reached the corridor connecting cell block H with the Health Care Centre. In addition, when she was met with during the investigation, she stated that she would do the same thing and that she would leave an inmate in that position. She also repeated that position at the hearing. She maintained that inmate X was no longer her responsibility when he walked on all fours.

[99] In that respect, the grievor made much of the fact that she was the only one to be disciplined for the February 9, 2014, incident. However, I note in the investigation report of Mr. Jaillet and Mr. Goulet a conclusion that another officer, Mr. Morin, should have intervened. However, as that case is not before me, I do not have to rule on the steps that could have been taken against Mr. Morin.

[100] In her arguments, the grievor referred me to the testimonies of her colleagues that written authorization was necessary to allow another inmate to help. Although it is not disputed that no written authorization was made for inmate Y to accompany inmate X, I note that in emergency situations, correctional officers must still respond to situations and provide assistance to inmates, while keeping in mind the institution's general security. I also note that at the same time, the grievor's colleagues also stated that no one is allowed to walk on all fours. In that respect, the evidence is that Ms. Soucy and Ms. Simard reacted immediately when they saw inmate X walking on all fours and that they informed the grievor and Mr. Caron of it.

[101] According to the grievor's Officer's Statement/Observation Report of February 9, 2014, after being denied having inmate Y push him in the wheelchair, inmate X had already expressed his intention to go to the Health Care Centre on all fours (Exhibit B-A, Tab F-5). The grievor should have managed the situation in a better way. While I understand that in an institutional setting, especially in maximum-security institutions, correctional officers must be very cautious before approving some inmate requests, allowing someone, after seeing the person do it, to walk on all fours for a distance of about 45 metres without even trying to dissuade the person, even if only by

discussion, is not, and I repeat, acceptable. When she was informed of the situation, and after she saw for herself that inmate X was walking on all fours, the grievor chose to ignore the situation, which, according to witnesses, could have deteriorated. Indeed, the evidence demonstrated that the other inmates present reacted by uttering insults and even threats because of the events.

[102] The employer also accused the grievor of not complying with Mr. Monier's order to allow another inmate to escort inmate X to the Health Care Centre, even without advance written authorization. In that respect, she maintained that her first interview with Mr. Monier was instead a discussion and that he did not order her to allow inmate Y to escort inmate X. After listening to the recording and reading the transcript of her conversation with Mr. Monier, there can be no doubt that clearly, he told her to allow another inmate to push inmate X's wheelchair, even though no written authorization had been made.

[103] Given the circumstances, I have no hesitation finding that on February 9, 2014, the grievor saw inmate X walking on all fours, allowed him to do it without trying to intervene, and did not comply with Mr. Monier's order to authorize another inmate to push inmate X's wheelchair.

B. The February 10, 2014, incident

[104] Although the February 10, 2014, incident was similar to previous day's, with respect to inmate X walking on all fours to the Health Care Centre, some facts make my finding different for the second incident.

[105] On one hand, on the morning of February 10, 2014, contrary to the day before, inmate X did not request that another inmate push his wheelchair. He said nothing about his intention to once again go on all fours to the Health Care Centre. Nor was anything noted in the cell block H activity log or during the morning briefing. According to the grievor, everything was normal.

[106] Only later was the grievor informed that inmate X again tried to go on all fours the Health Care Centre. However, her supervisor, Mr. Caron, intercepted him in his attempt when he was about halfway to the end. Ms. Simard, who was on duty in the corridor connecting cell block H with the Health Care Centre, informed Mr. Caron of it. Contrary to the events of the February 9, 2014, incident, on February 10, the grievor

did not see inmate X walking on all fours. Nor did she receive an advance warning of his intentions.

[107] The fact that the events of February 9 and 10 are similar does not make them one continuous event. Instead, in my view, they are two distinct events, and the grievor cannot be blamed for failing to anticipate that the February 9 incident would be repeated the next day. Once again, on the morning of February 10, nothing led her to believe that the inmate would behave the same way as he had the day before.

[108] The employer had the burden of proof in this case. Although the facts relating to the February 9, 2014, incident were proved, it is different for the February 10, 2014, incident. I cannot find that on February 10, 2014, the grievor deliberately allowed inmate X to walk on all fours in the corridor connecting cell block H to the Health Care Centre.

C. The proportionality of the imposed discipline

[109] The employer imposed a disciplinary suspension of three days on the grievor for the February 9 and 10, 2014, incidents. Since it did not prove any wrongdoing attributable to her with respect to the February 10 incident, and considering her lack of a disciplinary record, I find the discipline that the employer imposed excessive in the circumstances. Therefore, as the Federal Court of Appeal emphasized in *Basra*, I must now determine the appropriate discipline in light of the evidence before me.

[110] In the circumstances of this case, it appears to me that a one-and-a-half-day suspension is appropriate. Therefore, I reduce the suspension imposed on the grievor from three to one-and-a-half days.

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

(The Order appears on the next page)

V. Order

[112] I order sealed Exhibit B-A, Tab F-1, and Exhibit E-1, Tab 1, containing the plan of Donnacona Institution's cell block H.

[113] I order the deputy head to substitute a one-and-a-half-day suspension for the three-day suspension it imposed on the grievor.

[114] I order the deputy head to reimburse the grievor, within 60 days of this decision, one-and-a-half days of salary at the applicable rate as of the suspension, and with the usual deductions.

[115] The Board will remain seized of any issue related to calculating the amounts due under paragraph 114 of this decision for 90 days from the date of this decision.

September 15, 2021.

FPSLREB Translation

**Linda Gobeil,
a panel of the Federal Public Sector
Labour Relations and Employment Board**