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BETWEEN

**ANDREW LAMASH, MOHAMMAD SHAUKAT, AND RYAN PYE**

Grievors

and

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

Respondent

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

In the matter of individual grievances referred to adjudication

**Before:** Margaret T.A. Shannon

**For the Grievors:** Charlie Arsenault-Jacques, Union of Canadian Correctional  
Officers - Syndicat des agents correctionnels du Canada - CSN

**For the Respondent:** Kevin Dulude and Joel Stelpstra, counsel

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Heard at Edmonton, Alberta,  
January 22 to 24 and October 22 to 25, 2019,  
and via videoconference,  
April 6 to 9 and 12 to 16 and June 1 to 5, 7, and 11, 2021.

**REASONS FOR DECISION**

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**I. Individual grievances referred to adjudication**

[1] The grievors, Andrew Lamash, Mohammad Shaukat, and Ryan Pye were all correctional officers (CXs or “officers”) at the Correctional Service of Canada’s Edmonton Institution (EI or “the institution”) when they were involved in a use-of-force incident for which, according to their grievances, they were unjustly disciplined by their employer, the Correctional Service of Canada (CSC or “the employer”), contrary to the collective agreement between the Treasury Board and the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (“the union”) that expired on May 31, 2014.

[2] Mr. Lamash’s employment was terminated on December 4, 2014, and he grieved it on December 14, 2014. He also grieved his suspension without pay pending an investigation since August 6, 2014. Mr. Shaukat and Mr. Pye were each assessed a financial penalty of \$1000, in accordance with the “Global Agreement” between the employer and the union.

**II. Summary of the evidence**

[3] The grievors were involved in a series of use-of-force incidents at EI involving two inmates, who were brothers. The incidents happened within 15 minutes of each other. According to the employer, on the video recording of the incidents, Mr. Lamash can be seen striking one of the inmates on the head, applying knee strikes to the inmate’s back, and striking the other inmate on the torso with an oleoresin capsicum (OC) spray canister. Approximately 3 minutes later, during what the employer described as a poorly executed cell extraction, Mr. Lamash can be seen striking the inmate’s brother approximately 14 times with a baton, all while at least 14 other officers and a protective shield were at hand to assist.

[4] The first inmate sprayed with OC was taken to the decontamination shower and was inside and handcuffed when Mr. Lamash entered, in the presence of several other officers, including Mr. Shaukat and Mr. Pye. On a video recording, Mr. Lamash can be seen entering the shower area. Based on the employer’s viewing of the video of the incidents, and the reports of an officer who did not testify, it concluded that Mr. Lamash struck the inmate while he was alone in the shower with him. It also concluded

that the other officers present did nothing to stop Mr. Lamash from assaulting the inmate in the shower.

[5] Following these incidents, the officers involved were required to complete Officer Statement and Observation Reports (OSORs). According to the employer, Mr. Lamash did not accurately complete his OSOR, and he tried to influence those of the other officers involved in the incidents. For his acts of excessive use of force and dishonesty, Mr. Lamash's employment was terminated. The other grievors were assessed financial penalties of \$1000 each for their involvement in the use-of-force incident. The employer argued that in all cases, its actions were reasonable and justified, given the violations of its *Code of Conduct* (CD-060) and *Standards of Professional Conduct* by the grievors.

[6] In the course of the evidence, many witnesses referred to the involvement of a CX02, who is referred to in this decision only by his initials as "CX GS" in the recounting of the evidence. Only his initials are used because he has outstanding grievances before the Federal Public Sector Labour Relations and Employment Board ("the Board"). To prevent as much as possible this decision from impacting the outcome of those processes, he will not be identified. Any findings related to that officer's activities or credibility during the matters at issue must, as much as possible, be limited as to their impact on these matters. Also referred to only by their initials are the inmates involved in the use-of-force incidents described in this decision, to protect their privacy.

[7] Dan Erickson investigated the use-of-force incidents for the employer as part of the disciplinary investigation that gave rise to the disciplinary actions that are the subject of this case. EI's warden in August 2014 contacted him and informed him that there was a use-of-force review that had not been thorough enough; there were issues with the quality of the review and the report. He was asked to conduct a disciplinary investigation into the use of force and not to conduct a use-of-force review. He reviewed all the video recordings of the incidents, the audio recordings, and all the OSORs, and he conducted interviews. He collected pictures of the bruises and injuries suffered by the inmates. He listened to the tape recordings of the radio traffic related to the event made at the Main Control and Command Post (MCCP). Clovis Lapointe assisted Mr. Erickson with his investigation.

[8] As established by the disciplinary investigation, Mr. Lamash was not assigned to a specific unit that day. He was assigned to post EM32, which meant that he responded to calls for assistance throughout EI. At count time, inmate HW was asked to lock up. He refused, and some officers, including Mr. Lamash, moved in and confronted him. Mr. Lamash directed HW to put his hands on his head and come off the range; HW refused. Instead, he can be seen on the video recording backing away from the officers while raising his hands.

[9] Then, according to Mr. Erickson, Mr. Lamash grabbed the spray canister on his duty belt. This is not on the video recording but is mentioned in the OSORs. The OC spray deploys, and inmate HW is hit and falls to the floor. According to Mr. Erickson's interpretation of the video, once inmate HW is on the floor, he is struck repeatedly with the OC spray canister, which none of the officers reported seeing. Some of them reported that the inmate had clenched fists, while the video showed that his hands were open. Mr. Lamash was the only person on the scene with the type of OC spray canister used to strike the inmate as it was assigned to post EM32. Once the inmate is on the floor, Mr. Lamash lands knee drops on his back. That technique is not taught to officers, according to Mr. Erickson.

[10] When Mr. Lamash was shown the video, he commented to Mr. Erickson that inmate HW was aggressive and refused orders, so he deployed spray, took the inmate down, and secured him. He denied striking the inmate with the spray canister or applying any blows. In Mr. Erickson's opinion, Mr. Lamash did not properly assess the situation with inmate HW. He had options other than OC spray, taking the inmate down, and securing him when the other officers present were not prepared to fully support him by holding onto the inmate's arms and legs. Mr. Lamash could have closed the barrier and waited for the correctional manager (CM) to arrive, or he could have tried to negotiate with the inmate instead of proceeding directly to a use of force.

[11] Mr. Erickson's investigation was complicated by conflicting information in the OSORs filed following the events. The inmate was not aggressive on the video recording, and when he was confronted, he retreated, with open hands. The OSORs provided no explanation of how the inmate was subdued. According to Mr. Erickson's testimony, staff on the range were put in danger during the incident because they had no knowledge of the other inmates' whereabouts; inmate HW's cell door was blocked open, and his cell could have contained other inmates; and the officers involved did

not follow the proper staff-safety protocol. The CMs did not intervene at any time during the incident with inmate HW; they did so only after the incident with inmate SW concluded.

[12] Once inmate HW was removed from the range and taken to the decontamination showers, the video recording shows 14 to 15 officers roaming around outside the doors of the unit seemingly without purpose, according to Mr. Erickson. Apparently, there was a great deal of confusion and no coordinated effort to control the situation that had developed with inmate SW, inmate HW's brother, who was in cell A006 with another inmate and who was swearing at and threatening Mr. Lamash for his treatment of inmate HW.

[13] According to Mr. Erickson, at some point, Sandra Krstic, the CX02 in charge of the unit that day, allegedly heard inmate SW threaten to kill inmate C, who was in the cell with him. Mr. Lamash made the decision that a cell extraction would occur. He sent for the shield and the baton that are kept in the unit command post. The CM was not notified. There was no specific plan for the cell extraction. Spray was deployed through the food slot by Mr. Shaukat. Kevin Ransome, a CX, used the shield, while Mr. Lamash had control of the baton and swung it overhead with two hands like a club, which technique is not taught.

[14] Mr. Erickson found fault with many aspects of the use-of-force incident. It was not spontaneous; it was poorly planned, and those involved did not take the time to develop a plan, identify roles and responsibilities, and videotape the intervention, as required for a planned use of force. Mr. Lamash could have called for the Emergency Response Team (ERT) rather than undertake the cell extraction by himself.

[15] According to Mr. Erickson, Mr. Lamash's actions were planned and deliberate, and the cell extraction was unauthorized. They did not allow those involved the time to develop a plan, identify roles and responsibilities, and videotape as required for a planned use of force. The cell extraction was unauthorized. The use of force was excessive.

[16] On the video recording, Mr. Lamash swings the baton 14 times. In Mr. Erickson's evaluation, 14 strikes with a baton is neither normal nor required to control an inmate who has been sprayed when 8 other officers are present. The inmate had no weapons and was not assaulting an officer. The way Mr. Lamash used the baton was not as the

employer teaches CXs to use it; he wielded it in a two-handed, over-the-head manner and struck at the inmate's head.

[17] When Mr. Erickson asked some of the staff members involved, they said that they were not even aware of why the cell extraction was necessary. In Mr. Erickson's assessment, too many staff were present, which interfered with the cell extraction. The sheer number of CXs resulted in them tripping over each other in the course of the extraction. Other faults were identified, including the fact that the CM, the hostage negotiator, and someone from healthcare were not called. In Mr. Erickson's opinion, inmate SW, who was extracted from the cell, had no intention of hurting the inmate in the cell with him. His purpose was to provoke Mr. Lamash into a fight for taking his brother to segregation.

[18] Mr. Erickson's review of the shower incident revealed that only Mr. Ransome saw Mr. Lamash strike inmate SW. Five of the six officers involved in that incident did not mention anything about it. Mr. Erickson interviewed each one and asked if the officer saw a strike, but none remembered it. Mr. Ransome did not originally mention the strike in his OSOR but came forward later with the extra information, at great risk to his career, according to Mr. Erickson, because of the possibility of retribution from his co-workers for his actions. Mr. Erickson saw no benefit for Mr. Ransome to tell the truth, as like the others, Mr. Ransome was also disciplined for filing a false OSOR, to the best of Mr. Erickson's knowledge.

[19] For his part, Mr. Lamash reviewed all the OSORs before they were submitted, and he did not allow the CXs involved to leave the unit office until he reviewed the OSORs, according to Mr. Ransome. Mr. Lamash's version of events was that he entered the shower cell to adjust and help the officers present with the decontamination process and that he never struck the inmate. On the video recording taken from outside the shower cell, the inmate can be heard stating that Mr. Lamash struck him. For his part, Mr. Lamash denied reviewing any of the OSORs filed about the events of June 22, 2014.

[20] On cross-examination, the grievors' representative explored whether Mr. Ransome had changed his OSOR. According to Mr. Erickson, Mr. Ransome received a call from Mr. Lamash directing him not to change it. Mr. Erickson did not ask for a call log to verify that the call took place. Apparently, Mr. Ransome consulted his union

advisor, CX GS, about what to do. Mr. Erickson was unaware of the adversarial relationship between CX GS and Mr. Lamash.

[21] During his interview and after his OSOR was reviewed, Mr. Ransome told the investigators that he saw Mr. Lamash hit inmate HW during the takedown on the range; that inmate HW was not struggling at the time; that when inmate HW was on the ground, he did not resist and complied with orders; that inmate SW threatened Mr. Lamash; that Mr. Lamash replied that he would get his chance; and that during the decontamination of inmate SW in the shower, Mr. Lamash entered and kicked him in the lower body area.

[22] To Mr. Erickson, Mr. Ransome appeared genuine and remorseful, and his version of the events in the shower area was confirmed by the handheld camera footage. Mr. Ransome told the investigators that Mr. Lamash told the CXs in the unit office what information, terminology, and circumstances to use in their OSORs to justify the use of force. The terminology used in all the OSORs submitted that day is consistent with respect to the use of force, according to Mr. Erickson. Sean Samms, a CX, corroborated that Mr. Lamash directed the content of the OSORs to the officers required to write them. The OSORs submitted did not match the video evidence, according to Mr. Erickson, so according to him, it made sense that there was some discussion about what to include in them.

[23] According to Mr. Shaukat, during his interview with the investigators, he stated that inmate HW had had clenched fists and had assumed an aggressive stance. He refused to take orders and to lock up. When Mr. Shaukat reviewed the video evidence and saw the inconsistencies with what he had reported, he stated to the investigators that he believed that that was what he saw at the time. He had been in the unit subcontrol room, so he had a limited line of sight. Mr. Lamash had him relieved from his post so that he could assist with the cell extraction of inmate SW.

[24] Mr. Shaukat was the CX who administered the spray into the cell during the extraction. He sprayed it through the food slot, but inmate SW had blocked the slot with his body, and the spray ricocheted and contaminated the entire range, the other inmates, and the officers present. At first, Mr. Shaukat stated that he did not see any of the baton strikes because he was busy trying to spray the spray again, but later, he admitted that he did see a “few” baton strikes.

[25] During the disciplinary investigation interview, he retracted his comments in his OSOR about seeing inmate HW with clenched fists and assuming an aggressive stance. He indicated that no one provided him with any direction on the content of his OSOR.

[26] Mr. Erickson testified that Mr. Pye was not involved with inmate HW. Mr. Pye responded with other officers to the cell-extraction incident. He told the investigators that he heard inmate SW threaten to kill Mr. Lamash and inmate C but nothing else, because he had not been close enough. He saw inmate SW grab Mr. Lamash's leg and try to bite him. He did not see any baton strikes. Again, no one told him what to write in his OSOR.

[27] Mr. Pye was set to observe inmate SW during his decontamination shower. He did not report Mr. Lamash kicking the inmate, which he should have, according to Mr. Erickson. Mr. Pye witnessed Mr. Lamash enter the shower twice while inmate SW was inside it, which was contrary to policy, since ostensibly, inmate SW had made death threats against Mr. Lamash. Mr. Pye or any of the officers present should have stopped Mr. Lamash from entering.

[28] During the use-of-force incident with inmate HW, the officers present did not properly assess the risk on the range, did not discuss what was to take place, and did not notify the CM before going down the range under Mr. Lamash's direction. Ms. Krstic was the CX02 in charge of the unit that day, according to Mr. Erickson. When officers go down a range without assessing the risk, the result is often injury to officers or inmates. Most important in a use-of-force situation is the safety of the officers and the range.

[29] The Situation Management Model (SMM) has several options for the means of intervention, and officers are expected to use the least restrictive means. In this case, Mr. Lamash went directly to weapons and applied force. The other officers present did not use force. The OSORs filed that day did not match the video recording of the event; the OSORs were not accurate. They described inmate HW as having clenched fists, but his hands were in a surrender position. He was described as assuming an aggressive stance, but he retreats on the video. He offered no resistance when he was on the floor. Mr. Ransome and Mr. Samms both told Mr. Erickson that Mr. Lamash had directed them to include a reference to clenched fists and aggressive posture in their OSORs.



[30] The incident with inmate SW was described in all the OSORs in terms that conveyed the meaning of a hostage taking without using those exact words because that evoked the requirement for very specific protocols, according to Mr. Erickson. The CXs interviewed all said that inmate SW wanted to get at Mr. Lamash and that Mr. Lamash told him that he would get his chance. There were no negotiations with inmate SW, and no attempt was made to defuse the situation. The CM and the MCCP were not contacted. No one looked in the outside window to verify either the situation inside the cell or the condition of inmate C. In Mr. Erickson's assessment, the proper action would have been a cell extraction made by properly trained officers and conducted according to policy that was videotaped, and everyone would have known their roles exactly.

[31] Ms. Krstic was the officer in charge of the unit at the relevant time, even though Mr. Lamash acted like and assumed he was. The officers present, who were involved in the use of force, should have asked her for more information or direction before blindly following Mr. Lamash. She should have asked Mr. Lamash to remove himself after the first use of force against inmate HW, according to Mr. Erickson; instead, she abdicated her responsibilities and allowed Mr. Lamash to continue.

[32] Leon Durette spent the last five years of his CSC career reviewing use-of-force files for the employer. Before that, he was a national master trainer for the ERTs. He spent much of his career training CXs in the theories of use of force and in the proper techniques. He testified that on their induction into the CSC, CXs are trained in self-defence, arrest and control techniques, using batons and other weapons, and firearms. The CXs are instructed on their legal responsibilities and the legal limitations on them when using force. The focus of the training is on the defence of one's self and others, not aggression. CXs are not taught to fight. If an inmate is potentially violent, CXs are taught to maintain a safe distance, which provides them with the time and space to react, to defend themselves. CXs are taught that they are not to meet force with force, which results only in escalating force, but rather, they are to redirect force and distract the inmate. By so doing, the CX facilitates control of the inmate or an escape from the threatening situation.

[33] The CXs are taught that the baton is a defensive weapon, according to Mr. Durette. There are specific rules for using it, and it is to be used only when the potential for grievous bodily harm or death is present. Baton strikes are never to be

made to the head, neck, throat, spine, or groin but only on the legs and arms. CXs are to use their good judgement on the number of strikes required, depending on the situation. With each strike, they are to reassess the situation. Punishing the inmate is not the intent. The shield was introduced in 2014, according to Mr. Durette, and all CXs were trained on its use. They are required to recertify annually after their initial certification. Chemical agents may be used, but the canister containing them is not intended to be used as a weapon.

[34] Also, according to Mr. Durette, there are different types of use-of-force incidents; some are planned, and some are spontaneous, requiring an immediate reaction to an immediate threat. A situation may become assaultive if an inmate makes verbal threats or resists a CX's orders or directions to lock up; it may become a physically resistive situation. In Mr. Durette's assessment, it is not reasonable, under the SMM, which is a graphic used to assess the risk of a situation and the proper response, to use a baton if the inmate is making only verbal threats. To use a weapon, such as the baton, an inmate must also display other behaviours.

[35] Mr. Durette reviewed the video recording of the incidents in question. He saw a single inmate walking down the range, talking to other inmates. CXs approach him to have him comply with an order to lock up. Initially, there are no indicators of aggression from the inmate. He backs up to avoid the CXs and to create distance from them. The SMM requires that the CXs attempt to elicit voluntary compliance and then isolate and contain the inmate and communicate with him. The inmate goes to the ground, and the officers apply arrest and control techniques.

[36] A few minutes later, the officers conduct a cell extraction of another inmate, following which the inmate is taken to the ground and struck with a baton before being led away.

[37] Pierre Bernier was EI's warden as of these events and was the disciplinary authority in all these grievances. He took over as the warden on December 1, 2014. The first thing he was handed was Mr. Lamash's letter of dismissal to sign. He was not provided with the disciplinary investigation report, the video recordings, or the use-of-force reports. Eventually, he was provided with the necessary documents. The use-of-force reviews were consistent in their conclusions that the use of force was excessive and inappropriate at all levels of the review process.

[38] According to Mr. Bernier, management rejected an initial investigation into the use of force conducted by two CMs, Chris Saint and Jennie Reddick, at the institution that concluded that no wrongdoing took place. It was rejected because the CMs' conclusions were not congruent with those of anyone else in the review process. The investigation was quashed, and Mr. Erickson conducted a second one. The letter that Mr. Bernier was to sign on December 1, 2014, on the recommendation of the CSC's national labour relations office, was based on Mr. Erickson's report ("the Erickson report").

[39] Mr. Bernier questioned why a disciplinary hearing had not been held for Mr. Lamash. Tracey Farmer, who had been the acting warden before Mr. Bernier assumed the position, informed him that Mr. Lamash refused to participate in one.

[40] Before signing the termination letter, Mr. Bernier reviewed the video recording of the incidents and read the Erickson report and the OSORs. He stated that he could not get over the 14 baton strikes to inmate SW. He spoke to both Mr. Erickson and Mr. Lapointe to ensure that the contents of the termination letter were accurate.

[41] Based on his assessment, the wording in the termination letter to the effect that Mr. Lamash's actions were excessive was very strong. Mr. Bernier had them changed to reflect that based on the preponderance of the evidence, he concluded that Mr. Lamash's actions were excessive. Part of the reasons for the change was that he wondered why Mr. Lamash took over the operation on his own and why he went directly to the point of contact, when he could have isolated inmate HW and talked to or negotiated with him.

[42] Mr. Bernier also saw on the video recording what he considered an unnecessary escalation of events that started the second use-of-force incident before the first one had finished. Mr. Lamash goes to another cell to talk to someone, thus causing two situations that had to be resolved. When Mr. Lamash discharged the spray, it affected his coworkers and everyone else on the range. The inmate's head was banged into the wall. At least nine CXs were involved, which caused confusion.

[43] Mr. Bernier also took issue with much of what he saw on the video recording, including the improvised cell extraction of inmate SW, in which no one was properly equipped or wearing gas masks. Mr. Lamash was seen brandishing the baton and striking SW with it 14 times in a manner that the employer does not teach. According

to Mr. Bernier, what looked like a preplanned use of force was, in his assessment, a disaster. Mr. Lamash appeared to be in command. He had ordered the use of the shield, the gas, and the baton, but the true result was total chaos. Then, Mr. Lamash entered the shower cell twice, and no one stopped him. The officers present did not stop him from assaulting inmate SW in the shower.

[44] According to Mr. Bernier's viewing of the video recording of inmate SW's decontamination, Mr. Shaukat had good command of that situation. Mr. Lamash had no business being there, but he pushed his way in and entered the shower twice. He left only after the CM arrived. The problem was that Mr. Shaukat denied that Mr. Lamash entered the shower until he was faced with the video of it. Mr. Pye said that Mr. Lamash was within six inches of the inmate's face in the shower, but the question that remained for Mr. Bernier was what Mr. Lamash was even doing there. Ms. Krstic and Amber Delorme were in charge of the range that day. Mr. Ransome told Mr. Bernier that Mr. Lamash kicked SW while he was in the shower.

[45] Based on everything he saw, read, and heard, Mr. Bernier terminated Mr. Lamash's employment on December 4, 2014, for cause. He had lost confidence in him. The aggression against inmates and the culture of abuse at EI had to stop, and termination was the only solution. Mr. Lamash's negative leadership style jeopardized other officers' jobs.

[46] For his part at his disciplinary hearing, even though it was clear on the video recording that Mr. Lamash entered the shower twice, Mr. Shaukat could not explain why he had stated that no one had entered the shower. At his disciplinary hearing, Mr. Pye, who mentioned in his rebuttal to the disciplinary report that he saw Mr. Lamash enter the shower, told Mr. Bernier that he should have included it in his OSOR and that he should have submitted a more detailed OSOR.

[47] Mr. Bernier was confident that Mr. Lamash assaulted inmate SW in the shower cell after the extraction and that Mr. Shaukat and Mr. Pye failed to report it. His belief was based on the information he received from Mr. Ransome, Mr. Samms, other officers who were disciplined but did not grieve, and the video recording. Mr. Shaukat's and Mr. Pye's versions of the events did not align with any of Mr. Bernier's other information. It was Mr. Shaukat and Mr. Pye's duty to keep Mr. Lamash out of that shower cell that day, and they failed to properly discharge it. Furthermore, they should have honestly reported what happened; neither of them did.

[48] At his disciplinary hearing, Mr. Ransome told Mr. Bernier that he saw Mr. Lamash kick inmate SW when he was in the shower cell, thus confirming what he told Mr. Erickson and Mr. Lapointe. As did the others, Mr. Ransome told Mr. Bernier that he was coerced into writing his OSOR to suit Mr. Lamash.

[49] Based on all this, Mr. Bernier determined that Mr. Shaukat and Mr. Pye were victims of Mr. Lamash. Mr. Pye received a \$1000 financial penalty based on his failure to act, negligence in the discharge of his duties, his mistreatment of an inmate, and filing a false OSOR. Mr. Shaukat received a \$1000 financial penalty for failing to report that Mr. Lamash entered the shower, in addition to the other grounds for which Mr. Pye was found culpable.

[50] Mr. Bernier testified that EI might have had different practices as to who could carry the MK09 canister of OC spray. It is a larger can than the personal-protective-sized canister carried on the officers' duty belt. At most CSC institutions, it is kept at the unit command post with the shield and baton, but on that day, as can clearly be seen in the video recording, Mr. Lamash had it on his duty belt, which was acceptable at the time at EI. Likewise, EI might have had different practices as to closing barriers to isolate a range. It might have also had other, particular practices in play on that day, but none would have excused the actions that Mr. Bernier saw on the video, particularly the 14 strikes with a baton and the entering of the shower cell to assault the inmate. It also did not justify intimidating and harassing other officers to lie on their OSORs or filing false OSORs.

[51] For their parts, the grievors argued that a use-of-force incident is never pretty or easy to watch but that they are a regular part of the CX job. They carried out their duties that day following policy and the SMM and acted in the line of duty when the use-of-force incidents occurred. The force used was reasonable and necessary in the given situation to protect the institution, the inmates, and themselves. Their OSORs accurately reflect their recollections of the events as they existed on the day the OSORs were written. Discrepancies were caused by the fog resulting from the adrenalin rush one experiences during a use-of-force event.

[52] Mr. Pye was a CX01 posted to C/D unit at EI as of the incident. He testified that the dangerous part of responding to a call to deal with inmates in a condition other than normal ("CON") is that a CX is never sure what he or she will deal with. An inmate who would otherwise be cooperative and reasonable is rendered less cooperative and

more likely to be violent when intoxicated. Officers cannot reason with an inmate who is CON, and the likelihood of violence escalates. The SMM process is not as effective when dealing with intoxicated inmates. They will not follow simple instructions, and it is difficult to engage them in casual conversation. Things escalate rapidly, and the CX cannot predict the trigger or follow any set progression of actions.

[53] As for the day in question, Mr. Pye stated that he remembered hearing Mr. Shaukat call over the radio for CM and staff assistance, to respond to A unit. When he arrived, the unit was chaotic and loud. Mr. Pye could hear inmates banging and kicking at their doors. Mr. Pye and Donald Roussel, a CX, took up a position outside inmate SW's cell. Mr. Roussel talked to inmate SW. In the background, other CXs gathered equipment. Mr. Pye did not recall Mr. Roussel's conversation with the inmate, but it was calmer than when everyone gathered outside the cell door. When Mr. Lamash arrived, inmate SW began threatening him and the other inmate in the cell.

[54] According to Mr. Pye, no discussion took place about what was to happen and about anyone's role before the cell door was opened. Mr. Lamash told the inmate to turn around and put his hands through the food slot so that he could be handcuffed, but the inmate refused. This order was consistent with the SMM and is given to gauge an inmate's willingness to comply with officers.

[55] Mr. Pye did not recall who gave the first signal to open the cell door. He was not assigned any particular role before it was opened; he was there to aid and assist, however possible. When it opened, inmate SW lunged forward and to the side of the shield that had been secured from the unit subcommand and control post called "the bubble". This happened because Mr. Ransome had not properly deployed the shield, according to Mr. Pye, which allowed the inmate to get around it and attack the officers present. The spray deployed at the inmate hit the shield and ricocheted, thus hitting the officers.

[56] Mr. Pye worked with the other officers present to secure the inmate. He grabbed the inmate's arms and attempted to bring them to the inmate's rear area to be handcuffed. Mr. Pye succeeded in grabbing the inmate's right hand. The inmate held Mr. Lamash's leg with his left hand. Mr. Lamash managed to release the inmate's left hand from his leg and passed it to Mr. Pye. At that point, the inmate tried to bite Mr. Pye. Eventually, Mr. Pye successfully brought the inmate's arms to the rear of the inmate's body, and another officer applied handcuffs.

[57] After the officers successfully brought the inmate to his feet, he continued to be uncooperative. He refused to walk and struggled against the CXs attempting to control him. Eventually, he was taken to the shower on the upper range, for decontamination.

[58] Mr. Pye did not recall seeing any baton strikes because he had been blinded by the OC spray. Had Mr. Lamash swung a baton, he would have hit Mr. Pye because he was on the inmate's back, trying to cuff him to the rear. When he was in the pile of officers, Mr. Pye tried to gain control of the inmate and apply restraints to him. He used his body to cover the inmate's upper torso and head and was in the direct line of fire for the baton blows, had there been any.

[59] According to Mr. Pye, once the inmate was secured in the wet part of the shower, Mr. Shaukat turned the water on for him. The inmate was still handcuffed when Mr. Shaukat tried to gain compliance from him, to remove the restraints. However, the inmate remained physically uncooperative. Eventually, Mr. Lamash reported to the shower area. Mr. Lamash was told that the inmate was still uncooperative. He stepped into the shower and gave the inmate directions to get up and shower properly, which the inmate ignored.

[60] Inmate SW directed hostility at Mr. Lamash after he entered the shower cell and was uncooperative with everyone present. Mr. Pye did not think it odd that Mr. Lamash came to the decontamination of inmate SW because in Mr. Lamash's EM32 role, he was responsible for moving the inmate to segregation. It was normal that he would check on the status of the decontamination. There is pressure on the EM32 to keep things moving within the institution.

[61] It is not unusual for inmates to fixate on one person, even when many others are present. Inmate SW fixated on Mr. Lamash, which was an indication of the level of the inmate's intoxication. Mr. Pye did not know when Mr. Lamash was supposed to have assaulted the inmate in the shower cell. Mr. Pye was certain that it did not happen while he was looking into the shower. Mr. Lamash was on the scene only briefly. When he exited the shower cell, Mr. Lamash was not wet or disheveled. A CM was present when Mr. Lamash pushed into the shower. Mr. Pye questioned why the CM would allow Mr. Lamash to enter the shower cell if there was a problem with how things were being handled. No one reacted when Mr. Lamash entered the shower. Mr. Pye did not hear anything from the inmate, and the CM present did not react.

[62] According to Mr. Pye, Mr. Lamash then raised his tone of voice and gave the inmate directions to finish showering. He pushed the water button and left the shower cell. By then, CM Jamie Cook was on the scene. He gave no directions to anyone present. The inmate continued to not comply with the officers. He eventually did calm down. After the decontamination, he was escorted to segregation. Mr. Pye returned to C/D unit subcontrol until 20:00, following which he went to the C-unit office and wrote his OSOR.

[63] After the incident, much gossip arose at EI about the events, according to Mr. Pye. He was approached twice by officers from another unit, the G/H unit, and asked if he had heard inmate SW utter threats. When he confirmed that he had, Mr. Pye was warned not to say that he had, because the investigators would come after him if he did. Mr. Pye told the officers from G/H unit that he absolutely heard the threats coming from the cell containing inmate SW and that he reported it as such.

[64] When Mr. Pye refused to change his OSOR to delete any reference to threats made by the inmate, he became the target of mocking and personal attacks from the crew on G/H unit led by CX GS. He reported this to his union representative, Michael Inkpen, who advised him to speak to the employer about the pressure he was receiving. When Mr. Pye was asked why his coworkers from G/H unit would want the OSOR changed, he stated that if they successfully convinced him and others to delete references to threats in their OSORs, it would appear to management that Mr. Lamash opened the cell door without reason, as there had been no imminent threat. CX GS and Mr. Lamash were known to have a conflict; Mr. Lamash left G/H unit because of the behaviours of the crew he worked with there. According to Mr. Pye, officers avoided working on G/H unit at all costs because of the gang behaviour demonstrated by the officers who chose to work there. If an officer like Mr. Lamash chose to leave the unit, the CX became a target of the crew loyal to CX GS.

[65] At his rebuttal meeting with Mr. Bernier, Mr. Inkpen, Laura Contini, and a Human Resources representative, Ms. Contini did most of the talking, according to Mr. Pye. He was told that they were not there to discuss his version of the events as their minds were made up about what had happened. When Ms. Contini was asked for details to clarify the employer's questions, her response was that Mr. Pye knew what the employer was talking about. According to Mr. Pye, it was clear to him that the employer's representatives did not want to hear that he did not see an assault during



the initial incidents or in the showers. In their response, the employer's representatives twisted what he said to them. Ms. Contini became annoyed and angry with Mr. Pye when he tried to clarify his answers.

[66] According to Mr. Pye, Mr. Bernier was very abrasive at the meeting. He advised Mr. Pye and Mr. Inkpen that he was not sure what happened in the showers but that based on how Mr. Lamash had walked, he was sure that something happened. He described Mr. Lamash's walk on the video recording as puffy chested and aggressive and stated that Mr. Lamash swung his arms.

[67] At the meeting, when Mr. Pye reported to the employer that he was being targeted by the G/H unit crew, Ms. Contini asked him if he had bothered to report it; he was doing exactly that. She was indifferent to his concerns. After that meeting, he heard nothing further about his allegations.

[68] In his rebuttal, Mr. Pye admitted that he did not properly articulate when illegal alcohol was found on A unit. He tried to say that the inmates were "brewed up", not that a cell search had found the illegal brew. He was merely passing on the information that was shared with him when he arrived on the unit, as he understood it. He reported the threats he heard that day honestly, which became an issue for the board of investigation. The interference by CX GS and his gang in the investigation process skewed the outcome to the point that Mr. Pye ended up being accused of making false statements.

[69] The disciplinary meeting that Mr. Pye attended with Mr. Inkpen and Mr. Bernier was very brief. Mr. Bernier told Mr. Pye that he was obviously guilty and that he was fined four days' pay. Mr. Pye was in disbelief; it was the first and only discipline on his employment record.

[70] The discipline imposed on Mr. Pye and the events of that day have had a detrimental effect on his career with the employer. He has been denied the opportunity to join the ERT four times because of his involvement that day. The ERT's team lead advised Mr. Pye that he could not take Mr. Pye onto the team because it would look like he was doing it to spite management. When he was the acting assistant warden, operations, and the ERT coordinator, Eric Gagné told Mr. Pye that if he dropped his grievance, Mr. Gagné was willing to take him on the ERT. Mr. Gagné told Mr. Pye that he

would talk to Mr. Bernier and add him to the team, but Mr. Pye would not do it. Mr. Saint told Mr. Pye not to bother applying for a CX02 position because of the situation.

[71] Mr. Pye testified that the situation has made people doubt his integrity and honesty. When he trusted the process, it failed him. He saw an officer lose his job and others fined for doing their jobs and not following others who tried to influence the outcome of the investigations.

[72] Mr. Shaukat was a CX01 in 2014 and was posted to the A/B units at EI. On the day in question, he worked inside the bubble. As of the point of the incident, he had dealt with a few inmates who were CON or brewed up. He described them as unpredictable. Their decision-making and judgement abilities were diminished by the effects of the alcohol. CXs cannot achieve much compliance from an inmate in that state, so dealing with one is anything but normal. The normal tactics deployed by an officer, such as making verbal orders, using force, or inflicting pain, are not normally effective against an inmate who is CON.

[73] Dealing with inmates who are intoxicated is at a higher risk than dealing with normal inmates. In this situation, two inmates were in the same cell, which is against the employer's policies if they have not been assigned to that same cell. The SMM called for a heavy CX presence to deal with the situation.

[74] The incidents that gave rise to the disciplinary action occurred when the inmates had been ordered to lock up, in preparation for the institutional count. Everyone had locked up except inmate HW. Despite multiple orders over the public-address system to lock up, inmate HW would not comply. The inmate's speech was slurred when he responded to Mr. Shaukat's orders to lock up, which was uncharacteristic of him. Normally, inmate HW complied with the lock-up order. Based on his resistance to follow orders, his slurred speech, and his behaviour being out of the ordinary for him, Mr. Shaukat concluded that he was CON and informed the other officers on the range of it. He needed it dealt with quickly so that the count could be completed on time. Mr. Shaukat put a call out to the A unit office for officers to secure inmate HW in his cell.

[75] From his vantage point in the bubble, Mr. Shaukat said that four officers went down the range. Mr. Lamash was one of them. Mr. Shaukat saw inmate HW bob forward toward Mr. Lamash, so he called B unit for assistance on A unit. The inmate's actions

looked like an aggressive movement, which could have been a headbutt. From the bubble, Mr. Shaukat could not determine the distance between the inmate and Mr. Lamash. According to Mr. Shaukat, he witnessed the potential for an inmate to assault a CX.

[76] Seeing that the scene was escalating, Mr. Shaukat put in a call to the two CMs in the institution that day. He also called for more officers, because replacement officers would be required when those involved with inmate HW went for decontamination. CX GS contacted Mr. Shaukat via radio to see if more assistance was required. At the same time, the food slot in the door of the cell containing inmate SW dropped open, and a hand came out, attempting to grab the officers, which constituted an assault on them. The incident had become larger than anticipated, so Mr. Shaukat told CX GS that a general response for assistance was requested.

[77] After inmate HW was handcuffed and removed from the unit, Mr. Lamash asked Mr. Shaukat to get relieved from his post in the bubble to assist on the range. Mr. Shaukat testified that he left the bubble and took with him an MK09 canister of OC spray. When he arrived on the range, it was very loud and chaotic. He was advised that inmate SW was holding an inmate hostage in cell A006. Concerns were expressed that if Mr. Lamash did not enter the cell, inmate SW would kill the hostage.

[78] Mr. Lamash attempted to have inmate SW put his hands through the food slot, so that he could be handcuffed. The inmate was non-compliant, so Mr. Lamash directed Mr. Shaukat to retrieve the shield and baton from the bubble. Mr. Shaukat retrieved the baton and gave it to Mr. Lamash. Mr. Ransome tried to hand Mr. Shaukat the shield, but the practice is that the largest officer is responsible for it, who was Mr. Ransome, so Mr. Shaukat refused to accept it from Mr. Ransome. Mr. Shaukat was equipped with the OC spray.

[79] The food slot was dropped, and Mr. Shaukat attempted to deploy the OC spray into the cell, but inmate SW stood in front of the slot blocking the spray, which bounced back on the officers. When the cell door was opened, Mr. Shaukat expected Mr. Ransome to enter with the shield and pin the inmate to the wall with it until he could be handcuffed, as the officers had been taught. Mr. Shaukat was to be the second officer into the cell, and Mr. Lamash and the others would follow. Those assembled collectively agreed when it was a good time to go forward.

[80] Things did not go as planned. The inmate rushed the shield and got around it. Mr. Shaukat tried to deploy OC spray, but as he did, Mr. Ransome lifted the shield, which blocked the spray. The inmate was assaultive and resistive while struggling against the officers' attempts to cuff him. He grabbed Mr. Lamash's leg, which was an act of assault, and he would not comply with any directions to put his hands behind his back. Mr. Shaukat testified that from his position, he saw Mr. Lamash make two or maybe three baton strikes.

[81] In his original OSOR, Mr. Shaukat did not mention seeing any baton strikes. When he met with Mr. Erickson and Mr. Lapointe, the investigators showed him the video recording of the incident and had him count the number of baton strikes. Mr. Shaukat could not say that the baton strikes he saw on the video were directed at the inmate. Mr. Shaukat had been hit on the forehead by a glancing baton blow. He testified that it must have been caused by being grazed by the upswing, since if he had been hit on the downswing, it would have been on the back of his head, since he was on top of the inmate.

[82] Mr. Shaukat was subsequently found guilty of making a false statement in his OSOR when he amended it to reflect what he saw on the video recordings.

[83] Mr. Shaukat was shown the video recordings of the lower range (Exhibit 13) and the shower range (Exhibit 16) at the hearing. He described inmate SW's demeanour when he left the cell as resistive and combative and stated that the inmate would not comply with handcuffing, even after receiving repeated orders. The inmate clamped onto an officer's leg and would not let go until made to. While being transported to the shower for decontamination, he would not walk under his own power and had to be carried. All the while during the walk, he continued to make threats against Mr. Lamash.

[84] The inmate was still handcuffed when he was put into the shower because he was not cooperative. Mr. Shaukat testified that he went in to check on him. He was put down on the floor in front of the shower, and the water was turned on. Mr. Shaukat had to reposition him because of the proximity to the shower curtain, which the inmate continued to maneuver to block the officers' view of him in the shower. Mr. Shaukat testified that he wanted to remove the inmate's handcuffs, but his behaviour was still combative, and he was threatening other officers, so doing so would have been inappropriate. Mr. Shaukat continued to assess the inmate's behaviour to

determine when or if it was appropriate to remove the handcuffs. CM Cook eventually arrived but did not give any directions about how to handle the inmate, according to Mr. Shaukat.

[85] At about 15:58, Mr. Lamash arrived on the scene, while the decontamination process was underway. He entered the shower and then left, according to Mr. Shaukat. Mr. Lamash went in to move the curtain, which the inmate had kicked closed, and to turn the water back on. He then left. When asked if that was appropriate, Mr. Shaukat responded that when an officer is aggravating a situation or when an inmate is focussed on an officer, it is appropriate to remove the officer from the situation. Mr. Lamash did not remove himself and in fact inserted himself into the shower situation.

[86] The inmate continued to be uncooperative while being moved to segregation. He spat at an officer and tried to pull away from Mr. Shaukat while they were on the stairs. CM Cook intervened, and together, they escorted him to segregation. He continued to spit, and he resisted the application of a spit hood. While he was being transferred to segregation, his anger shifted from Mr. Lamash to Mr. Shaukat, according to Mr. Shaukat's testimony. This is not unusual for inmates who are CON and whose anger is generally focussed at whoever is in front of them.

[87] At some point during the scuffles, Mr. Shaukat was injured. Once inmate SW was secured in the segregation unit, Mr. Shaukat went to the hospital to be checked over. He was accompanied by Mr. Samms. They were at the hospital for approximately four hours. When they returned to the institution, Mr. Shaukat filled in his workers' compensation forms and OSOR in the A unit office. Officers Lamash, Krstic, and Ransome were in the unit office when he arrived. They wanted to know how Mr. Shaukat had been injured. He answered that he did not know exactly but he felt the pain once he had cooled down after the incident with inmate SW. At no time did those present discuss what to include in their OSORs. Mr. Shaukat also did not receive any directions or suggestions on the content of his OSOR.

[88] Mr. Shaukat described the environment at EI as very toxic. He testified that he hesitated to respond to a use-of-force incident if the crew from G/H unit was the backup. The environment at EI hindered Mr. Shaukat's performance. The new warden, Mr. Bernier, made things worse. He twisted people's words. Mr. Shaukat felt helpless to stop the G/H unit crew's manipulation of EI's management. The hearing was the first

time anyone asked him about what happened in the shower room with inmate SW; yet, he had been found guilty and disciplined without being questioned.

[89] Mr. Shaukat was also not allowed to address the finding that he left the bubble without authorization, which was raised in the second investigation. He testified that he was the unit officer and that he had felt that he would be more useful on the floor that day. According to him, any CX could work the bubble, but his knowledge of the inmates and their behaviours made him more valuable on the floor than in the bubble. It was a common practice at EI for the unit officer to leave the bubble to assist on the unit when asked. In this situation, Mr. Lamash asked Mr. Shaukat for his assistance.

[90] Mr. Shaukat did not submit a rebuttal at the disciplinary hearing as he had no faith in the investigation and disciplinary process. The disciplinary hearing was the first time he met Mr. Bernier, who was accompanied by Ms. Contini and a Human Resources representative. Mr. Shaukat felt like he was being given a last chance to come clean and to agree to the employer's version of the facts. He was asked if Mr. Lamash assaulted the inmate in the shower, to which he responded, "No." Throughout the meeting, Mr. Shaukat had the sense that the employer was attempting to obtain information from him about Mr. Lamash.

[91] Mr. Lamash testified that he joined the CSC in 2009 as a CX01 and that from that point on, he worked only at EI. Before that, he had been a member of the Canadian Armed Forces (CAF) and had been deployed 3 times in his 15 years of service. He was medically released in 2009 due to injuries he suffered while serving. He testified that he suffered from chronic pain and depression as a result of a back injury and post-traumatic stress disorder attributed to his CAF service.

[92] During his orientation at EI in 2009, Mr. Lamash was met by CX GS, who told him that he was assembling a group of ex-military members to make up his crew on G/H unit. The atmosphere on G/H unit was not bad in the beginning, according to Mr. Lamash, as all the ex-military members were like-minded. The situation became toxic between Mr. Lamash and CX GS over time. The interpersonal dynamic among crew members was not healthy; there was a great deal of backstabbing and infighting. According to Mr. Lamash, if an officer did not toe the line, the other officers on the unit shunned him or her.

[93] Mr. Lamash was shocked by how rude and inappropriate CX GS was toward others in the workplace, including the inmates. According to his testimony, Mr. Lamash called CX GS out about it and told him to stop. The problem as Mr. Lamash saw it was that CX GS was an effective union representative who others on his unit knew was able to get things done. The CMs gave him whatever he wanted.

[94] The interactions between Mr. Lamash and CX GS were terrible, according to Mr. Lamash, and made every day they worked together terrible. It was not fun for him working with the G/H crew and putting up with the shenanigans they would pull. When Mr. Lamash was promoted to a CX02 position on G/H unit he spoke very little to CX GS. The crews would leave him alone on the G/H unit to do all the work, contrary to policy and safety requirements. They shunned Mr. Lamash, or as they put it, they “put him on the dummy”.

[95] Mr. Lamash testified that he had enough of that treatment and that he moved to A unit when the opportunity arose. Otherwise, had he stayed, he knew that CX GS and the other officers on G/H unit would have continued to bully him. Mr. Lamash testified that he feared reprisals when he left G/H unit, but he wanted his time at EI to be enjoyable. It stressed him out not knowing what he would face each shift when he entered for work. CX GS would shout out of the windows of G/H unit across the courtyard, calling Mr. Lamash a rat. Comments were made in the pat-down lines. Other CXs made a point of shunning Mr. Lamash in front of others. Those activities humiliated him. In contrast, the crew on A unit was good, quiet with the inmates, and respectful. Mr. Lamash enjoyed working there. On June 22, 2014, he was assigned to the EM32 post, which is responsible for inmate movement throughout the institution.

[96] Mr. Lamash testified that he had received no training on how to direct staff during an incident or related to the proper execution of EM32 duties. He had been provided very little training in the use of a baton, and according to his testimony, he did not recall much of the training he had received. Before June 22, 2014, he had never used a baton in an incident. He did not remember receiving any training on the differences between a planned and a spontaneous use of force. According to his testimony, he also never discussed the distinction between a preplanned, planned, and spontaneous use of force.

[97] In the five years that Mr. Lamash was employed at EI, he remembered using negotiation tactics only once. He had never been part of a discussion about when to use negotiations as a tactic to defuse a situation.

[98] It was not uncommon for inmates on A unit to drag their heels and refuse to lock up. The officers in the bubble would notify him, and he would go down the range with other officers to provide a staff presence and to try to convince inmates to lock up. With the extra staff, inmates tend to listen, according to Mr. Lamash. On the night of June 22, 2014, Mr. Lamash did not expect inmate HW to react as he did. According to Mr. Lamash, he was shocked by how things turned out that day.

[99] Inmate HW became hostile as soon as Mr. Lamash arrived on the range, and he refused to follow Mr. Lamash's first direction. According to Mr. Lamash, he saw inmate HW take an aggressive stand and clench his fists. This could not be seen on the video recording of the incident (Exhibit 13) because the camera view was blocked by Mr. Lamash's back. On the video, the inmate raises both hands, which, according to Mr. Lamash on cross-examination, is the universal sign for surrender.

[100] The inmate became aggressive with Mr. Lamash and angry with him as soon as Mr. Lamash gave him orders. Mr. Lamash testified that using the SMM, the inmate's behaviour went from physically uncooperative to assaultive immediately upon Mr. Lamash's arrival on the unit. The inmate refused to comply with staff orders, told Mr. Lamash that it was fight time, demonstrated assaultive body gestures, and made comments that he wanted to fight with Mr. Lamash. The inmate's actions showed Mr. Lamash that he was aggressive and looking to fight Mr. Lamash. This aggressive posture was maintained until the OC spray was deployed in the inmate's direction.

[101] According to Mr. Lamash, he had committed to the use of force once he stepped on the range. It was obvious to him that that was his only option. Once everyone was committed to walking down the range, it would have been dangerous to retreat, according to Mr. Lamash because, it would have caused a blockage such that no one could move. Instead, Mr. Lamash deployed the OC spray, and the inmate collapsed to the ground easily. Mr. Lamash did it because he assumed that the inmate would close the gap between them and come at him. The inmate's demeanour gave Mr. Lamash every reason to believe that he was at risk, according to his testimony.



[102] Having committed himself to the range with the others, and being faced with an assaultive inmate who was about to close the gap between them, Mr. Lamash used the best tool available to him, which was the OC spray. The MK09, which Mr. Lamash was carrying, is not to be used to spray an inmate in the eyes, so Mr. Lamash aimed it from a distance of seven or eight feet at the inmate's nose and chin. The inmate went down to the ground with his hands underneath him and continued to refuse to cooperate with the officers. Mr. Lamash testified that he gave the inmate physical and verbal cues to give up his hands, but the inmate would not comply.

[103] Mr. Lamash denied that he ever struck the inmate with the MK09 canister. It is brittle. If it is struck against something hard, it shatters, releasing the spray. Mr. Lamash admitted that he might have used the canister to tap the inmate on the back or shoulder, to get him to give up his hands. The tap involved very little force, as the purpose was to let the inmate know the officer's intention if the inmate did not cooperate. Mr. Lamash learned that technique while on the job at EI from other officers. He did not use it every day, only during times of chaos and confusion. EI management never gave any direction about this technique; nor was it taught in any employer training session.

[104] Mr. Lamash also denied striking the inmate with his knee or performing a knee drop on him during the scuffle. According to Mr. Lamash, he put his knee into the inmate's back to control him. Later, at his disciplinary hearing, he stated that he came down on inmate HW with enough force to gain control of him (Exhibit 50). According to Mr. Lamash, it is not easy for an officer to write an OSOR immediately after an incident because the officer will not remember everything that happened. That is why he did not mention using knee strikes in his OSOR.

[105] Mr. Lamash testified that inmate SW was "going ballistic" in cell A006. He threatened to kill Mr. Lamash while Mr. Lamash tried to gain control of inmate HW. Mr. Lamash described inmate SW as being "over the top with rage". To calm the situation, Mr. Lamash left the group trying to subdue inmate HW and tried to "dialogue" with inmate SW. He blamed Mr. Lamash for using OC spray and taking control of inmate HW. He had no interest in Mr. Lamash's attempts to calm him down. He escalated his threats, and at some point, he began to threaten the inmate in the cell with him, inmate C. The situation was then very serious, because inmate SW was also CON and

extremely hostile, according to Mr. Lamash. Mr. Lamash admitted that he knew that inmate SW was trying to bait him into something.

[106] Mr. Lamash testified that he was tired by then, and he asked someone present to get the EM16 (the duty CM) to report to the unit. He then asked Mr. Pye and Mr. Roussel to watch the cell. At that point, Mr. Lamash left, without informing Mr. Pye and Mr. Roussel of his plans because he did not want inmate SW to know them and to prepare. Mr. Lamash described the situation he faced as a mess. It was confusing, noisy, and chaotic, given the number of officers running around while he tried to assign them tasks.

[107] This was the first time Mr. Lamash was the on-scene commander in a use-of-force incident. It was the most complicated and challenging situation he had ever faced as a CX. He believed that a threat was imminent; the situation on the unit was not improving, and there were no CMs yet on the unit. Normally, the institutional ERT carries out cell extractions.

[108] Mr. Lamash executed the cell extraction. He called for the cell door to be opened. He then called for the use of the shield and swung the baton after Mr. Shaukat was unsuccessful with deploying the OC spray. The composition of the extraction team was based on the people present. Officers filled roles on their own initiative. Everyone present knew the plan and exactly what was going on. Mr. Lamash was willing to listen to suggestions from the officers for a plan, but none were forthcoming.

[109] Mr. Lamash testified that he struck the inmate in the arm and wrist area with the baton. He used it with sufficient force and a sufficient number of times to gain control of the inmate. He used it to break the inmate's grip on his leg and to stop the inmate's attempts to bite another officer. Mr. Lamash testified that he never intended to use the baton when it was retrieved but that he wanted it handy just in case it was needed. He also believed that having it handy would show force to the inmate and convince him to back down.

[110] The cell door was opened, and the inmate was very hostile. He burst through the officers in an attempt to get at Mr. Lamash. A scrum happened, and Mr. Lamash used the baton to break off the inmate's attacks. None of his strikes hit his target, according to his testimony, because the inmate was under the shield and under control. On cross-

examination, Mr. Lamash admitted that he could not remember how he deployed the baton; he was more concerned about the inmate biting his colleague's fingers.

[111] Mr. Lamash testified that he continually applied the SMM and reassessed the situation, which is why he returned to cell A006. The situation was not de-escalating, and an intervention plan was developed. Things were dire, according to Mr. Lamash, yet the door of cell A006 was left unattended for more than 90 seconds while inmate SW continued shouting and beating on it. Mr. Lamash assumed that the only solution was to remove inmate SW from the cell. He testified that he did not know that he should not have been involved in a planned use of force involving an inmate who had made threats against him immediately before the use of force, according to the *Use of Force* directive (Commissioner's Directive (CD) 567-1).

[112] Once inmate SW was taken to the shower, Mr. Lamash went there to see how the decontamination was going. He remembered speaking to CM Cook but could not remember what was said. The inmate was still hostile to Mr. Lamash when he stepped into the shower to reposition the inmate and turn on the water. In hindsight, according to Mr. Lamash, not entering the shower would have been a good idea. It never occurred to him that he put himself at risk; he just dealt with an ongoing situation.

[113] Following the incident, Mr. Lamash saw CX GS and CM Gagné watching the video recording of the events in the CM office. He asked them why CX GS was watching the video, and he then returned to his unit. Ms. Krstic, Mr. Ransome, and Mr. Shaukat were in the A-unit office when Mr. Lamash wrote his OSOR. It is very common for CXs to discuss events after an incident, but no directions were given about what to include in the OSORs. Mr. Lamash did not read anyone else's OSOR, and no one else read his. On cross-examination, he admitted that the wording of his OSOR reflected the wording of the SMM, to justify his actions and the use of force.

[114] Later that night, Mr. Lamash had a heated exchange with CX GS in the courtyard after Mr. Lamash found out the CX GS had pulled G/H unit officers off A unit during the incident. Mr. Lamash wanted to know why CX GS put the A-unit officers at risk by pulling the G/H unit officers away from the incident.

[115] Mr. Lamash's last day at work was June 23, 2014. Mr. Saint and Ms. Reddick interviewed him about the events of June 22, but he was provided no explanation as to why their investigation report was quashed. The atmosphere of the investigation

carried out by Mr. Erickson and Mr. Lapointe was completely different from that of Mr. Saint and Ms. Reddick. Only in the second investigation did Mr. Lamash find out about the allegations that he had assaulted the inmate in the shower. He was suspended without pay in August 2014. There were no discussions about his suspension or its continuation to the date of his termination. He was never told why his presence in the workplace was inappropriate.

[116] Mr. Lamash did not participate in the disciplinary process because he was in a state of depression. He went to an occupational stress injury clinic for help sometime after the 2014 events. He has been treated by a psychiatrist, and he is seeing a psychologist. He had a clean disciplinary record at the CSC up to the point at issue. His post-traumatic stress disorder was diagnosed sometime in 2014, but according to Mr. Lamash, he had been suffering from its symptoms for “numerous years”.

[117] Mr. Lamash admitted that he made mistakes on the night of June 22, 2014. He should have waited for the CMs to arrive. It was not a good decision to enter the shower with an inmate who was hostile to him, but had he not entered, someone else would have had to. He believed that the situation was dire but recognized that had someone been watching the cell properly, intervention could have waited. He testified that he felt overwhelmed when dealing with that serious situation. His adrenalin was pumping, and he was narrowly focussed on the task before him.

[118] After his termination from the CSC, Mr. Lamash entered an apprenticeship pipe-fitter course. He worked as a pipefitter until 2018, when his back injury would no longer allow him to continue. Since then, he has received income replacement from the Department of Veterans Affairs, along with his CAF pension. No decision has been made on his future capacity to work, as he requires surgery for his back injury. Mr. Lamash has not lost faith in the CSC and believes that he could return to EI without any problems. The officers with whom he had problems are no longer there, and EI is a better place.

[119] Ms. Krstic testified that in June 2014, the atmosphere at EI was extremely toxic. There was significant staff turnover, including wardens. Internal corruption investigations were ongoing. Staff members preyed on each other. She and Mr. Lamash were good friends and at one time were in an intimate relationship that did not work out. By the time of the hearing, they were no longer speaking.

[120] On June 22, 2014, the day of the incidents in question, Ms. Krstic was the CX02 in charge of A unit; Ms. Delorme was her partner. Mr. Ransome and Mr. Lamash, who was in the EM32 post, were both in the unit office. When Ms. Delorme brought the inmates in from the yard and put them back in their cells, she commented to Ms. Krstic that she felt that the unit was “a bit off”. Since Ms. Krstic normally worked B unit, she was unfamiliar with A unit and was not quite sure what Ms. Delorme meant by that. Then, she heard on the intercom Mr. Shaukat announce that inmate HW was refusing to lock up. Ms. Krstic and Ms. Delorme intended to achieve compliance and complete their range walk at the same time. Mr. Ransome and Mr. Lamash offered to help. The officers were not aware that the inmates were under the influence of alcohol.

[121] The four then proceeded to the range. The plan was to have the inmates lock up, carry out the range walk, and complete the count. Once the barrier was opened, CXs Lamash and Ransome told the inmates to lock up and shouted that command at the same time. Ms. Krstic could see that inmate HW was not complying. He appeared to be swaying from side to side. He was verbally aggressive and shouted over the officers’ voices. The verbal exchanges between him, Mr. Lamash, and Mr. Ransome appeared to Ms. Krstic to excite the other inmates. The inmates became rowdy, including screaming and banging on cell doors. They egged inmate HW on. Inmate HW would approach the staff members and then retreat, swearing at the CXs the entire time. In Ms. Krstic’s assessment, he was being verbally aggressive and physically uncooperative.

[122] With Mr. Lamash and Mr. Ransome in front of her, Ms. Krstic could not see the inmate, but she could see that his hands were at his side and clenched and that his body was tense. To her, his stance appeared aggressive. The officers did not know that he was CON until the initial contact with him, when he appeared highly agitated. Mr. Lamash deployed the MK09 spray, took inmate HW to the ground and handcuffed him. Ms. Krstic was not sure as to whether the inmate fell or dropped to the ground, but once there, he did not cooperate with attempts to stand him up. Once he was brought to his feet, he was angry and continued to resist the officers. He was physically uncooperative as he was taken off the range.

[123] Once inmate HW was removed from the range, it exploded. Ms. Krstic did not expect any of this to happen when she went to the range that day. The tension on the range escalated once inmate HW was sprayed. She remembered Ms. Delorme calling for the CM to come to A unit, but only half the message got through, because other radio

traffic interfered. Several calls were made for the CM to come to the unit. Healthcare personnel were also called to the unit as required by policy in a use-of-force situation. Two CMs arrived on A unit before the cell extraction occurred, according to Ms. Krstic.

[124] Once inmate HW was removed from the range, Ms. Krstic found out that inmate SW was closed up in cell A006 with inmate C. Inmate SW was very upset that inmate HW had been sprayed. He was swearing and screaming, and he threatened to kill some staff members, particularly Mr. Lamash. Mr. Lamash stopped outside the cell and had a very loud exchange with inmate SW.

[125] Ms. Krstic testified that she believed that inmate C's life was in jeopardy. She looked in cell A006 and saw inmate C sitting on the desk waving his hands above his head. She said that that was neither normal nor a sign of a comfortable situation. To her, it was a sign that he was in physical distress and that he was trying to get the officers' attention. Inmate SW stood in front of the cell door, blocking the exit. Inmate C was behind him, in front of the window.

[126] While taking inmate HW to the decontamination showers, Ms. Krstic ran into CM Todd Ginger, whom she debriefed in front of the unit subcontrol. She told him everything that she later put in her OSOR. She met with CM Cook in the unit office and repeated verbatim what she had told CM Ginger, including the plan to open cell A006 and extract inmates SW and C. CM Cook called healthcare personnel to the unit, according to Ms. Krstic. After that, her role was to monitor the situation.

[127] The incidents occurred at around 15:50, and Ms. Krstic wrote the OSOR in the A-unit office at around 20:00 that evening. Officers Ransome and Shaukat were in the office with her at the same time, working on their OSORs. Ms. Krstic testified that she printed hers and put it in the logbook, to be handed in at the end of the night. Nobody reviewed it before she handed it in.

[128] After the inmates were relocated due to the gas deployment, staff members began coming in and out of the A-unit office, checking in. Ms. Delorme was moved to another unit. Ms. Krstic did not see Mr. Pye. Mr. Lamash was sent off the property but later returned. CX Shaukat went to another unit and later returned. According to Ms. Krstic, she was the only one on A unit for the remainder of the night. Mr. Ransome left the unit and returned only to write his OSOR.

[129] Ms. Krstic testified that her duty was to report incidents accurately, including when writing an OSOR and when giving evidence under oath. This duty required her to correct any errors she might have made in her OSOR when she initially wrote it. The OSOR she submitted that day accurately reflected what happened, even though it might appear on the video recordings that inmate HW moved backward and was surrendering. From her vantage point, while he was on the floor, he struggled, swore, and resisted.

[130] Ms. Krstic admitted that her memory of the incident with inmates C and SW might have been affected by the stress of the event and the passage of time. But she insisted that she knew what she saw and that she reported it exactly as it happened. Based on inmate SW's threat that he would kill inmate C, there was reason to believe that he would cause inmate C grievous bodily harm. She admitted that despite that, she did not appoint anyone to stand by the cell door and monitor the events inside and stated that "it was not [her] best intervention".

[131] On cross-examination, Ms. Krstic insisted that CMs were on the unit before the cell door was breached. She also insisted that she told them her plan to breach the cell door and that when they gave her no further directions, she proceeded as planned. She disputed CM Cook's OSOR (Exhibit 5, tab 14), which stated that he and CM Ginger arrived as the inmates were being put in the decontamination showers and that they were not aware of any cell-extraction plan. She also disputed CM Ginger's OSOR (Exhibit 5, tab 19), in which he stated that he arrived as inmate C was coming up from the lower level of A unit.

[132] Ms. Delorme worked with Ms. Krstic on the day of the events at issue and arrived on the unit between 14:30 and 14:40, according to her testimony. Things appeared normal among her coworkers, but one of the inmates seemed to be acting unusually, which led her to believe that he was using some sort of banned substance. She did not report it but returned to the unit office, where she found Mr. Lamash and Mr. Ransome. Shortly after she arrived, she heard on the intercom Mr. Shaukat from the bubble ask them to check out inmate HW. Those assembled looked at the video monitors and saw him staggering down the hallway.

[133] Ms. Krstic and Ms. Delorme went to check it out, followed by Mr. Lamash and Mr. Ransome. According to Ms. Delorme, she considered the situation low to medium risk, based on what she had seen on the monitors. Inmates HW and SW were known for

making homebrew on the unit but were generally not a problem. When the four arrived on the unit, Mr. Lamash directly ordered inmate HW to return to his cell. Inmate HW refused, things escalated, and Mr. Lamash then ordered inmate HW to turn around and put his hands behind his back.

[134] It was evident to Ms. Delorme at that point that inmate HW would not willingly lock up. He was verbally resistive and physically uncooperative. He swore, shouted, ignored commands, and walked toward the officers. Ms. Delorme testified that she could not remember how inmate HW ended up on the ground. She did recall that he resisted the application of handcuffs and that Mr. Lamash had a hard time cuffing him. Inmate HW continued resisting the officers while they tried to lift him to his feet.

[135] Ms. Delorme testified that she attempted to notify the CMs several times but that her calls were “stepped on” or interfered with by other calls being transmitted simultaneously. She finally got through to the CMs when inmate HW was in the decontamination shower. While at the shower with inmate HW, she heard inmate SW shouting. By the time inmate SW was taken to the shower, Ms. Delorme was unsure as to her role, so she proceeded to secure the food slots. She then went to B unit to help with the count. At some point, she ran into CM Ginger in the servery.

[136] Ms. Delorme started her OSOR at 18:50 and completed it at 22:45; she finished her shift on B unit. When she started her OSOR in the office on A unit, several people came and left. Mr. Lamash was shouting about CX GS, but since she had nothing to do with it, Ms. Delorme tuned it out, according to her testimony. This was her first use-of-force incident as an officer, and she had thought that Mr. Lamash was in charge of the situation.

[137] Ms. Delorme was asked about the barrier to A unit and why it was not closed during the incidents with inmates HW and SW. She testified that it is used only to secure maintenance workers when work is required on the unit, without disrupting unit routine. The barrier keys are kept in the bubble.

[138] Kevin Lingrell testified that during his more than 25-year career at EI, he has held CX01, CX02, CX03 staff training officer, and CM positions. He has been an ERT member and leader. He has taught self-defence, physical skills, and use of force to other CXs. During his career, he has been involved in more than 300 use-of-force incidents and has conducted more than 100 use-of-force reviews.



[139] According to Mr. Lingrell, the CM's role is to deploy staff in emergencies. The SMM (Exhibit 6, tab 11, page 4) is used to guide officers in the options to follow for handling use-of-force situations. In CD 567-1, which is the CSC's use-of-force policy, three types of use of force are defined. The lines between each one are not clear. The policy states that if a use-of-force intervention plan is needed, then the CM's permission to proceed is required.

[140] Any use of force must comply with the SMM. Officers are not allowed to ignore the SMM; they must use the safest and most reasonable measure to resolve situation. Only what is necessary and proportionate to attain the purposes of the *Corrections and Conditional Release Act* (S.C. 1992, c. 20) is allowed. A response to a use of force is both physical and emotional. An officer's objectivity goes out the window. Part of assessing the situation is assessing the irritants and removing anything that will cause an escalation.

[141] CXs are entitled to use as much force as required to control the situation when dealing with a non-compliant or physically resistive inmate. When weapons such as a baton are used, the CX may continue to strike until the inmate ceases to be assaultive. Batons come in three lengths: 26, 36, and 42 inches. As of this incident, the subcontrols on the ranges at EI were equipped with 36-inch batons. According to Mr. Lingrell, these weapons are not ideal for use on the ranges, which are only 48 inches wide.

[142] Batons are serious weapons. An officer must be able to explain why one was used when lesser options were available. Baton strikes must be controlled and directed but never aimed at the inmate's head, throat, or spine. According to Mr. Lingrell, officers are given very little training on using them.

[143] An officer is expected to maintain distance from a combative inmate, to maintain a safety zone. One of the guiding principles is that an officer is not to meet force with force; officers must deflect and use control tactics whenever possible. The SMM states that an officer is to use the amount of force required to control the situation safely. At times, the officer may be required to withdraw from the situation. Isolating and containing the inmate may be the appropriate resolution.

[144] According to Mr. Lingrell, when dealing with an intoxicated inmate, there is an elevated risk that requires a CX to continually assess and reassess the situation.

Officers dealing with an intoxicated inmate are at a greater safety risk, as the inmate's impaired state results in poor decision making. Some inmates are compliant when intoxicated, while others are agitated and aggressive. CXs do not know what will confront them when they walk down a range, so they need extra staff for backup to respond to and control inmates.

[145] Mr. Lingrell was interviewed as an expert in the use of force by the first use-of-force investigation, conducted by CMs Saint and Reddick. He was asked his opinion of the video recording of the events of June 22, 2014. The outcome of this review determined that there was no culpability on the part of Mr. Lamash. Mr. Lingrell was not interviewed as part of the second investigation.

[146] During CM Saint's and CM Reddick's interview, Mr. Lingrell reported that Officers Shaukat, Pye, and Lance Woodman had approached him to report that they had been intimidated by CX John Fraser from G/H unit to change their OSORs. They were reportedly told that if they did not change their OSORs, they would be seriously disciplined. Mr. Lingrell advised the three officers not to change their reports if they had reported the truth.

[147] Mr. Lingrell testified that some time later, CMs Saint and Reddick contacted him and advised him that their report had been filed with Human Resources but that Ms. Contini had not been happy with the outcome. She quashed the report and ordered a new investigation. According to Mr. Lingrell, CMs Saint and Reddick expressed concerns that their careers were in jeopardy as a result.

[148] Mr. Lingrell testified as to the responsibilities of the different positions on the living units that the CXs rotated through. The subcontrol officer role, which Mr. Shaukat filled on that day, is to provide an armed response when necessary, to open and close all cell doors, to open and close all interior and exterior doors, to facilitate inmate movement, to provide overwatch of the unit, to provide security equipment to the officers, to coordinate security operations with the CX02 assigned to the cellblock, and to issue keys to the CXs. The subcontrol officer also cycles through all the posts on the unit. They are relieved for breaks, at shift changes, on direction, in an emergency, or when required to assist with an incident.

[149] The EM32 CX02 role that Mr. Lamash filled that day is the role of movement control supervisor. There was no specific training for that role at the time. The officer

in that role responds to emergencies as directed by the MCCP. The EM32 carries MK-4 and MK09 OC-spray canisters. Only first responders carry the MK09 canisters. The EM32 is a primary responder on every shift; he or she wears a personal protection alarm (PPA) and carries a radio. Nothing in the post's standing orders states that the EM32 must be involved in all incidents, although it was the practice at EI that the EM32 was in charge of a scene until the CM arrived.

[150] The EM06 and the EM16 are the CMs in charge of the institution on every shift. The EM06 is the desk officer; the EM16 helps the EM06 fulfil CM duties. Both respond to all emergencies and take control to determine the resources required. When a call is made for staff assistance, the CMs are to respond, determine what is happening, and take control of the situation. They go to the scene of the incident, ask for a briefing, take control, and provide direction. The first thing that needs to be done is to locate and verify what is happening. The second is to isolate, contain, and control the situation. The EM16 is the on-scene commander unless an assault is in progress when the EM16 arrives.

[151] Mr. Lingrell was asked to comment on Exhibit 13, which is a video recording of A unit's lower range 2. He noted that when inmate HW was being dealt with, it appeared that he was unsteady on his feet. He held his arms wide, and he was observed puffing himself up or trying to appear larger. He moved aggressively, in Mr. Lingrell's opinion. As Mr. Lamash approached the inmate, it appeared to Mr. Lingrell that words were being exchanged and that OC spray was deployed. In Mr. Lingrell's opinion, since four officers were on the range, it was hard for them to move, turn, and react. They could not withdraw because the halls were very narrow.

[152] Mr. Lingrell also reviewed and commented on the cell extraction of inmate SW. According to him, when the cell door was opened, the inmate charged the shield and got past it. Mr. Lamash struck with the baton, and the other officers took the inmate down. The inmate rushing out of the cell constituted assaultive behaviour, according to the SMM. Mr. Lingrell observed that no strikes hit the inmate as he was covered by the shield. Strikes were aimed at the inmate but hit not him but the shield or the floor.

[153] When asked about the use of the barrier on the range instead of intervening with the inmates, Mr. Lingrell testified that he has seen it used several times during a use-of-force incident on a range at EI, but he would not describe doing so as common.

Such an incident on a range is very noisy. Their proximity to that barrier affects the officers' ability to hear.

[154] Mr. Inkpen testified that at the relevant time, he was approached for assistance as a union official representing the grievors at the rebuttal stage of the disciplinary process. At that time, he was a shop steward and a member of the union executive. He made sure that the grievors submitted written rebuttals to the disciplinary investigation and sat through the rebuttal and disciplinary meetings.

[155] Mr. Inkpen described the rebuttal meeting with Mr. Pye as hostile and combative, unlike any he had attended in his 10 years as a union representative. When Mr. Pye questioned how the investigators could have reached their conclusions about him, given that they did not speak to him about the events, Ms. Contini accused him of knowing the answers to the questions because he knew what he had done, according to Mr. Inkpen. When Mr. Inkpen challenged Ms. Contini about her comment, she replied to Mr. Inkpen that the evidence was incontrovertible and empirical against Mr. Pye. She refused to provide details about Mr. Pye's wrongdoings for fear that it would identify the unnamed witness in the report.

[156] According to Mr. Inkpen, it was impossible for Mr. Pye to rebut anything at the rebuttal meeting, as there were no details of his involvement in any assault. The employer's representatives were secretive and adversarial. It was clear to Mr. Inkpen that they expected Mr. Pye to admit guilt. There was nothing corrective about this meeting, unlike others Mr. Inkpen had attended, at which the parties had agreed to the events being discussed. The meeting left both Mr. Inkpen and Mr. Pye bewildered, since they left with more questions than they had before it started. According to Mr. Inkpen, neither of them understood what had happened at the meeting.

[157] Similarly, at Mr. Shaukat's meeting, the employer's representatives were hostile and argumentative. As had Mr. Pye, Mr. Shaukat had been found guilty of failing to report an assault he had not seen. Investigators interviewed him twice but did not question him about the alleged assault. Again, the employer's representatives refused to provide any details about the case against him, even when they were questioned. At one point, he was told that he had kicked an inmate in the chest, but when he asked the employer's representatives which inmate it was, they refused to provide any details. As had Mr. Pye, Mr. Shaukat was given no chance to respond fulsomely to the charges against him. The employer was not interested in hearing from the employees.

[158] At Mr. Pye's disciplinary meeting, Mr. Bernier proceeded directly to the sanctions to be imposed. He was not interested in hearing from Mr. Pye. Mr. Shaukat's disciplinary meeting proceeded similarly. At the meetings, Mr. Inkpen spoke to the employer's representatives about the CMs' failure to respond to the incidents on A unit. According to Mr. Inkpen, Ms. Contini, who was present with Mr. Bernier, told him that the CMs were asked about the events of that day and that the employer had no concerns with their actions.

[159] Mr. Inkpen also reported that according to Ms. Contini, there had not been two investigations into the same use-of-force incident. According to her, CM Saint's and CM Reddick's investigation never occurred. To resolve this question, Mr. Inkpen met with CMs Saint and Reddick after the disciplinary hearings. They confirmed that they had completed a disciplinary investigation report and that they had submitted it to CSC's Labour Relations section. They were notified sometime later that the employer had quashed and cancelled it because its results were not what it wanted.

[160] Mr. Saint informed Mr. Inkpen that the investigators encountered problems from the beginning of their investigation. The set of facts presented to them by the employer to be investigated could not be corroborated. Ms. Contini had briefed them about the events to be investigated, but Mr. Saint and Ms. Reddick could not corroborate them. They investigated the issue of changing OSORs. In their opinion, they determined that one witness, Mr. Ransome, had a credibility issue. They reported to Mr. Inkpen that they had the sense that Mr. Ransome did not provide truthful evidence but rather repeated what CX GS had told him to say. According to what he had been told, the conclusions in CM Saint and Reddick's report upset the employer. Mr. Inkpen reported that Mr. Saint was threatened with termination and that Ms. Reddick was mocked. According to Mr. Saint, the employer expected the investigators to conclude that Mr. Lamash, Mr. Shaukat, and Mr. Pye were guilty, despite the fact that there was no evidence supporting it.

[161] During the meeting with CMs Saint and Reddick, Mr. Inkpen was shown the police file log, which the employer had sent to the Edmonton Police Service for the purposes of having Mr. Lamash charged with assault. Each time, the Edmonton Police Service returned it, the last time with a note dated January 28, 2015, stating that it was not to be referred to the police service again. No charges were ever laid against Mr. Lamash due to the incidents at issue, to the best of Mr. Inkpen's knowledge.

[162] Mr. Inkpen and the local union president Sean Whelan worked together to represent Mr. Lamash. They met with Mr. Bernier to review the video recordings of the events and asked about the presence of the CMs and why certain people had not been interviewed, such as CX Woodman, who had been found guilty of witnessing Mr. Lamash assault the inmate in the shower.

[163] Mr. Inkpen and Mr. Whelan went through the contents of Mr. Lamash's access-to-information request, which contained almost 500 pages of notes from Ms. Contini (Exhibit 44). At page 313, there is a statement that it is common to place CXs in the warehouse if the employer needs to put them in a post without inmate contact. Mr. Lamash had requested such a post instead of being suspended. Ms. Contini refused, even though Labour Relations advised her that the employer was considering that option (Exhibit 44, page 312).

[164] On the same page, Ms. Contini states that the video recording shows Mr. Lamash assaulting the inmate with his knee and an MK09 canister. At that point, Mr. Lamash became aware of other videos that had been provided to him. The Labour Relations representative with whom Ms. Contini was communicating asked her if they were the videos the employee had not seen or have. Repeatedly in the *Larsen*-criteria assessments, the employer referred to Mr. Lamash hitting the inmate with the MK09 canister and pushing his knee into the inmate's spine. The employer also referred to threats that Mr. Lamash had made, which turned out to be a disagreement between Mr. Lamash and CX GS when Mr. Lamash had returned from leave before the incident.

[165] Like Mr. Pye and Mr. Shaukat's rebuttal and disciplinary meetings, the meetings with Mr. Lamash were not corrective. At no point in these meetings was there a discussion of the events. The employer was not interested in anyone's version of the events other than its own.

[166] Mr. Woodman testified that he was never interviewed about his role in the incidents involving the two inmates on A unit. He was in New Brunswick when the interviews were held, and the first he heard that he was being investigated and disciplined for his role in the events that day was when he found out via mail that he had been found guilty of a violation of the employer's policy related to the events.

[167] He asked to view the video recordings on his return to the institution, but his request was refused. Two weeks after making his request, he met with Mr. Bernier and

Mr. Inkpen, and the evidence against him was presented. It consisted of a screenshot of him looking sideways toward the shower cell where inmate SW was being decontaminated as he walked by while completing his rounds. According to Mr. Bernier, it was proof that Mr. Woodman saw Mr. Lamash assault the inmate in the shower.

[168] That proof that he had seen Mr. Lamash assault the inmate did not reflect what took place as Mr. Woodman attempted to pass the shower cell where inmate SW was being decontaminated. In his very brief glimpse into the cell as he passed, Mr. Woodman saw the inmate lying on the shower floor. He heard Mr. Lamash shouting a command at the inmate to stand up in the shower water, but the inmate would not cooperate. The only move that Mr. Woodman saw Mr. Lamash make was to step out of his way so that Mr. Woodman could proceed down the range.

[169] Mr. Woodman testified to his recollections of the day of the incidents on A unit. He was working in the bubble on C/D unit when a call came for assistance on A unit. He responded. When he arrived on A unit, it was very loud; the inmates were riled up, according to him. He heard inmate SW say that he would kill one of the CXs present and that he would kill Mr. Lamash. Mr. Woodman testified that he did not see any baton strikes as he focussed on securing inmate SW and protecting his own safety.

[170] Mr. Samms testified that he was working the EM17 post in the gym office when he received a radio call notifying staff that assistance was required on A unit. When he arrived in response, A unit was chaotic and very loud. The staff members present were running around, uncertain of what they were required to do to remove inmate SW from the cell. From his position outside the cell door, he heard inmate SW shout that he would kill someone, before the cell door was opened. Once that happened, Mr. Samms was hit by a wave of OC spray that had been deployed into the cell through the food slot in the door.

[171] The inmate charged out of the cell and was taken to the ground, where Mr. Samms attempted to secure his legs. No specific role had been assigned to him; he was trying to help and did the first thing he could when the door opened. During his attempts to secure the inmate, Mr. Samms' head was inside the cell doorway, rendering him incapable of seeing where the other inmate in the cell was located because of the effects of the OC spray. According to Mr. Samms, he did not witness any of the alleged baton strikes because of the effects of the OC spray.

[172] Once the inmate was secured, Mr. Samms helped escort him to segregation, following which the CM called him to escort Mr. Shaukat to the hospital to seek treatment for an injury sustained during the cell extraction. On his return, Mr. Samms wrote his OSOR and submitted it to CM Cook.

[173] During the investigation process, he was accompanied by CX GS. When Mr. Samms met with CX GS, CX GS advised Mr. Samms that he was representing other officers who had been involved in the incident and that they were retracting and rewriting their OSORs. He advised Mr. Samms to rewrite his OSOR and to remove any references to the inmate's threats as according to CX GS, they were not made, and whoever said that they had been made lied in his or her OSOR. According to Mr. Samms, CX GS wanted him to remove any reference to the threats that he had heard. When Mr. Samms asked CX GS why he would do it, CX GS told him to do it and to trust him.

[174] During the investigation interview, Mr. Samms felt that CX GS was giving his version of the events to the investigators by answering the questions before Mr. Samms could. After the interview was complete, CX GS stayed behind to speak to the investigators, without Mr. Samms present.

[175] Mr. Samms was never present when Mr. Lamash addressed a group of officers concerning the contents of their OSORs. He had no knowledge that such an event ever happened. He did not feel any peer pressure to comply with Mr. Lamash's version of events and had no conversations with him about what to put in the OSORs.

[176] Brian Squires testified that he is currently employed by the CSC as a national training and development officer at EI. He is responsible for all training standards and all the training performed at EI. Mr. Squires has 16 years of ERT experience at EI and has been the staff training officer for the ERT as well as the team leader. He has responded to more than 800 cell extractions over his career. According to him, in 2014, any CX could have carried out a cell extraction, based on their training.

[177] The role of the front-line officers is to preserve life, prevent grievous bodily harm, and deal with assaultive behaviour in a way that minimizes risk to the safety of the staff, inmates, and institution. EI staff were familiar with planned and spontaneous uses of force, but "intervention plan" was defined only when the SMM was revised in 2018. A spontaneous use of force requires officers to respond immediately. A



preplanned use of force occurs after a protracted incident, once negotiations have failed and there has been time to develop a plan. Preplanned uses of force are the ERT's responsibility. Staff officers do not participate in them.

[178] Officers should not be part of a preplanned use of force if they were part of the incident leading to it, according to CD 567-1. But according to Mr. Squires, doing so was normal at EI. Officers were expected to carry out their duties regardless of the situation. The CM is responsible for managing the number of officers involved in a spontaneous use of force, when practical. Officers who participate in use of force and who were involved in the incident leading up to it are emotionally involved, not thinking clearly, and could be injured or cross-contaminated, according to Mr. Squires.

[179] Todd Ginger testified that he was an acting CM at EI on June 22, 2014, when he received a call for the EM06 or EM16 to report to A unit. He was working with CM Cook that day. It was the first time either of them heard that something was happening on A unit. They left the CM office for A unit; they were in no rush because there had been no personal-protection-alarm alert or other radio transmissions that had caused an alarm to sound. They waited for the food cart to pass before they entered the unit. They stopped and spoke to the officers in the bubble. They could smell the OC spray. CM Cook was allergic to it and acquired a mask.

[180] CM Cook sent Mr. Ginger to the servery to clear it and ready a space for the inmates. Neither CM Cook nor Mr. Ginger was aware how heightened the situation had become. Mr. Ginger testified that he spoke to CX Lacy Mitchell, who told him that inmate HW was secured in the showers for decontamination, which meant to Mr. Ginger that the incident was over. He was unaware of the ongoing situation with inmate SW. Since no one had called for assistance from the lower range, the CMs did not go down the stairs to see what was happening. They had a limited view down the stairs. Instead, the CMs went into the unit office. They called the segregation unit to alert it that the inmate was being transferred. At no time did the CMs direct CX GS or Mr. Roussel to leave A unit and return to G/H unit. The CMs were unaware of the progress of the cell extraction since they were not given an incident update on inmate SW.

[181] According to Mr. Ginger, he was not there to deal with the situation. CM Cook, the EM06, was the officer in charge, so he had to decide whether to call the ERT in to deal with the situation involving inmate SW.

[182] Mr. Ginger testified that he and CM Cook were aware that the inmates on A unit were CON. He remembered seeing many staff members running around but did not remember any shouting or screaming. According to his testimony, he and CM Cook would have approached the situation differently had someone on the unit briefed them when they arrived. Even so, he did not recall asking anyone present what was going on. The first he heard of the alleged incidents was when he read the OSORs submitted to him.

[183] While Mr. Ginger was present on the unit, he was focussed on talking to the CXs from the top of the stairs. He was not looking at the activities unfolding below, before him. Exactly what was happening was very vague to him. He was there to clean up after an incident, and he knew nothing of the plan to open the cell door to extract inmate SW.

[184] According to Mr. Ginger, management never questioned his actions that day, and he was not investigated in either investigation. He conceded that a live feed of the ranges is shown on monitors in the unit office where he and CM Cook were located that day, but he did not recall if they watched them or if the monitors were on as that was not their purpose for using the office.

### **III. Summary of the arguments**

#### **A. For the employer**

[185] There is little debate about the facts in this case; it is a matter of interpreting them. It is a question of the level of threat that the officers responded to when they approached inmate HW. It is a question of whether the officers had other or better options to deploy to respond to the threat that they faced. Finally, it is a question of whether the officers' actions escalated the threat level they faced. If the use of force was not necessary or proportionate and consistent with policy, the question then is the appropriate level of discipline to impose.

[186] The fact that CX GS might have been involved at different times does not change the appropriate actions and whether the officers followed policy when dealing with inmates HW and SW. The employer's evidence is primarily the video recordings of the officers in action.

[187] According to *Wm. Scott & Company Ltd. v. Canadian Food and Allied Workers Union, Local P-162*, [1977] 1 C.L.R.B.R. 1 (“*Wm. Scott*”), the usual basis for adjudicating discipline issues involves considering the following three questions: (1) Did the employee provide reasonable cause for some sort of discipline by the employer (i.e., did the employee commit misconduct)? (2) If so, was the discipline that the employer imposed an excessive penalty in the circumstances? (3) If it was excessive, what alternate measure should be substituted that is just and equitable in the circumstances?

[188] The proper penalty for an excessive use of force is termination. The case law is clear. CXs are authorized by law and policy to use force. Mr. Lamash assaulted two inmates, broke employer policy, and did not follow the SMM. He broke the cardinal rule for peace officers, which is that they must protect those in their custody. Inmates in custody are dependent on CXs for their basic necessities.

[189] Assaulting an inmate is one of the most egregious offences. Any interpretation of what happened on June 22, 2014, did not fall within Mr. Lamash’s policy obligations. His version of the events is not consistent with the video recordings. An employee with peace officer status is more likely to be believed than an inmate, so it is essential that the employer-employee bond of trust be maintained. Mr. Lamash and his fellow officers were trained in the appropriate use of the SMM. It must be adhered to. Situations must be de-escalated, and the least amount of force necessary must be used. Mr. Lamash’s actions that day were inconsistent with that obligation (see *Ontario Public Service Employees Union v. Ontario (Ministry of Community Safety and Correctional Services)*, 2008 CarswellOnt 6734).

[190] Likewise, in *Ontario Public Service Employees Union v. Ontario (Ministry of Community Safety and Correctional Services)* (2013), 236 L.A.C. (4th) 91, the arbitrator ruled that termination is appropriate, even for a minor transgression of the use-of-force rules. In *British Columbia v. British Columbia Government Employees Union (Correctional Services)* (1987), 27 L.A.C. (3d) 311, the arbitrator ruled that an excessive use of force is the most egregious offence a CX can commit. It is an abuse of the trust given to them, which is that they will use force only when necessary.

[191] Being a CX is not easy. Inmates regularly abuse CXs. Regardless, there is a high expectation that they will respect inmates’ rights. They are expected to keep their cool and not resort to gratuitous violence. CXs are expected to model the rule of law and

use force only when necessary. Doing otherwise results in a severe response from the employer.

[192] From the video recordings (Exhibit 13), it is evident that inmate HW retreats with his hands up. Mr. Lamash deploys OC spray and hits the inmate with his left hand. The inmate's head hits the wall, and he collapses to the floor. Mr. Lamash then drops his knee onto the inmate's back and continues directing OC spray at him. He then hits the inmate with the OC spray canister. Inmate SW becomes agitated with Mr. Lamash over his takedown of inmate HW. Mr. Lamash engages with inmate SW through the cell door. He is visibly agitated.

[193] When the cell door opens, inmate SW is also very agitated. He charges the group of CXs assembled and attempting to extract him from the cell. Mr. Lamash then swings the baton 14 times. Mr. Lingrell speculated that the baton hit the shield and caused no harm, but no one mentioned such a thing in their OSORs or in their other evidence. Despite the circumstantial nature of the evidence, the boards of investigation's findings are what happened.

[194] Once inmate SW was secure in the decontamination shower, Mr. Lamash stormed in. Mr. Ransome confirmed that Mr. Lamash kicked the inmate in the groin when he entered, just as the inmate reported.

[195] A peace officer's role is to maintain order. The overarching responsibility of a CX as a peace officer is to use the least amount of force required, necessary, and appropriate to the circumstances. The purpose of the SMM is to help the CX determine the appropriate use of force required. CD 567-1 states at paragraph 7 that a CX's primary obligation is the peaceful resolution of an incident through discussion and negotiation. Mr. Lamash did not assess or reassess the appropriateness of his actions. He did not maintain a safe distance or attempt to avoid using force, which is the SMM's goal, according to Mr. Durette.

[196] When dealing with inmate HW, Mr. Lamash had other, better options available to him. At no time did he engage in meaningful dialogue or attempt to negotiate the inmate's compliance before he deployed the OC spray. According to the evidence, Mr. Lamash did not consider confinement or retreating as viable options. The entire situation would have been defused had options other than deploying OC spray and assaulting the inmate been considered. Mr. Lamash might have perceived a threat, but

he went straight to the use of force, without considering other options, even after the inmate retreated. Mr. Lamash violated the employer's policies and his training.

[197] Mr. Lamash admitted that inmate SW tried to bait him into a fight. Mr. Lamash was obligated to de-escalate the situation by removing himself from it, since he was the target of abuse from inmate SW. Doing so and allowing the other officers present to deal with the situation would have been the appropriate course of action. Instead, he accepted the bait, engaged with the inmate, and failed to recognize that his presence was making things worse. Even though Mr. Lamash perceived a threat to the other inmate in the cell, the evidence was that that threat was part of the bait used to engage Mr. Lamash in a fight.

[198] What Officers Krstic, Pye, and Ransome claimed they saw was improbable to impossible. Only through overt collusion or inadvertent collaboration could their stories have come together that way. None of them is consistent with the video recording. The specific language they used was calculated to justify the use of force.

[199] The officers had the burden of proving what they did or did not see or hear. Mr. Roussel was able to have a calm conversation with inmate SW while standing outside cell A006. Mr. Pye perceived threats of gross bodily harm. The truth of what each witness said lies in its harmony with the preponderance of the probabilities that a practical and informed person would readily recognize as reasonable in that place and in those conditions (see *Roberts v. Deputy Head (Correctional Service of Canada)*, 2007 PSLRB 28 at para. 220).

[200] The officers in this matter took the time to gather tools but did not take the time to retrieve a handheld camera to videotape their intervention near the end of the incident. The door to cell A006 was either left unattended or watched by Mr. Roussel, who was able to talk quietly to the inmate. During all the relevant time, no one called the duty CM to tell him that a cell extraction was imminent. Once the cell door opened, the results were predictable.

[201] What followed was a serious use of force. Mr. Lamash swung the baton 14 times in rapid succession, without taking the time to reassess the situation and the effectiveness of his actions. According to Mr. Bernier, the first swing might have been justified, but after that, the CX's job may be in jeopardy. Nothing supports Mr. Lingrell's suggestion that an officer using a baton is to keep swinging it until it

becomes effective. The way that Mr. Lamash used the baton created a dangerous situation for the inmate and the CXs involved. Mr. Samms was worried about the inmate in the cell kicking him, because he was on the floor with his head in the cell and had been blinded by the OC spray. Mr. Shaukat said that he was hit on the upswing of the baton. It was only a tap, because anything harder would have knocked him out. Mr. Pye said that the inmate tried to bite him at the same time as the baton was being deployed. Obviously, Mr. Lamash's actions did not serve to de-escalate the situation.

[202] All the officers described the situation as chaotic. The risk to them all could have been diminished had Mr. Lamash stepped back and had one of the 14 other officers present replaced him, had the CMs been advised that a cell extraction was imminent, and had a clear and coherent plan been put together.

[203] A cell extraction of this nature is not consistent with policy. It was not undertaken in the safest and most reasonable manner using the least amount of force necessary. The board of inquiry concluded that the officers had plenty of time to consult the CM. CXs are trained to respond quickly but are also trained that if they are unsure, they should consult the CM. What happened on June 22, 2014, was an unauthorized preplanned intervention. The fact that it was a poor or partial plan does not mitigate the actions of the officers involved.

[204] There is conflicting evidence about when the CMs were briefed about the cell-extraction plan. The video recording shows that when the CMs arrive, Ms. Krstic and Ms. Delorme are present. Ms. Delorme speaks to CM Cook, but she testified that she did not brief him. Mr. Ginger testified that the CMs were unaware of the gravity of the situation until later. The evidence is that CM Cook did not understand what was going on, not that he was uninterested in it. The CMs did do something when they arrived; they readied the institution for transferring the inmates who were CON to segregation. Even had the CMs been briefed, no one advised the officers on the range of it.

[205] The actions of CX GS are problematic, but he was not involved in the circumstances. His problematic actions were removing his officers from A unit and leaving A unit without the support required during the use of force. Mr. Lingrell was not a dispassionate observer. He has been involved in the conflict between the factions at EI. He has a stake in the outcome of these grievances.

[206] The employer's version of the shower events is the most realistic, on the balance of probabilities. Mr. Lamash should never have gone into the shower cell as doing so when involved in a use-of-force situation with the inmate breached the employer's policies. Mr. Pye and Mr. Shaukat facilitated the violation by failing to intervene to stop Mr. Lamash from entering the shower cell. The spontaneous utterances of inmate SW, which are audible on the video recording from the handheld camera, stating that Mr. Lamash had "kicked him in the balls" and beat him, put together with Mr. Ransome's evidence, make more sense than do the other versions. Mr. Lamash was in the shower cell with the inmate long enough to kick him.

[207] Mr. Ransome told the board of inquiry that Mr. Lamash kicked the inmate while the inmate was on the shower floor. If the Board accepts the findings of the board of inquiry, it has to accept that the CXs breached their duty. The report by Mr. Saint and Ms. Reddick was logically untenable, according to Mr. Bernier, who testified that their conclusions were inconsistent with what he saw on the video recording. As it was a hearing *de novo*, the employer had to prove the events to the Board. The adjudicator must draw her own conclusions and not rely on the conclusions of either board of inquiry.

[208] Finally, the answers to the *Wm. Scott* questions are that conduct warranting discipline occurred. The appropriate disciplinary action for an excessive use of force is termination, which was Mr. Lamash's penalty. Mr. Shaukat and Mr. Pye failed to report accurately what occurred that day. According to the decision in *Cooper v. Deputy Head (Correctional Service of Canada)*, 2013 PSLRB 119, if the discipline imposed was reasonable, the adjudicator should not tinker with it. (See *Rolland Inc. v. Canadian Paperworkers Union, Local 310*, [1983] O.L.A.A. No. 75 (QL); *Albano v. Deputy Head (Correctional Service of Canada)*, 2015 PSLREB 79; *Hicks v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 99; *Legere v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 65; and *Shaw v. Deputy Head (Correctional Service of Canada)*, 2019 FPSLRB 101.)

[209] As in *Shaw*, Mr. Lamash could and should have done a better job of assessing his options before using force. As the EM32, he was a primary responder at EI, which elevated his level of authority and esteem among officers looking for his direction. The employer must be able to trust him to abide by the use-of-force policy. As an experienced officer, he should have recognized the vulnerability of the inmates and

should have acted accordingly. He should have planned for how he would deal with an inmate who was CON, using the least amount of force necessary. (See *Newman v. Deputy Head (Canada Border Services Agency)*, 2012 PSLRB 88.)

[210] Verbal abuse is common in a correctional environment. Mr. Lamash should not have reacted to inmate SW's provocation (see *Roberts*).

[211] In determining the appropriate level of discipline, the employer must consider both the aggravating and the mitigating factors. Inmate HW could have been contained without the level of force used by closing the barrier door to the range. Inmate SW was contained until Mr. Lamash ordered the door opened. Other intervention options were never considered, even though the situation continued for several minutes, and the officers had time to cool down and think. Determining whether use of force is justified is a question of good faith. One is not justified by abusive language. The CMs could not provide condonation as they did not know what was going on. There were no radio transmissions announcing the upcoming cell extraction.

[212] The use of force on the video recording was neither necessary nor proportionate to the situation. The officers had other options. They could have isolated the inmates, kept a safe distance, and waited for the effects of their presence. They could have reassessed when inmate HW retreated. Mr. Lamash failed to recognize his role in escalating the situation by interacting with inmate SW and entering the shower cell. They could have notified the CMs of their intention to perform a cell extraction.

[213] Penitentiaries are dangerous environments. CXs have a sworn duty to protect the inmates, their coworkers, and the institutions. They are to uphold the law and model behaviours that encourage inmate rehabilitation. Officers Pye and Shaukat had an obligation to intervene and report Mr. Lamash when his actions violated policy. On the balance of probabilities, the shower incident occurred, and they should have seen it. Mr. Pye could not have seen or heard what he alleged he did, given that Mr. Roussel was able to have a calm conversation with inmate SW at the same time that Mr. Pye said the inmate was uttering threats. Mr. Shaukat exaggerated in his OSOR and admitted that it was inconsistent with what he saw on the video recording. Both Mr. Shaukat and Mr. Pye reported a narrative consistent with what they admitted they had discussed with others.



[214] Mr. Lamash engaged in an unprovoked use of force, which was unethical. This is the most serious type of offence in the employment context. He committed three abuses of inmates in his care, thus breaching the bond of trust with his employer and failing to meet his obligations as a peace officer. Termination was reasonable in his case.

## **B. For the grievors**

[215] The employer had the burden of proof to show with clear, cogent, and compelling evidence that the alleged events in fact took place. Mr. Bernier strongly believed the Erickson report, which he described as stellar. The letters of discipline are related to that report's conclusions. There is no debate that many things could have been done in a better way on June 22, 2014, but the question is whether what was done contravened the commissioner's directives.

[216] Much of the evidence related to how things were done at EI. The range barriers were rarely used, if at all, to isolate and contain inmates. When an inmate refused to lock up at EI, it was common for the CXs to walk down the range and make a show of their presence. Mr. Erickson never asked anyone about how barriers were used at EI. According to Ms. Delorme, the officers went down the range because that is what was done at EI. The decision to go down the range was a common practice.

[217] Mr. Lamash went down the range in an assertive manner, determined to resolve things, according to his body language on the video recording. From the bubble, Mr. Shaukat verbally ordered the inmate to lock up. When the inmate refused, Mr. Shaukat relayed that information to the officers who later went down the range. His analysis was that the inmate was CON and that the door of cell A003 was blocked open with a towel. He sent the officers down to verify the situation. It was just a normal day on A unit, according to the evidence.

[218] There is no clear, cogent, or compelling evidence that not using the barrier instead of walking down the range was misconduct by anyone. The video recording did not show inmate HW's hands at all times. Based on when his hands were visible, the investigators concluded that he had had open hands at all times. The Board should not make that leap. The video quality is poor, and according to *Legere*, the cameras did not see what the officers saw. Mr. Shaukat testified that the inmate took an aggressive stance after being ordered to lock up. According to Mr. Lamash, the inmate said that it

was fight time. He ignored the lock-up directions, according to both Ms. Delorme and Ms. Krstic.

[219] Inmate HW was physically non-compliant when he refused to lock up. The safest thing to do before a fight broke out was to use the OC spray. The SMM authorizes using it when an inmate is physically uncooperative. The video recording does not show the tone of the interactions with the inmate or the level of threat his demeanour posed. An inmate who is CON is not likely to comply with verbal directions and is in a highly volatile state.

[220] There is no evidence that Mr. Lamash sprayed the inmate while the inmate was on the floor. Mr. Erickson talked about officers retreating in this type of situation. He did not consider that four officers filled the range and that they could not back up in a synchronized way while watching the inmate. These physical constraints formed part of the decision to use the OC spray.

[221] When an inmate refuses to cooperate, what options are available to a CX dealing with an inmate who is CON? The fact that the inmate backed up is not necessarily a sign of retreat when it is unknown whether it was caused by releasing the OC spray. Mr. Lamash testified that he used a quick burst of OC spray, which correlates to the time on the video recording when the inmate retreats.

[222] The best evidence of whether Mr. Lamash hit the inmate in the face is the testimony of the person who saw it happen. According to the evidence, it was Mr. Ransome, but he did not testify. In his interviews with Mr. Saint and Ms. Reddick (as noted in their report), Mr. Ransome told them that he did not see Mr. Lamash punch the inmate. Mr. Erickson said that he saw Mr. Lamash take a left-hand punch at the inmate, but he was not sure whether the fist connected.

[223] The video footage is not conclusive that the punch occurred. It is clear that inmate HW staggered and bounced off the walls, which could have been caused by the effects of the OC spray. According to Mr. Durette, OC spray makes the floor slippery. There is no direct video evidence of a punch; the only person who saw it was Mr. Ransome, but he did not testify. He reported it only during his interview with Mr. Erickson and Mr. Lapointe. Given Mr. Ransome's height, it is unlikely that he did not see where the alleged punch landed. It is very concerning that he gave completely opposite evidence during the investigations.

[224] As stated in *Legere*, the Board needs more than possibilities when determining what took place. The employer did not discharge its burden of proving that Mr. Lamash punched the inmate in the head. Both Mr. Durette and Mr. Lingrell testified that placing a knee on the back is a technique taught to control a prone inmate. Given the constrained area and the fact that the inmate's head was against the wall, it is possible that Mr. Lamash's knee was lower down the inmate's back than is shown in the video recording. There is no evidence of the amount of weight that was placed on the inmate's back. The second investigation concluded that Mr. Lamash collapsed his knee onto inmate HW's back, thus using prejudicial language. The investigators mentioned a knee drop in their chronology, but then in their analysis, the issue was with the knee's placement. The video does not support the fact that Mr. Lamash used a knee drop.

[225] Again, Mr. Ransome claimed to have seen Mr. Lamash strike inmate HW with the MK09 spray canister, yet he reported nothing about it to Mr. Saint or Ms. Reddick. The MK09 is a metal canister with plastic handles that come apart easily, which would have happened had it been used to strike someone. The handles did not come apart. Mr. Lamash testified that he used the canister to tap the inmate to get his attention, which was a technique he had learned from other officers.

[226] There is no mention in the medical reports of an injury to inmate HW's torso. They mention a contusion to his left shoulder. Significant physical handling was required to get him into the shower, which could have caused it. Inmate HW would not present his hands for cuffing while he was on the floor. The second investigation report states that the inmate was motionless. Mr. Ransome told Mr. Saint and Ms. Reddick and stated in his OSOR that the inmate struggled and spat. Mr. Lamash said that the inmate resisted giving up his hands. Despite this, the second investigation concluded that the inmate was cooperative.

[227] According to the employer, the number of baton strikes used against inmate SW, the technique, and the area targeted were all excessive. Ms. Contini deemed the number of strikes excessive. Mr. Bernier testified that an officer may strike once and then reassess the situation, but the training manual teaches using the baton in bursts of five strikes. Mr. Erickson found that using the baton had been acceptable but that the number of strikes was excessive. The video evidence is inconclusive as to how many strikes were actually made. Some of the swings could have been attempts to

strike and thus could not have been strikes. It is unknown how many times Mr. Lamash struck the inmate with the baton.

[228] The SMM identifies using the baton on an assaultive inmate. To conclude that the number of strikes was an excessive use of force, the conclusion would have to be that the baton was unneeded. Inmate SW tried to bite Mr. Lamash's leg and Mr. Pye's hand. The question is when he stopped trying to bite them. There is no way to establish that Mr. Lamash continued the baton strikes after the inmate stopped biting. Mr. Lamash testified that he stopped using the baton because of the pile of officers in front of him. He claimed that he targeted the inmate's wrist and hand, to force him to let go.

[229] According to the second investigation, the video recording shows Mr. Lamash using overhead blows and swinging the baton with one hand when he was trained to use two. According to Mr. Erickson, CXs are not allowed to use a baseball-bat type of grip when using the baton, but Mr. Durette testified that there is no mandatory grip distance. The picture in the training manual shows what resembles a baseball-bat-type grip. Given the conditions in the hallway, it is likely that Mr. Lamash's hands were closer together than they should have been. His technique might not have been perfect, but if the employer had expectations on the proper technique, it should have dedicated more time to training officers in using the baton.

[230] Faulty technique is not necessarily an excessive use of force. The second investigation report refers to strikes to the inmate's head and facial area with the baton. Based on the video recording, there is no way to ascertain whether strikes were made to the inmate's head. There is no way to determine whether they even landed on the inmate.

[231] Mr. Erickson concluded that the threats to inmate C were fabricated, yet Mr. Pye, Ms. Delorme, Ms. Krstic, and Mr. Lamash all heard them. Initially, inmate SW directed them at Mr. Lamash, but then, his focus changed. Mr. Shaukat testified that the threats were aimed at him by the end of the decontamination. Inmate SW was extremely agitated, and there is a high possibility of violence with two inmates in the same cell when they are CON. It is clear that inmate SW wanted to fight with Mr. Lamash. Should an officer have ignored the threats to inmate C because they were bait to engage with Mr. Lamash? Should the officers have waited to see if inmate SW was serious about his threats to inmate C?

[232] Officers are responsible for their actions. They are allowed reasonable perceptions, such as whether inmates are CON, screaming, shouting, punching a cell door, refusing to comply with orders, making threats, etc. Therefore, Mr. Lamash concluded that it was appropriate to remove the inmate from cell A006. Mr. Lamash agreed that he could have waited to open the cell door, since he had the capacity to reflect on his actions, but he made his decision in the heat of the moment, based on the circumstances at the time. He might have dropped the ball when he left the cell door unattended, but he was concerned with organizing things, to rescue inmate C.

[233] According to CD 567-1, the distinction between the definition of “intervention plan” and how one is applied is unclear. Ms. Contini referred to an immediate action plan that according to Mr. Squires, only the ERT uses. Mr. Erickson found that opening the cell door was a preplanned use of force. According to Mr. Durette, front-line staff may carry out an intervention plan. Mr. Bernier said that it was not an appropriate use of force. Mr. Shaukat said that it was not in any way an intervention plan.

[234] According to Mr. Lingrell, the boundaries were unclear. Mr. Lamash did not remember any discussions among staff about CD 567-1. Mr. Squires testified that the staff members were not involved in a planned use of force. Those involved had no clear understanding of the forms of intervention listed under CD 567-1. It makes no sense to find that they violated a policy that no one understood or had a common understanding of.

[235] The CMs received a call to respond to A unit from its subcontrol. When they arrived, they did not go down to the range. CM Cook said that both inmates were in the shower when the CMs arrived, which from the video recordings is not true. According to Mr. Lingrell, CMs are to take charge of a scene when they arrive, but the CMs in this case retreated to the unit office instead and did not attend the scene. They turned a blind eye, let the situation unfold, and then came out of the office and said that they had no clue that anything had happened.

[236] The employer had the burden of proving that the assault in the shower took place. Its best evidence about that incident was from Mr. Ransome. He did not report it until his third interview. It can be agreed that it was not a good idea for Mr. Lamash to enter the shower cell, but that does not mean that he assaulted the inmate while he was in there or that other officers saw him do it. There is no evidence to support Mr.

Ransome's statements. If so, much of this case relies on Mr. Ransome's evidence, why did he not testify?

[237] According to *Roberts*, the inmate's credibility deserves critical scrutiny. In this case, the inmate did not testify. CM Kelly Monson interviewed inmate SW after the incident and reported that he had no concerns and that he had hardly any recollection of the incident because he had been CON. On the balance of probabilities, the burden of proving that an assault took place in the shower was not met. If Mr. Lamash violated policy by being in the shower, then so did Mr. Shaukat. The question is whether the policy was violated or whether being there was a good idea.

[238] Mr. Ransome raised the idea of collusion in drafting the OSORs. Mr. Lamash would not let anyone leave until they wrote their OSORs following his directions. Mr. Samms said that that did not happen and that each officer wrote an OSOR alone. Mr. Ransome is the only source of this information, but he did not testify. Mr. Pye did his OSOR on C unit after a two-hour shift at C-unit subcontrol. It is extremely unlikely that Ms. Delorme would have threatened to label anyone as a rat. Collusion is more than being in the same room writing a report with officers decompressing after the biggest event of their careers.

[239] Mr. Lamash was singled out. There is much to be learned from this incident (see *Besirovic v. Deputy Head (Correctional Service of Canada)*, 2021 FPSLRB 33). Mr. Lamash did not wear or set off his personal protection alarm, but then neither did anyone else, so why was he disciplined for it? There is no evidence that the board of inquiry questioned him about the failure to videotape the incident with a handheld camera as required by CD 567-1, yet he was disciplined for it. There is no evidence that it was more his than it was anyone else's job.

[240] Mr. Lamash was found to have discredited the CSC, in violation of CD-060. According to *Dekort v. Deputy Head (Correctional Service of Canada)*, 2019 FPSLRB 75, this is not a stand-alone charge and is valid only to the extent that the other charges against him are valid. The charges that Mr. Lamash did not disclose his use of spray and the baton are without merit as the spray was in the air and could be detected by smelling it, and the baton was visible to everyone. On the balance of probabilities, CM Cook knew that they had been used.

[241] The allegations that Mr. Lamash was careless in performing his duties and that he put his coworkers at risk are also without merit. According to Mr. Shaukat, they executed a plan based on tools and positions assigned. Mr. Lamash was damned no matter what if he did not intervene to save inmate C. In his assessment, the risk to inmate C's life was greater than the risk to staff.

[242] In the *Larsen*-criteria assessment prepared with respect to Mr. Lamash, Ms. Contini already referred to the employer's irrevocable breach of trust for him. She assumed that he had a record of the excessive use of force, which is untrue. In her mind, he was guilty, and nothing could change it. She referred to police investigations into Mr. Lamash's conduct, which never existed, but she repeatedly sought to institute them. Mr. Bernier came to his conclusions based on the findings of the use-of-force review. Meetings with the grievors and management were hostile, and they were not given the opportunity to address the charges against them.

[243] Mistakes were made that day. It was a mess, but so was the disciplinary process. It does not change what happened, but it must be considered. Mr. Bernier never met Mr. Lamash, yet he lost faith in Mr. Lamash based on the decision in a flawed and biased report. Mr. Lamash recognized that he made mistakes, he should have kept an eye on the cell, he should have called the CMs, he should have had the equipment ready, and he should have waited to enter the cell.

[244] No one testified that they could not work with Mr. Lamash were he returned to his position. Termination is excessive in the circumstances, given the breach of natural justice and mitigating factors. There were no grounds for disciplining Mr. Pye and Mr. Shaukat.

[245] The suspension without pay imposed on Mr. Lamash was disciplinary, and it constituted double jeopardy. He requested a change of squad or to be put in a post without inmate contact, which would have allowed him to continue to work through the investigation period, yet the employer refused to, based on comments by Ms. Contini that Mr. Lamash had struck an inmate with the MK09 cannister and used knee strikes against him and that the bond of trust had been irrevocably broken. Her conclusion that it was impossible to put him anywhere in the institution was the reason for his suspension. She shared inaccurate information with CSC headquarters in an intent to embellish the case. The employer could have sent him to the warehouse as it had done for other officers, but Ms. Contini stopped it.

[246] On August 8, 2014, the employer received the first report, which stated that there had been no misconduct. It did not review the suspension decision, but it did change the suspension to one with pay. Four weeks later, when the second investigation began, the suspension reverted to being without pay.

[247] Mr. Pye and Mr. Shaukat were found guilty of witnessing an assault that they were never questioned about. They had no idea what they were supposed to have done, until this hearing was held. They were disciplined on a procedurally flawed process that cannot merely be addressed *de novo*. The employer caused them foreseeable mental distress by putting them through this process based on false allegations and by not allowing them to defend themselves. They are entitled to \$10 000 in damages for such a severe breach of natural justice (see *Honda Canada Inc. v. Keays*, 2008 SCC 39).

#### **IV. Reasons**

[248] I spent hours with the parties, and alone, reviewing the different versions of the video recordings of the events submitted as exhibits. From my viewing of the recordings, particularly those of CMs Ginger and Cook, it is clear that the CMs on duty were in fact on the unit at the time of the events and that they did nothing to intervene to stop or direct the cell extraction of inmate SW. Had one of the CMs assumed the responsibility assigned to them by virtue of their classification, things might have turned out much differently, and CXs Shaukat and Pye would have been left with no doubt as to who was in charge of the scene. The CMs were not disciplined for their failures. Mr. Shaukat and Mr. Pye should not suffer for doing what they thought was in the best interests of the institution while in the absence of proper direction.

[249] Also clear from my viewing of the video recordings is that Mr. Lamash entered the range that day in a very aggressive manner. He demonstrated a very aggressive demeanour when he approached the inmates. Walking with his shoulders lifted and leaning forward toward the inmate was aggressive. While the videos have no audio, even without it, Mr. Lamash has an angry face and does not address anyone in a calm demeanour. The parties spent an extensive amount of time identifying markers that denote aggression in an inmate, which apply equally to interpreting aggression in an officer's actions.

[250] Mr. Lamash was seen striking inmate HW with the MK09 canister. Whether he tapped or struck the inmate is irrelevant, as either action posed a serious risk to



everyone involved, since the canister was brittle and subject to easy breakage. It is not clear to me whether he used knee strikes against inmate HW, but he certainly did perform at least one knee drop onto the inmate's back. Similarly, he can be seen punching at the inmate while the inmate is on the floor.

[251] It was not necessary for the employer to establish beyond a reasonable doubt what happened that day. Its burden of proof was on the balance of probabilities that what it alleged happened actually happened. As alleged by the employer, from my viewing of the video recordings, I concur that Mr. Lamash's actions when he dealt with inmate HW, on the balance of probabilities, were an excessive use of force. Using the MK09 canister to strike the inmate and using the knee drop on his back were neither authorized by policy nor an accepted practice.

[252] Mr. Lamash's termination was not based solely on his handling of inmate HW. That together with the handling of inmate SW resulted in his termination, along with his judgement or lack of it in handling the entire situation. He was not terminated for each action in isolation of everything else that occurred. The totality of his actions and the resultant effect on the employment relationship resulted in his ultimate fate.

[253] As to the incident with inmate SW, Mr. Lamash can be seen repeatedly striking with the baton the scrum at his feet, which was composed of fellow officers and the inmate. According to his evidence, he had little experience or training with the weapon. This demonstrated his total disregard for the safety of others around him. He also demonstrated his disregard for the employer's policies and his safety when he entered into the shower where inmate SW was being decontaminated. According to the uncontradicted testimony, officers who have been involved in an incident, such as Mr. Lamash was with inmate SW, should not be involved in the decontamination process. Despite this, he barged into the shower cell. He admitted to the Board that in hindsight, he should not have done it.

[254] There is no doubt that Mr. Lamash intended to engage in the use of force on June 22, 2014. By his testimony, he admitted that he committed himself to the use of force once he stepped on the range to deal with inmate HW. He also testified that as soon as he arrived on the unit, it was obvious to him that that was his only option. At no time did he consider other options, particularly negotiating a resolution to the situation as according to him, he was not familiar with using negotiation to defuse a situation. Had that situation been resolved differently, what happened next with

inmate SW (inmate HW's brother) might very well have been avoided. The SMM in use at the time and its newer iterations identify options for dealing with such situations with the least amount of force necessary. Mr. Lamash entered the scene with the intent to use force, thus exacerbating it and creating the scene that happened next.

[255] A peace officer's role is to maintain order, not to promote or exacerbate a situation. Mr. Lamash failed to meet his CX responsibility as a peace officer when he failed to determine the least amount of force required in, necessary for, and appropriate to the circumstances. He failed to meet his obligations under CD-567 to peacefully resolve an incident through discussion and negotiation. At no time did he approach either inmate with the intention of resolving the situation through discussion or negotiation. His first recourse was to force, which was excessive to the stated purpose of the intervention. As a senior officer and a first responder within the institution, it was expected that he would model a calmer approach to inmate interactions and not resort to the type of aggression he demonstrated that day.

[256] An officer is expected to use judgement and insight whenever entering a range in response to a call for assistance. This is particularly so of a CX02 such as Mr. Lamash. This is for the safety of fellow officers, the inmates, and the institution. An officer who fails to display these qualities cannot learn them if the officer's first instinct is to immediately use force, as was Mr. Lamash's. He received the same training as did all others employed as CXs. This training covers a multitude of options and encourages using the least-aggressive solution whenever possible. He cannot blame his failure to digest and use the training provided to him for the situation he is in.

[257] Without proper direction, and given the chaos created by the lack of direction, the perception that Mr. Lamash was in charge, and his obvious state of heightened agitation, the other officers' actions appeared to be within the SMM. They took the inmate to the ground, gained control, and removed him from the situation, to be decontaminated. Mr. Lamash can be seen striking at not only the inmate but also his fellow officers with the baton during the struggle. He was oblivious to the danger he posed to his coworkers, particularly if I accept Mr. Lingrell's evidence that the inmate was underneath the shield at the time and could not have been struck by the baton.

[258] The employer's version of what happened in the shower area is not consistent with the video recording and does not support the allegations against Mr. Shaukat or

Mr. Pye. Mr. Shaukat did not allow Mr. Lamash to enter the shower. Mr. Lamash burst in while still in a state of heightened agitation. He did not stop to talk to Mr. Shaukat, Mr. Pye, or anyone else present, according to my viewing of the video. How then could Mr. Shaukat or Mr. Pye be responsible for Mr. Lamash's actions, when he pushed past them, without interacting with them? The evidence also does not support the allegation that Mr. Lamash struck the inmate while he was in the shower in the absence of Mr. Ransome's testimony, who was the only officer who reportedly saw any such thing.

[259] CM Cook was there, as is evidenced by the video recordings of the scene, yet he did nothing and said nothing to Mr. Shaukat to prevent Mr. Lamash from inserting himself into the situation. There is no evidence before me that supports imposing discipline against Mr. Shaukat or Mr. Pye for their actions in the use-of-force event or the decontamination. It is clear to me from viewing the videos submitted as exhibits having heard the evidence of each witness as they watched the videos, and having reviewed the employer's policies that Mr. Lamash should have removed himself and that he should not have been involved in the decontamination process of inmate SW given that he had been the subject of the inmate's threats. Despite this, and in flagrant disregard of policy or in ignorance of the impact of his actions in inflaming the situation, Mr. Lamash barged into the shower and incited the inmate's mood further.

[260] The employer argued that its version of the shower events is the most realistic on the balance of probabilities. I disagree, as its version attributed much to Mr. Shaukat, Mr. Pye, and others, which is clearly not evident from the video recordings. Nowhere except in the employer's interpretation of the videos does Mr. Shaukat or Mr. Pye allow Mr. Lamash into the shower cell. It is clear that Mr. Lamash pushed his way past the officers assembled and that he entered the cell. If something else happened, which Mr. Ransome observed, then testimony from him is required to prove it, as the employer's case is built primarily upon the videos submitted as exhibits, as its representative noted in argument. In the absence of video of what happened in the shower, I can make my decision based only on what was submitted for my review.

[261] Furthermore, I will not speculate beyond what is on the video recordings and what was attested to before me about what happened while Mr. Lamash was in the cell. When there are two equally realistic versions of what happened off camera, I must accept the one supported by other evidence. The employer failed to discharge its

burden of proof with respect to the events that occurred in the shower cell. That does not mean that Mr. Lamash's action on entering that cell was consistent with policy or the best procedures; nor does it mean that I cannot conclude that by his actions, he exacerbated and prolonged his dispute with inmate SW, thus violating his CX obligations and the employer's policies.

[262] The action plan that Mr. Lamash chose to pursue to extract inmate SW from the cell was ill planned and contrary to the SMM, and it put his fellow officers at great risk. With his head in the cell, and blinded by the OC spray, Mr. Samms was in peril from not only the inmates but also from his fellow officer, who was repeatedly striking at the scrum of officers and the inmate on the ground. Mr. Pye was in direct striking range of the baton blows while he attempted to secure the inmate in restraints, and he covered the inmate with his body. The baton strikes, which are very clear on the video recordings, were aimed primarily at the officers who attempted to secure the inmate. Mr. Shaukat testified that he was struck by an upward swing of the baton. According to Mr. Lamash's testimony, none of his baton strikes hit their target because the inmate was under the shield and under control.

[263] Mr. Shaukat was injured and required medical treatment at a local healthcare facility as a direct result of Mr. Lamash's insistence that a cell extraction was required, without proper attention to the employer's cell-extraction policies, the SMM, and most of all, the safety of his fellow officers and the inmate. It was not a minor infraction. Disregard for the safety of fellow officers cannot be ignored and requires a very severe penalty. Actions during an intervention of this nature must take into account the safety of the officers involved with respect to the inmate, the environs, and the tools to deploy. However, Mr. Lamash failed to recognize the degree of harm that could have happened to his colleagues and the inmate.

[264] From the video recordings, it is obvious that Mr. Lamash was focussed on one thing and that he did not consider other possibilities that would have posed a lesser threat to everyone involved. He did not retreat and consider other possibilities; nor did he consult his fellow officers to plan what each of them would do. The fact that the CMs on duty that day did not intervene did not relieve Mr. Lamash of his obligations to protect the safety of his colleagues, the inmates, and the institution.

[265] Given Mr. Lamash's inexperience with handling situations of this magnitude, and given the testimony of the other officers that inmate SW was talking to them,

albeit uttering threats against Mr. Lamash and possibly the other inmate in the cell, although it is not clear, and based on the viewing of the video recordings, Mr. Lamash's presence escalated the seriousness of the situation. Other officers were able to calm the situation. There was no urgency to remove inmate SW from the cell. The CM had been called to the scene. Mr. Lamash's actions were reckless.

[266] In my estimation, based on all the information before me, there was time for Mr. Lamash to remove himself from the situation and allow others to deal with it in a calmer manner. Time was not of the essence, and alternative measures were available to the officers, rather than a poorly executed and unplanned cell extraction. To me, it demonstrates an incredible lack of insight and judgement by Mr. Lamash, which resulted in officers being injured, a risk that the employer is justified in refusing to accept.

[267] I believe that the fact that the CXs used nearly identical language and format in their OSORs reflects the culture of correctional environment and not collusion. The officers used the format encouraged by the employer and a language common to them. This dialect was clear, as witnesses from both sides spoke in phrases and descriptions that were common, repetitive, and reflective of the format and content of the employer's policies and not entirely consistent with the video recordings, at times. The fact that their descriptions of the events were similar between the OSORs would not be unheard of in these circumstances. This alone is not sufficient to prove a meeting of the minds of the officers to alter the facts. Without audio to accompany the recordings, what the inmate said will never be known. Without proof of meetings or sufficient other evidence, as in *Finlay v. Deputy Head (Correctional Service of Canada)*, 2013 PSLRB 59, I cannot conclude that there was any collusion among the officers with respect to the contents of their OSORs.

[268] The employer's representative argued that through overt collusion or inadvertent collaboration, the CXs' stories came together using specific language calculated to justify the use of force. I do not accept that there was any collusion among the officers or pressure from Mr. Lamash about the contents of the OSORs that were filed about the incident. Nothing in the employer's evidence convinces me otherwise. I also do not believe that Mr. Lamash exerted pressure on his fellow officers with respect to the contents of their OSORs. They offered valid explanations as to when and how they wrote their OSORs, which do not implicate Mr. Lamash. The

employer failed to prove this allegation against all the grievors, but it is not fatal to its request that its decision to terminate Mr. Lamash be upheld. Even without this allegation, there is sufficient evidence to support his termination.

[269] Similar to the case in *Shaw*, in my assessment, Mr. Lamash did not demonstrate that he has a true understanding of the potential consequences of his actions, and no doubt, he would resort to the same tactics if faced with similar circumstances in the future, which would put the institution, the inmates, and his fellow co-workers at risk. He violated not only CD-060 but also the employer's *Code of Professional Conduct* by mistreating an inmate in his custody. Despite training in the proper methods of the use of force, with annual refreshers, he chose to use methods to control the inmate that were not part of his training, with which he was unfamiliar, and that in fact were excessive. The employer is justified in its concern about Mr. Lamash repeating this behaviour should it continue to employ him. Consequently, I do not believe that the employer was unreasonable or wrong in determining that termination was appropriate in the circumstances.

[270] The employer established that Mr. Lamash used excessive force against inmate HW and inmate SW. He failed to consider alternatives to intervene with these inmates and did not properly apply the SMM. He deployed weapons available to him improperly and applied techniques he had not been taught, which was contrary to policy. He violated the employer's use-of-force policies, including the SMM, and he failed to act in a manner expected of a role model who is a CX02. His actions put his fellow officers at risk and caused them harm. His actions were worthy of serious discipline that sent a message to others that the employer will neither accept nor condone such conduct. Given his position and classification, the cumulative nature of his offences, and his complete and ongoing denial of wrongdoing, the employer was justified in its loss of faith in the employment relationship. In *Wm. Scott* terms, the employer established grounds for discipline, and the discipline imposed was not excessive (see *Shaw*, *Newman*, and *Albano*).

[271] Having determined that the employer had cause to terminate Mr. Lamash, and given that the termination was made retroactive to the date of his suspension without pay, I need not consider whether the suspension without pay was disciplinary. The decision to terminate retroactively to the suspension date is justified given that the

grounds for the termination existed and were known at the time of the suspension. It was an appropriate date on which to terminate the relationship.

[272] It is very interesting that the employer saw fit to investigate this matter twice, despite the outcome of the investigation by Mr. Saint and Ms. Reddick and their report. Mr. Inkpen's evidence about the controversy related to that report is very interesting. But without corroboration from either Mr. Saint or Ms. Reddick, it falls into the category of hearsay. I cannot conclude anything other than that the employer chose not to accept the conclusions of Mr. Saint and Ms. Reddick, even though the description of the behaviour of the employer's representatives at the rebuttal and disciplinary meetings may support the conclusion that it expected the investigators to produce a report confirming its opinions and not conflicting with them.

[273] The investigative process is key to the requirements of natural justice. It is clear to me that the processes followed in this case, the multiple investigations, the failure to ask the grievors about the allegations against them, the refusal to accept alternative explanations, and the refusal to provide clarification when the grievors sought them means that it cannot be considered an unbiased process. However, hearings before an adjudicator are *de novo* hearings, and any prejudice or unfairness that a procedural defect might have caused are cured by the adjudication of the grievances (see *Maas v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 123 at para. 118; *Pajic v. Statistical Survey Operations*, 2012 PSLRB 70; *Tipple v. Canada (Treasury Board)*, [1985] F.C.J. No. 818 (C.A.)(QL) at 2; and *Patanguli v. Canada (Citizenship and Immigration)*, 2015 FCA 291). The grievors had a lengthy hearing before me and had ample opportunity to be heard correcting the employer's breach of natural justice during the disciplinary and investigative processes.

[274] Much time was spent discussing the role of CX GS at EI and his alleged interventions in the investigative process. It was not particularly relevant to me, other than to provide insight into EI's environment. As it was a hearing *de novo*, and the employer did not rely on evidence from CX GS, I have not drawn any conclusions based on hearsay evidence related to or alleged to have originated with CX GS.

[275] After reviewing Exhibits 5, 13, 14, 15, 16, 38, and 39, I have determined that they should be sealed because each one contains information related to inmates incarcerated in the institution. To determine whether such restrictions should be placed on the open court principle, an evaluation of the circumstances is required

against the test set out in *R. v. Mentuck*, 2001 SCC 76, which is known commonly as the “*Dagenais/Mentuck*” test, which was refined in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, in the context of civil proceedings.

[276] The Supreme Court of Canada recently revisited the test in *Sherman Estate v. Donovan*, 2021 SCC 25. The Court stated that the test laid out in *Sierra Club* continues to be the appropriate guide for the exercise of discretion in dealing with restrictions on the openness of proceedings. The Court explained that a person seeking a restriction must show:

- 1) retaining 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.

[277] The Court went on to recognize that an aspect of privacy is an important public interest for the purposes of the test, namely highly sensitive personal information that would result not just in discomfort or embarrassment, but in an affront to the affected person’s dignity.

[278] The report, OSORs, and video recordings in question identify people who are not party to this proceeding and who have the right to their privacy. Allowing their identities to become part of the record serves no public or judicial interest and would seriously risk their privacy interests, including their dignity. No reasonable alternative measure than a sealing order would prevent the risk, and the benefits of the order would outweigh its negative effects. For those reasons, I order sealed Exhibits 5, 13, 14, 15, 16, 38, and 39.

[279] The parties provided me with numerous cases to support their arguments, many of which were in common. While I have read each one, I have referred only to those of primary significance.

[280] In sum, I will conclude with answering the questions from the *Wm. Scott* case. Mr. Lamash provided the employer with cause for discipline that given the circumstances of this case and based on all the evidence, including the video recordings, the oral testimony, and the exhibits, demonstrates that the employer’s decision to terminate his employment was not an excessive response. Given this



conclusion, there is no need for me to consider any alternate measure that should be substituted in his case.

[281] For all of the above reasons, I make the following order:

*(The Order appears on the next page)*

**V. Order**

[282] The grievance in Board file no. 566-02-11251 is allowed.

[283] Mr. Shaukat shall be paid \$1000 plus interest at the Federal Court of Canada's prejudgement rate from the date of the disciplinary letter to the date of this decision and after that at the Federal Court of Canada's post-judgement rate until the payment date.

[284] The grievance in Board file no. 566-02-11254 is allowed.

[285] Mr. Pye shall be paid \$1000 plus interest at the Federal Court of Canada's prejudgement rate from the date of the disciplinary letter to the date of this decision and after that at the Federal Court of Canada's post-judgement rate until the payment date.

[286] The grievances in Board file nos. 566-02-10550, 10782, and 10783 are dismissed.

[287] Exhibits 5, 13, 14, 15, 16, 38, and 39 are sealed.

November 17, 2021.

**Margaret T.A. Shannon,  
adjudicator**