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



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

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BETWEEN

**STEVE DOE**

Grievor

and

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

Respondent

Indexed as

*Doe v. Deputy Head (Correctional Service of Canada)*

In the matter of an individual grievance referred to adjudication

**Before:** Gorette Fukamusenge, a panel of the Federal Public Sector Labour Relations and Employment Board

**For the Grievor:** Christophe Haaby, Union of Canadian Correctional Officers -  
Syndicat des agents correctionnels du Canada - CSN

**For the Respondent:** Andréanne Laurin, counsel

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Heard via videoconference,  
October 8 to 10, 2025.  
(FPSLREB Translation)

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**REASONS FOR DECISION****(FPSLREB TRANSLATION)**

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**I. Individual grievance referred to adjudication**

[1] The Federal Public Sector Labour Relations and Employment Board (“the Board”) is seized of a grievance filed by Steve Doe, the grievor. The grievance challenges a two-day suspension that was imposed by the Correctional Service of Canada (“the respondent”) on the ground that the grievor allegedly offered his weapon to an inmate during a medical escort.

[2] The grievance is allowed in part. The respondent’s concerns are legitimate, particularly with respect to its obligations to ensure the safety of its staff, the public, and the entire correctional community. However, the penalty cannot be upheld, on one hand, because it is excessive, and on the other hand, because it is primarily based on assumptions or speculative inferences. It is replaced by a verbal reprimand.

[3] At the time of the events, the grievor was working as a CX-02-level correctional officer at Archambault Institution. According to the evidence adduced to the record, this Institution has two units: one with minimum security and the other with medium security. It also houses the Regional Mental Health Centre (RMHC). The grievor was represented by the Union of Canadian Correctional Officers – Syndicat des agents correctionnels du Canada – CSN (UCCO-SACC-CSN or the “bargaining agent”). His conditions of employment were governed by the collective agreement between the bargaining agent and the Treasury Board for the Correctional Services group, which expired on May 31, 2018 (the “collective agreement”).

[4] On the day of the incident that led to the suspension, the grievor and another correctional officer, Remo Pierfelice, were escorting an inmate who was incarcerated at the RMHC to an outside medical clinic. The incident occurred in 2016, but it was not brought to the respondent’s attention until late 2018. The suspension was imposed in May 2019.

[5] The respondent determined that the grievor had intentionally acted inappropriately and had committed misconduct that could have had significant consequences. It concluded that the grievor had not complied with the *Code of Discipline*, the *Post Order*, the rules of professional conduct, and the *Values and Ethics Code for the Public Sector* (the “*Values and Ethics Code*”).

[6] The inmate involved did not participate in any way in this proceeding; as a result, his name will not be mentioned in this decision.

## **II. Summary of the evidence**

[7] The bulk of the evidence comes from the testimonies. The grievor testified on his own behalf, while the respondent called four witnesses: Mr. Pierfelice, correctional officer; Christian Houde, correctional manager; Eric Cyr, correctional manager; and Patricia Tranchemontagne, Acting Deputy Warden of Operations.

[8] All the witnesses testified to the best of their recollection, and no evidence calls their credibility into question.

### **A. For the respondent**

[9] Mr. Pierfelice is the correctional officer who was with the grievor at the time of the incident in summer 2016. His testimony was in English with simultaneous translation. He testified that to the best of his recollection, the grievor had, on two occasions, offered his weapon to the inmate and undone the safety device on his holster while they were in a waiting room of a medical clinic. He stated that he felt nervous and anxious, that he did not find the grievor's remarks to be normal, and that he took it as a joke. He explained that upon returning from the clinic, he immediately spoke to the grievor and expressed his dissatisfaction. He added that the grievor apparently then reassured him that it was not serious and that it was a joke. He stated that the rest of the escort went smoothly.

[10] When asked to provide the exact words spoken by the grievor, Mr. Pierfelice replied that he could not remember them with certainty. He allegedly said: “[translation] Are you looking at my weapon?”, “Would you like to take it?”, and “Do you want my weapon?” He testified that he took it as a joke until the safety device was removed. He added that he was in a state of shock and paralyzed. He could not remember if he had seen the inmate's eyes fixed on the firearm that the grievor was carrying.

[11] When asked why he had not reported the incident to management when it occurred in summer 2016, he replied that he felt guilty by association and feared that his colleagues would turn against him. He added that at the time, he was going through personal issues, but after what happened in Kingston, he decided to disclose

the information, despite saying that he was not sure whether he would face harassment. He explained that he had had a bad experience in the past and that he did not want to be harassed. He stated that he had confided in close colleagues, and that the information eventually reached Mr. Houde, who was his immediate supervisor. He added that after the incident, he worked with the grievor only once or twice.

[12] Mr. Houde testified that at the end of summer 2018, he had heard rumours that there was an officer who had offered his weapon to an inmate, but there was no name at first. According to his testimony, he had heard that it was Officer Pierfelice who was escorting along with the correctional officer who had allegedly offered a weapon to the inmate, and that the grievor's name came out later. He stated that he had considered the situation to be serious, and that he had summoned Officer Pierfelice and met with him, accompanied by his union representative. He added that he had asked Officer Pierfelice to put into writing what he had reported by email and that he had, in turn, forwarded the email to the Warden.

[13] Mr. Houde stated that the situation was serious, explaining that there had been a significant breach of both public safety and that of the correctional officers. He assumed that if the inmate had had a weapon in his hands, other correctional officers would have been forced to react. He stated the following: “[translation] If an officer asks an inmate if you want to have my gun, let's say the inmate would have answered yes, what would have happened? If the inmate had said yes, does that mean that [the grievor] was going to say yes? I don't know.”

[14] Mr. Cyr also testified for the respondent. When the incident was reported to management, he was an acting correctional manager. He participated in the disciplinary process, and he and Ms. Tranchemontagne signed the disciplinary letter. He testified that the main things that correctional officers are taught are to think about everyone's safety, to protect their firearm at all times, and not to offer it to anyone. According to him, the grievor's remarks could have posed a danger if the inmate had chosen to take the firearm.

[15] Mr. Cyr stated that, during the disciplinary meeting, the grievor explained that it was a joke and that his comment was not serious. He added that he did not remember the exact words that the grievor had used during that meeting.

[16] In response to the question about the security issues that could arise from the hypothetical situation of giving or offering a firearm without removing the safety feature, Mr. Cyr replied as follows: “[translation] Offering the weapon puts the idea in the inmate’s head that they could come and take the weapon. I remember that it was an inmate who had a mental health condition; he would have reacted differently.”

[17] As for Ms. Tranchemontagne’s testimony, it focused on the alleged facts and the rules that were violated. According to her testimony, the grievor was accused of having offered his firearm to the inmate, and then of having removed the weapon’s safety feature. When asked how offering his firearm to an inmate would be misconduct, Ms. Tranchemontagne explained that the grievor had violated the conduct and safety rules. She testified as follows: “[translation] It has a significant impact, a major consequence, it’s unacceptable, and it violates all the basic rules of a correctional officer. You cannot lend your weapon to a colleague, let alone to a criminal.”

[18] Ms. Tranchemontagne suggested that there could be significant short-term and long-term repercussions. According to her testimony, in the short term, it affects colleagues and the public. It can have various consequences, as it tarnishes the respondent’s reputation. She testified as follows:

[Translation]

*This type of verbalized offer, if conveyed within the Institution, can create other incidents; it tarnishes the professionalism of our officers and the organization. It can create a loss of trust and have several repercussions when colleagues lose trust in each other.*

[19] She specified that the inmate was incarcerated at CSC and that this centre accommodates people with needs ranging from medium to high levels. She suggested that there were risk factors if his mental health was not stable. She testified as follows: “[translation] Here, we are talking about a firearm being offered. Can he tell whether or not the offer is real?”

[20] Ms. Tranchemontagne continued her testimony by pointing out the lapses that had led to the disciplinary action. She criticized the grievor for not demonstrating professionalism, and she mentioned that he had violated ss. 5, 6, 7, 8, and 10 of the *Code of Discipline*.

[21] For reference, these sections of the *Code of Discipline* read as follows:

**Responsible Discharge of Duties**

5. Staff shall conduct themselves in a manner which reflects positively on the Public Service of Canada, by working co-operatively to achieve the objectives of the Correctional Service of Canada. Staff shall fulfil their duties in a diligent and competent manner with due regard for the values and principles contained in the Mission Document, as well as in accordance with policies and procedures laid out in legislation, directives, manuals and other official documents. Employees have an obligation to follow the instructions of supervisors or any member in charge of the workplace and are required to serve the public in a professional manner, with courtesy and promptness.

...

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

...

f. fails to take action or otherwise neglects his/her duty as a peace officer;

...

**Conduct and Appearance**

7. Behaviour, both on and off duty, shall reflect positively on the Correctional Service of Canada and on the Public Service generally. All staff are expected to present themselves in a manner that promotes a professional image, both in their words and in their actions. Employees dress and appearance while on duty must similarly convey professionalism, and must be consistent with employee health and safety.

...

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

a. displays appearance and/or deportment which is unbecoming to an employee of the Service while on duty or while in uniform;

b. is abusive or discourteous by word or action, to the public, while on duty;

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

...

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

a. interferes with the work of others;

b. is abusive, by word or action, to other employees, while on duty or under circumstances related to his/her duties;

...

f. disregards established safety practices;

...

[Emphasis in the original]

[22] The disciplinary letter also states that the grievor violated ss. 4.2 and 5 of the *Values and Ethics Code*. These sections read as follows:

*4. Stewardship*

Public servants shall use resources responsibly by:

...

*4.2 Considering the present and long-term effects that their actions have on people and the environment.*

...

*5. Excellence*

Public servants shall demonstrate professional excellence by:

...

[23] In response to the question of how offering a weapon would violate s. 5 of the *Code of Discipline*, Ms. Tranchemontagne explained that correctional officers must maintain professional behaviour, both in their verbal communications and in their actions. According to her, giving a firearm to an offender was not professional. This was not the type of behaviour expected from staff. She testified as follows: “[translation] The question is whether what we are doing is appropriate for the public; it was unacceptable, it tarnishes the profession and the correctional service.”

[24] She added that the grievor had violated the *Post Order*, stating that according to this document, a correctional officer must make sure to protect his or her firearm and stay vigilant. According to her, offering his weapon to the inmate could incite him to act out and take the weapon as if it were a genuine offer. The fact that he offered it goes against the protocol to stay vigilant and keep a distance.

[25] Similarly, she stated that the grievor had not followed the situation management model. She explained that this instrument requires correctional officers to constantly assess situations involving an inmate.

**B. For the grievor**

[26] During his testimony, the grievor confirmed that at the time of the incident, he was working at Archambault Institution as a CX-02 level correctional officer and that he was assigned to one of the institution’s cell blocks. He stated that he frequently did

shifts as an escort, often took his colleagues' escorts and that was how he regularly ended up on the road.

[27] In terms of responsibilities, he stated that a correctional officer at the CX-02 level has a certain level of responsibility. For example, he stated that the correctional officer is responsible for inmates and becomes a contact person for them. He explained that during the incident in summer 2016, there were two correctional officers, but he was the one in charge of the escort. He added that as a CX-02 level correctional officer, he regularly worked armed. He liked doing escorts, according to him, unlike many other colleagues.

[28] With respect to the incident in question, he stated that he, Officer Pierfelice and the inmate were all inside a waiting room with the door locked. He said that this was a large room, there was a good distance between one another and the inmate was seated against the wall. He stated that he had interacted with the inmate in the past, and that he had done escorts several times. He stated that the inmate was staring above his firearm and that his reflex was to ask an intervention question he had apparently used in the past. He stated that each time, he asked the following question: "[translation] Do you want my firearm?" This allowed him to check the inmate's intentions. He explained that the approach involves asking affirmative questions to see how the person reacts.

[29] When asked about the inmate's reaction, the grievor stated that the inmate did not seem to understand the question and was stunned. He specified that he had asked the question again and that the inmate had laughed, and they had moved on to other discussions, which had lightened the mood. According to him, the purpose of asking these questions directly and in a humorous way is to maintain a direct connection with the inmate. He added that they had continued to chat with the inmate and that the situation had been resolved by the two questions.

[30] In terms of distance, he said that the inmate was more than six to eight feet away from him and his colleague. He stated that the inmate was to his right, opposite him, and that there was a wall behind him. He said that this positioning led him to believe that the inmate was staring at his firearm, since there was nothing else to look at in that place but the wall.

[31] He concluded his testimony by stating that, when he had returned to work temporarily at the end of 2018 after a year and a half of leave, he learned that he was the subject of a disciplinary investigation into the incident and that it had shaken him.

### **III. Confidentiality order**

[32] The respondent requested a sealing order for the document titled *Post Order*, as it contains sensitive information about the responsibilities and duties of a correctional officer during medical escorts. The grievor did not object.

[33] I have granted the requested order; therefore, no excerpts from this document will be reproduced in this decision.

[34] The Board is subject to the open court principle, so I must explain my reasons for that decision. By applying the three-part test for granting a confidentiality order developed in *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38, I conclude that making this document accessible to the public would pose a serious risk to an important public interest, namely protecting the safety of the respondent's staff, the public, and the entire correctional community.

[35] The sealing order must apply to the entire document to preserve the confidentiality of the security protocol during escorts; redaction would not have been a satisfactory alternative. Moreover, no other reasonable alternative would adequately mitigate this risk. Thus, the order respects the principle of proportionality, as the benefits of sealing this sensitive information outweigh the negative effects of limiting the open court principle in this case.

### **IV. Disciplinary grievances**

[36] The parties agree that the legal analysis framework applicable in cases of disciplinary action is that outlined in *Wm. Scott & Company Ltd. v. Canadian Food and Allied Workers Union*, Local P-162, [1977] C.L.R.B.D. 1 ("*Wm. Scott*"). The analytical framework proposes a sequential approach of three distinct steps. The first step is to determine whether the grievor committed the misconduct or wrongdoing that led to disciplinary action. If the respondent is unable to establish misconduct, the other two steps are no longer relevant. If misconduct is established, the second step is to decide whether the disciplinary action was proportionate to the alleged wrongdoing. If not,

the third step helps to substitute the disciplinary action with another appropriate penalty.

[37] The parties presented arguments to meet the requirements of the *Wm. Scott* test, the summary of which will follow.

## **V. Summary of the arguments**

### **A. Absence or existence of the alleged misconduct**

[38] The respondent maintains that the grievor offered to let an inmate handle his firearm. It argued that, through his remarks, the grievor did not comply with his post order, and that he violated the *Code of Discipline* and the *Values and Ethics Code*.

[39] According to the respondent, the evidence establishes that in summer 2016, the grievor and Officer Pierfelice were providing a medical escort to an outside clinic. While they were waiting in a room at the clinic, the grievor offered to let the inmate handle his firearm twice. During her testimony, Ms. Tranchemontagne explained how the grievor's remarks violated various policies and explained the potential short-term and long-term repercussions. She clearly explained that there were several other ways to obtain information about the inmate's intentions, but asking the inmate if he wanted his weapon was certainly not one of them.

[40] According to the respondent, the grievor's position implies that since there was no security breach incident, his behaviour does not constitute misconduct. The respondent disagrees; you should not wait for a security incident to occur before taking action. It is responsible for ensuring safety and protecting the public. All of its employees must follow its directives and policies rigorously and professionally to prevent security incidents from occurring. It is important for the employer to act before a security incident occurs.

[41] The respondent also mentioned that the grievor had admitted to making those statements, although it did not take into account the intent behind them.

[42] According to the respondent, the misconduct has been established.

[43] For his part, the grievor denies the accusations made by the respondent and claims that he did not commit any misconduct. According to him, the respondent did

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not prove that there was a breach of the *Code of Discipline*, the rules of professional conduct, or the *Post Order*.

[44] The grievor questioned the accuracy of the terms used, emphasizing their importance, explaining that they were interpretations such as “offering the weapon” or “offering to handle the weapon.” According to the grievor, the Dictionnaire Larousse defines the verb “to offer” as the act of making something available to someone without them asking for it, proposing it to them, or allowing them the opportunity to do something. He maintains that his comments were limited to questioning the inmate’s willingness, and not to handing him the firearm or offering him the chance to handle it, as the respondent claims.

[45] The expression “to offer a weapon” carries the connotation that he is making his weapon available to the inmate. The grievor refuted the respondent’s interpretation based on the phrases “[translation] do you want my gun?” or “[translation] do you want to take my gun?”, according to Officer Pierfelice’s testimony. He insisted that none of these expressions show that the grievor would have offered to let the inmate take the weapon or would have invited him to come take it. The Dictionnaire Larousse defines the verb “to want” as desiring something or having the intention to; these nuances are important.

[46] The grievor asked the Board to dismiss the testimonies of Mr. Cyr and Ms. Tranchemontagne about the exact terms used, on the grounds that these witnesses were not present in the clinic room, that these terms do not appear in Officer Pierfelice’s email, and that they had never met him as part of the disciplinary process.

[47] Furthermore, the grievor claimed that it was an incident without any audio or video recording. According to him, although three people were involved in the incident, only two people testified: he and Officer Pierfelice. He suggested that their testimonies do not contradict each other and that, since the inmate was not called to testify, only these two testimonies can help establish the facts.

[48] Referring to *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), the grievor returned to the concept of witness credibility. He argued that in the absence of direct testimonies, this is a situation where the facts are the same, but each witness has his own interpretation for the words spoken. A sentence can take on a different meaning depending on the intonation used, the context, the terms employed, the speaker, the

distance or the listener's understanding. The grievor argues that neither he nor Officer Pierfelice lied in their testimonies; rather, they offered their own interpretation of the phrases in question. It is therefore possible that the two testimonies that seem contradictory are not actually so.

[49] Citing *F.H. v. McDougall*, 2008 SCC 53 at para. 46, the grievor insisted that evidence must be clear and satisfactory to meet the burden of proof on a balance of probabilities. In his opinion, the respondent did not prove that either the *Code of Discipline* or the rules of professional conduct had been violated. It did not establish that the grievor committed the alleged misconduct.

[50] The grievor also argued that each witness stressed the importance of non-verbal communication and the correctional officer's ongoing analysis of each situation. He argued that he had used his discretion to act in response to the inmate's sustained gaze at his firearm. He stated that after he asked the question, the inmate stopped looking at the firearm.

[51] The grievor also argued that he was inspired by suicide prevention training, which taught that one of the ways to truly understand what is happening is to ask a direct question. According to him, that is exactly what he did in this situation.

[52] He also questioned the disciplinary investigation, claiming that it was incomplete. According to him, Ms. Tranchemontagne and Mr. Cyr were not aware of the facts because they did not speak with the inmate about the situation. The investigation lacked certain aspects that could have been verified by the respondent. The grievor did not specify what those aspects were. Citing *Stann v. Deputy Head (Correctional Service of Canada)*, 2018 FPSLRB 5 at paras. 71 to 73, he reiterated that the investigation was incomplete and biased.

[53] It is well established that a penalty based on incomplete facts will be overturned. To support this argument, the grievor cited *King v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 84 at para. 106.

[54] The grievor revisited the testimonies of Ms. Tranchemontagne and Mr. Cyr who conducted the investigation for the respondent. He stated that these witnesses had testified that they did not find it relevant to question the inmate or Officer Pierfelice about what had happened in the waiting room at the clinic. They based it on the email

that Agent Pierfelice had prepared. According to the grievor, in a complete disciplinary process, the least that could have been done was to talk to Officer Pierfelice to understand the email he had prepared and sent to Mr. Houde.

[55] The grievor insisted that nothing had happened following the question he had asked, as the inmate had shown no negative reaction and no incident had occurred.

#### **B. Proportionality of the disciplinary action**

[56] The respondent maintained that the discipline imposed was reasonable. It stated that it had considered the impact of the grievor's remarks, the role of a correctional officer, and the seriousness of the misconduct. The respondent emphasized Officer Pierfelice's testimony. In its view, Officer Pierfelice testified that this event had shocked him, that he felt his safety was compromised, and that he felt very anxious. Furthermore, he testified that after this incident, he had spoken with the grievor to show that he disagreed with it.

[57] According to the respondent, Officer Pierfelice did not report the incident to management in 2016 due, in part, to the potential consequences that this statement could have his colleagues' respect for him at work. There is a code of silence that exists among correctional officers. To support this argument, the respondent cited *Sandhu v. Deputy Head (Correctional Service of Canada)*, 2018 FPSLREB 63 at paras. 48, 57, 105, 110, and 114.

[58] The respondent revisited the grievor's testimony. It stated that, although the grievor claims to have no memory of the impact of the incident and that his colleagues did not feel threatened in that respect, it is of the opinion that, on the contrary, rumours were circulating among the officers that a correctional officer had offered a firearm to an inmate. According to the respondent, this is how the information was brought to management's attention, two years later. It suggested that if the situation had been trivial, rumours would not have circulated among the correctional officers. Relying on *Faryna*, it invited the Board to conclude that it was more likely that Officer Pierfelice felt anxious and shaken as a result of this incident and that he discussed his discomfort with the grievor on the way back.

[59] According to the respondent, Ms. Tranchemontagne clearly explained that there were several ways to verify the inmate's intentions, but asking him if he wanted his

weapon was certainly not one of them. As a result, she had decided to impose a disciplinary action of two days' suspension. The grievor also testified that following the disciplinary process, he agreed that other questions could have been asked. He even added that in consideration of management's concerns, he had asked questions differently during subsequent escorts.

[60] The respondent stated that the corrective goal of the disciplinary action had been achieved, considering that it had caused the grievor to change his questions to inmates. It stated that this was the best evidence to demonstrate that the disciplinary action was reasonable under the circumstances.

[61] The respondent cited *Labadie v. Treasury Board (Correctional Service of Canada)*, 2006 PSLRB 53, to show some similarity to this case. It stated that, in *Labadie*, a correctional officer had left his post with his weapon on his belt to intervene among inmates, which was inconsistent with the responsibilities and duties established by his post order. The correctional officer received a penalty equivalent to four days' pay. The respondent had considered that it was a matter of safety, that fellow officers felt threatened, and that the grievor seemed to downplay the seriousness of his actions.

[62] The respondent also invoked the role of a correctional officer, stating that he or she plays a very important role in our society. Referring to Ms. Tranchemontagne's testimony, it explained that the correctional officer must ensure the control and safety of an inmate while working with them on rehabilitation. A correctional officer is also responsible for protecting the public. In this respect, Ms. Tranchemontagne asked whether the officer's behaviour would have been considered acceptable by a member of the public if he had a small camera on his shoulder, and her answer had been a categorical no.

[63] The respondent also argued that correctional officers must be held to a higher standard of conduct. To support this argument, it cited *Desjarlais v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 88 at para. 151. It stated that, in this case, the correctional officer who had left a door unlocked while she was distracted was suspended for one day for neglecting her duties. The Board had reduced the discipline to a written reprimand.

[64] The respondent emphasized the seriousness of the misconduct. Seriousness is an aggravating factor in the circumstances. According to the respondent, the grievor did not seem to acknowledge during his testimony that his remarks carried a certain degree of seriousness; however, Officer Pierfelice, Mr. Cyr, Ms. Tranchemontagne, and Mr. Houde all testified to the seriousness of the grievor's remarks and the possible consequences that such remarks could have entailed.

[65] The respondent suggested that, under the circumstances, a two-day suspension was reasonable and appropriate given the seriousness of the misconduct. In its view, it imposed a sufficiently heavy penalty to ensure that such behaviour did not happen again. It argued that a respondent can impose a sufficiently heavy penalty to meet a deterrence requirement. To support this argument, it cited *Eden v. Treasury Board (Canada Border Services Agency)*, 2011 PSLRB 37 at paras. 61 and 62. It stated that, in *Eden*, the grievor was a Border Services officer. A 10-day suspension was reduced to five days on the grounds that the disciplinary action should be corrective and progressive.

[66] The respondent also referred to *Bhikoo v. Deputy Head (Correctional Service of Canada)*, 2012 PSLRB 122. It stated that in this case, a correctional officer had asked his colleague, during a medical escort, to lend him his weapon in order to scare the inmate being escorted. One of the officers on the escort was the only one armed. The respondent rejected the grievor on probation due to the inappropriate nature of his comments and the fact that his behaviour compromised its standards and guidelines. According to the respondent, the facts of that case are similar to those of this case, as the decision especially highlights the seriousness that the respondent attributes to this kind of conduct. According to the respondent, serious action may be necessary to strengthen deterrence.

[67] The respondent also argued that the grievor testified that he had asked the disputed question to find out the inmate's intentions. He did not provide this information to management during the meeting that had been organized to present him with the disciplinary action.

[68] The respondent also referred to the events in Kingston, emphasizing that this demonstrated that medical escorts could end badly and that there were several issues to consider. It did not clarify these issues.

[69] Ultimately, the respondent asked the Board to deny the grievance.

[70] For his part, the grievor refuted the respondent's arguments about the impact of his remarks on Officer Pierfelice. He maintained that he could not control how the latter had perceived his question to the inmate nor how he had interpreted his remarks. The grievor returned to the testimonies of Mr. Cyr and Ms. Tranchemontagne, stating that the impact of the question at issue was very significantly negative on the public. Although he admitted that he agreed that a correctional officer could not give their firearm to an inmate, he insisted that it was very clear from all the evidence that this had never been the case.

[71] Officer Pierfelice testified that he had a discussion with the grievor about the situation. If this discussion took place, it would have happened in the vehicle, on the way back and away from any public presence. According to the grievor, it was also very clear in his testimony and that of Officer Pierfelice that the three were alone in the room. There were no members of the public in the room and no one heard the question asked of the inmate.

[72] The grievor questioned the testimonies of Mr. Cyr and Ms. Tranchemontagne, which he believes are hypotheses and assumptions about what could have happened if a correctional officer had asked an inmate, "[translation] Do you want a weapon?" He argued that there was no evidence of similar situations that would suggest an incident was going to occur.

[73] The grievor insisted that under no circumstances had he failed to protect his firearm, that he had not made his firearm available to the inmate, or that he had not reduced the safe distance between himself and the inmate. He reiterated that the respondent had not clearly and convincingly proven that he had violated the rules of discipline or the rules of professional conduct.

[74] He suggested that if the Board believed he had violated the *Code of Discipline*, the penalty imposed was excessive. To support this argument, he stated that he had no disciplinary record. He also argued that he had changed the way he asked questions to avoid creating ambiguity during subsequent escorts. He also cited his extensive expertise related to his professional career. He added that he had expressed remorse and that he had an understanding of how his comments could be perceived. However, he insisted that he could not be attributed with intent when that is not what he meant.

According to him, the fact that he did not admit to wanting to give the firearm to the inmate cannot be seen as a lack of remorse. To support this argument, he cited *Scott v. Deputy Head (Correctional Service of Canada)*, 2022 FPSLREB 104 at paras. 193 and 194.

[75] According to the grievor, progressive discipline is a principle that has been so well established by the courts that the parties found it appropriate to include it in their Global Agreement. He referred to Part III, clause 1a) of the collective agreement. He suggested that the respondent had not adhered to the principle of progressive discipline. According to him, given that he had no disciplinary record, and considering the mitigating factors and that it does not constitute serious misconduct as defined in the Global Agreement between the respondent and the bargaining agent, and the fact that the respondent did not demonstrate that the alleged misconduct constituted serious misconduct, the penalty imposed was excessive.

[76] The grievor then requested reimbursement for the two days of suspension at the applicable rate, compensation for bonuses, adjustments to his pensions and his leave credits, if applicable, and any other rights granted to him by the collective agreement, along with legal interest.

## VI. Reasons

### A. The alleged misconduct

[77] It is appropriate to start by reviewing the disciplinary letter. It accuses the grievor of violating the *Code of Discipline*, the rules of professional conduct, and the *Values and Ethics Code*, on the grounds that he allegedly offered to let an inmate to handle his firearm or asked him if he wanted to take his firearm. The letter recalls that the *Code of Discipline* and the *Values and Ethics Code* are an integral part of the grievor's conditions of employment.

[78] The letter states that, during the disciplinary meeting, the grievor acknowledged that he often joked with inmates at CSC and that, in this case, he believed it was a tasteless joke and that he had not considered how others might interpret it.

[79] The letter concludes that the employee intentionally acted inappropriately and had “[translation] ... **committed misconduct that could have had significant**

**consequences”** [emphasis added]. The letter imposes a two-day suspension as disciplinary action.

[80] It is worth noting that this letter does not mention the violation of the *Post Order*, although this point was raised in Ms. Tranchemontagne’s testimony. Furthermore, the fact that he undid the firearm holster mechanism is not mentioned in this letter, although this factor was noted in Officer Pierfelice’s testimony. These factors will therefore not be taken into consideration in this decision. The disciplinary letter is based solely on the question that the grievor asked of the inmate; only this issue is central to this decision.

**B. The applicable legal analysis framework: the test set out in *Wm. Scott***

[81] The parties agree on the applicable framework for analysis, which is the one stated in *Wm. Scott*. However, they disagree on whether or not there was misconduct or a just and reasonable cause justifying the suspension. In any case, a hearing before the Board is a *de novo* hearing. In other words, the Board is not bound by the reason given by the respondent. It must conduct a new examination to determine whether there has been misconduct.

[82] To this end, it has been established that the respondent is responsible for proving, on a balance of probabilities, the existence of wrongful behaviour or misconduct that justifies the penalty and, where applicable, that the penalty is proportionate.

[83] As I previously stated, the test outlined in *Wm. Scott* consists of three distinct steps (see *Walker v. Canada (Attorney General)*, 2020 FCA 44 at para. 4, citing *Basra v. Canada (Attorney General)*, 2010 FCA 24 at paras. 24 to 26). These three steps are as follows:

- 1) Determine whether the grievor’s behaviour warranted disciplinary action being taken.
- 2) If so, determine whether the disciplinary action imposed was excessive in all the circumstances.
- 3) If the disciplinary action was excessive, determine what other penalty would have been appropriate.

**1. Did the behaviour attributed to the grievor constitute misconduct?**

**a. The facts and evidence related to the misconduct**

[84] Determining whether there was misconduct is based on the examination of the facts, and in this case, they are relatively straightforward. At the time of the incident that led to the penalty, the grievor held the position of correctional officer at the CX-02 level at Archambault Institution and had significant experience in the field of security. During summer 2016, he was tasked with providing a secure escort at an outside medical clinic and was accompanied by his colleague, Officer Pierfelice. This escort involved an inmate incarcerated at Archambault Institution.

[85] The uncontested evidence indicates that the grievor, Officer Pierfelice, and the inmate were in a waiting room at an outside medical clinic. The grievor apparently noticed that the inmate was staring intently at his firearm. During his testimony, the grievor stated that he asked the inmate if he wanted his weapon. He explained that it was a direct question aimed at assessing the inmate's intentions for his firearm, noting that he had used a similar question in the past. He also emphasized that the inmate was handcuffed during this incident.

[86] The evidence also established that it was not until two years later, in November 2018, that rumours related to this incident began to circulate and came to the attention of Mr. Houde, the immediate supervisor of Officer Pierfelice. He stated that he did not report the incident at the time it occurred, in 2016, due to personal difficulties and fear of retaliation.

[87] After meeting with Officer Pierfelice in late November 2018, Mr. Houde asked him to write an email report on the 2016 incident. Following this report, management met with the employee and imposed a two-day suspension on him.

[88] The evidence also shows that the incident had not been brought to management's attention until the time when the media was reporting events involving an inmate who had seized a firearm from a correctional officer at Kingston General Hospital in Ontario during a medical escort. It should be noted that these incidents are not before the Board and have no impact on this decision.

[89] The respondent penalized the grievor on the grounds that he allegedly committed misconduct. Thus, the first question I need to decide on is whether there

was misconduct by the grievor. To answer this question, I wondered if the question that the grievor asked the inmate could constitute misconduct. What is misconduct?

**b. The definition of misconduct**

[90] The codes and policies cited by the respondent as having been violated do not expressly define what constitutes misconduct. In order to determine whether the grievor's behaviour constituted misconduct, I drew on certain definitions from a few decisions that analyzed this concept. For example, in *Pugh v. Deputy Head (Department of National Defence)*, 2013 PSLRB 123 at para. 137, the Board, citing the second edition of the *Canadian Oxford Dictionary*, stated that misconduct is defined as "improper or unprofessional behaviour."

[91] I also drew inspiration from the comments of the Federal Court of Appeal at page 336 of *Canada (Attorney General) v. Tucker*, 1986 CanLII 6794 (FCA), [1986] 2 FC 329. Although this decision was made in a case dealing with issues involving the application of the *Employment Insurance Act* (S.C. 1996, c. 23), I find that the following comments are general in scope and can apply to the case at hand:

...

*... In my view, the concept of misconduct is applicable to any behaviour, abnormal in itself or regrettable in its effects, for which a person may be to blame; and its application requires the consideration of all surrounding circumstances, such as, in the case of an employee, the nature of his duties, his intention at the time of the incident, the certainty, probability or mere possibility, immediate or remote, that his ability to satisfactorily perform his duties would be affected or that unfortunate consequences would ensue, the gravity of those consequences, etc. So a practical and moral judgment based on totality of the circumstances is involved....*

...

[92] The determination of misconduct depends on the circumstances of each case. In the circumstances of the present case, considering the nature of the grievor's duties and keeping in mind the definitions mentioned above, I find that the question he asked the inmate can be classified as misconduct in this context. I believe that at the very least, the grievor has "display[ed] appearance ... which is unbecoming" and did not present himself "... in a manner that promotes a professional image ...", contrary to the rules of the *Code of Discipline*. Even if the grievor had wanted to make a joke or

check the inmate's intentions, the comment represented a marked deviation from the standards of conduct that the respondent is entitled to expect from its correctional officers.

[93] The grievor argued that he had asked a question to check the inmate's intentions, but he had no intention of allowing the inmate to take his firearm. I have no doubt about this statement's reliability or its credibility. The courts recognize that the presence or absence of intent is a relevant factor when assessing misconduct and its seriousness. They also state it possible to find that misconduct occurred that warrants disciplinary action in the absence of intent. (See, for example, *Tucker and N.L. v. Treasury Board (Department of National Defence)*, 2023 FPSLREB 119 at para. 112).

[94] As he himself acknowledged, the grievor asked an inappropriate question, without intent, but also without assessing or understanding the possible consequences, which reflects a serious lack of judgment.

[95] Citing *F.H.*, the grievor suggested that the evidence presented by the respondent was neither clear nor convincing. He claimed, in this respect, that the respondent had used different expressions, such as "[translation] offering his firearm to the inmate" and "[translation] offering to let an inmate handle his weapon", which were subject to differing interpretations, and that it had attributed intentions to him that he did not mean.

[96] I do not agree with that claim. I find that the evidence is unambiguous. The grievor admitted to having asked a direct question to find out whether the inmate, who was staring at his firearm, wanted it. It seems that this question was asked more to see the inmate's reaction than to get an answer, without caring about the possible outcome. Regardless of the expressions used, it is undisputed that the grievor did indeed ask such a question. The only disagreement is that the grievor claims he had no intention of offering his firearm to the inmate or encouraging him to take it.

[97] It should be noted that correctional officers also have the status of peace officers and are required to meet a very strict standard of conduct (see *Besirovic v. Deputy Head (Correctional Service of Canada)*, 2021 FPSLREB 33 at para. 103; and *Bridgen v. Deputy Head (Correctional Service of Canada)*, 2012 PSLRB 92 at para. 106). It seems to me that the grievor, given his role and status, failed to meet this standard.

In any case, as I have already stated, misconduct, as defined above, can be considered regardless of intent.

[98] On the other hand, the grievor stated that there were irregularities in the disciplinary investigation process, particularly because management did not meet with the inmate to obtain his version of events and that Ms. Tranchemontagne and Mr. Cyr, who imposed the disciplinary action, also did not meet with Officer Pierfelice. This argument is irrelevant. The process before the Board is a *de novo* process. The grievor had the opportunity to present his case, and to state his facts and arguments, and no evidence shows that the disciplinary procedure caused irreparable harm. Thus, even if such irregularities had occurred, they were addressed by this process before the Board, which is based on a new examination of the facts and evidence presented.

[99] Having concluded that misconduct occurred, the next step is to determine whether the suspension was an excessive disciplinary action in the circumstances.

## **2. The disciplinary action was excessive in the circumstances**

[100] Determining whether the suspension was excessive requires weighing all circumstances, including aggravating and mitigating factors. In this case, I acknowledge the seriousness of the grievor's misconduct, but also the absence of intent, the acknowledgment of the wrongdoing, his honesty, his remorse, and his disciplinary record, which was impeccable until the disciplinary action was taken, as mitigating circumstances. I conclude that these far outweigh the aggravating circumstances.

[101] The grievor maintained that the suspension was excessive, that it did not comply with the principle of progressive discipline, and that it was contrary to the Global Agreement. I did not find it necessary to resort to this agreement to determine the proportionality of the disciplinary action imposed in the circumstances of this case.

[102] In any case, I agree with the respondent's argument about the importance of intervening proactively and not waiting for another incident to occur. However, it does not follow that every blameworthy behaviour or misconduct must systematically result in a penalty. In his arguments, the respondent stated that it "imposed a sufficiently heavy measure to ensure that such behaviour does not happen again". The disciplinary

letter states that the grievor had already acknowledged that he had made “[translation] a tasteless joke”, without anticipating the possible interpretations, and that he had since reflected seriously on his behaviour and committed to changing it. In these circumstances, there was nothing to correct.

[103] Furthermore, considering the principles of the corrective goal of discipline, proportionality, and progressive discipline, imposing a suspension was not justified in this context. In fact, in addition to his impeccable disciplinary record, the grievor had acknowledged his misconduct. He had expressed remorse and a sincere desire to change. All these factors constitute mitigating circumstances that argue for a non-punitive response. Although the grievor was blamed for asking a careless question, he did not deny the words he allegedly said. He challenged the intent attributed to them by the respondent. This does not equate to a lack of remorse.

[104] More specifically, the disciplinary action in this case is primarily based on a need for prevention, based on assumptions about what could have happened depending on the inmate’s reaction. Assumptions can make anything possible, but they do not establish a fact. In the circumstances, I believe that a warning or a reminder would have been sufficient to achieve the goal of prevention and correction, without resorting to punitive action. Disciplinary action is not primarily intended to punish, but is a tool to correct misconduct or inappropriate behaviour. However, not all misconduct necessarily justifies disciplinary action being taken when the goal of correction can be achieved through non-punitive means.

[105] The respondent referred to certain Board decisions, including *Labadie*, *Desjarlais*, and *Bhikoo* to support its argument that the disciplinary action was “reasonable,” to use its own words. The circumstances in those cases are not comparable to those in this case.

[106] In *Labadie*, for example, the grievor received a four-day suspension for entering his control post with his firearm, even though it was prohibited.

[107] In *Desjarlais*, a day of suspension was imposed on the grievor for keeping a door open to the main communications and control post. The suspension was reduced to a written reprimand.

[108] Although *Bhikoo* deals with a medical escort as in this case, the facts are not similar. In *Bhikoo*, it was about a correctional officer who kept asking his colleague to give him his firearm to scare an inmate while they were conducting a medical escort. In this case, the grievor asked the inmate a question to check his intentions because, he said, he was staring at his firearm.

[109] All these situations present significant factual differences.

### **3. What other disciplinary action could have been imposed?**

[110] As I have already stated, I am not convinced that a two-day suspension was necessary to correct the grievor's behaviour, as he had already acknowledged his mistake and taken steps to remedy it.

[111] Although the grievor's misconduct has been established, the respondent has not demonstrated that imposing a financial penalty was necessary to achieve the goal of correction. Therefore, the disciplinary action was not justified. It is excessive and not in accordance with the principle of proportionality. It is reduced to a verbal reprimand.

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

*(The Order appears on the next page)*

**VII. Order**

[113] The grievance is allowed in part.

[114] I order the respondent to reimburse the grievor for financial losses and other benefits due to the two-day suspension, all with legal interest as well as an adjustment of pensions and his leave credits, if applicable, and any other rights conferred to him by the collective agreement.

[115] I also order the sealing of the *Post Order*.

[116] I will remain seized of this case for a period of 120 days from the date of this decision to address any issues arising from the implementation of this order.

March 9, 2026.

FPSLREB Translation

**Goretti Fukamusenge,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**