



Mailed S29pm

September 29, 2011

59320-20/09-051

CS# s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing further to your letter dated September 27, 2011, received at the Investigation & Standards Office (ISO) on September 29, 2011, requesting a review of a disciplinary hearing conducted at North Fraser Pretrial Centre (NFPC). Pursuant to s. 29(2), Correction Act Regulation (CAR), I obtained and reviewed the documents, listened to the audio record and reviewed two DVR (Digital Video Recording) pertaining to the allegation that you breached s. 21(1)(d), CAR.

According to the documents, the charging officer reported that you breached s. 21(1)(d), CAR which states that "an inmate must not wilfully or recklessly damage or destroy property that is not the property of the inmate." Specifically, the officer reported that you broke the phone receiver holder on the first tier phone.

The first hearing officer disqualified himself when it became evident that he was mentioned in the circumstances. When the proceedings were reconvened with a different hearing officer, you plead not guilty to the allegation. The hearing officer heard testimony from the charging officer, your explanation of the circumstances and reviewed two DVR footages pertaining to this matter.

After listening to the evidence presented and in reviewing the DVR evidence, the hearing officer found you guilty of the charge. The hearing officer commented that he observed you striking the telephone with force. After reviewing and discussing your institutional history, the hearing officer imposed five days segregation, to be served concurrently with the segregation penalty you were serving at that time.

In review, I found your hearing administratively fair. I also support the decision made and I found the penalty reasonable, under the circumstances. Therefore, I am confirming the decision made and the penalty imposed. Your appeal is dismissed.

Yours truly,



Larry Chow
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Mr. J. Pastorek, Warden, NFPC
Mr. M. Jonas, Assistant Deputy Warden, Hearing Officer



Mailed Oct 4pm

October 3, 2011

59320-20/11-070

CS# s.22

s.22

c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Fraser Regional Correctional Centre (FRCC) on September 26, 2011.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents, and listened to the audio record of the disciplinary hearing. I have also reviewed the DVR evidence that was presented at the hearing.

You were charged with breaching section 21(1)(z.2) (i) of the CAR which states that "an inmate must not engage in an activity that jeopardizes or is likely to jeopardize the safety of a person." You pled not guilty. After hearing evidence the hearing officer found you guilty and sentenced you to 20 days in segregation and 18 days loss of earned remission.

Following my review, I can see no grounds to interfere with the hearing officer's determination of guilt in this matter. The defence you presented at the hearing was not consistent with the DVR evidence and I am satisfied that your disciplinary hearing held on September 26, 2011 was conducted in an administratively fair manner.

However, I believe that the hearing officer erred in the disposition he awarded. At the time of the hearing you had not earned 18 days remission. By my calculation, you had only earned 17 days remission at that time.

I am therefore setting aside the disposition awarded by the hearing officer and substituting it with a new disposition.

Pursuant to section 29(4)(b) of the CAR, I am confirming the decision made and am imposing a penalty of 20 days in segregation and 17 days loss of earned remission.

I will also be directing that your institutional record is amended to reflect this.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Mr. S. DiCasteri, Warden, FRCC



Mailed Oct 5pm

October 4, 2011

59320-20/11-072

CS# s.22

s.22

c/o Surrey Pretrial Services Centre
14323 57th Avenue
Surrey, BC V3X 1B1

Dear s.22

I am writing further to your letter dated October 3, 2011, received at the Investigation & Standards Office (ISO) on October 4, requesting a review of a disciplinary hearing that was concluded at Surrey Pretrial Services Centre (SPSC) on September 28, in relation to a breach of s. 21(1)(g), Correction Act Regulation (CAR). Pursuant to s. 29(2), CAR, I obtained and reviewed a copy of the documents and listened to the audio record of your hearing.

According to the documents, the charging officer reported that you breached s. 21(1)(g), CAR which states that “an inmate must not unless unreasonably provoked by that person, behave in an insulting or abusive manner toward a person”. Specifically, the charging officer reported that on September 14, 2011 at approximately 0930 hours, you directed abusive and insulting language at her.

You plead not guilty to the allegation. The hearing officer heard evidence from the investigating officer. You requested an adjournment for the charging officer to attend because you were of the view that you had been provoked by your treatment/circumstances which caused you to act in such a manner. The hearing officer asked you questions about what you were going to ask of the charging officer and your concerns about your circumstances/treatment. The hearing officer denied your request for an adjournment and subsequently found you guilty of the allegation. After reviewing your institutional history, the hearing officer imposed 10 days segregation, commencing September 28 to be satisfied on October 7, 2011.

In review, I found your hearing administratively unfair. You requested an adjournment to have the charging officer attend. In my view, the hearing officer should have granted you the request. Pursuant to s. 29(4)(c), CAR, I am rescinding the decision made and the penalty imposed. Under s. 29(4)(c)(i), CAR, I am directing that the person in charge change your record to reflect the rescission.

Yours truly,



Larry Chow
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Mr. G. Davis, A/Warden, SPSC
Mr. B. Palmer, ADW, Hearing Officer



Mailed Oct 5pm
October 5, 2011

59320-20/11-071
CS# s.22

s.22
c/o Surrey Pretrial Services Centre
14323 57th Avenue
Surrey, BC V3X 1B1

Dear s.22

I am writing in response to a request, written on your behalf by s.22 Legal Advocate, Prisoners' Legal Services, for a review of a disciplinary hearing held at Surrey Pretrial Services Centre (SPSC) on September 13, 20 and 29, 2011.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents, and listened to the audio record of the disciplinary hearing. I have also reviewed the DVR evidence that was presented at the hearing.

You were charged with breaching Section 21(1)(z.2) (ii) of the CAR, which states that "an inmate must not engage in an activity that jeopardizes or is likely to jeopardize the management, operation or security of the correctional centre." You pled not guilty. After hearing evidence the hearing officer found you guilty and sentenced you to 20 days in segregation.

In her letter to this office s.22 argued that your hearing was flawed by delay and a failure to permit you a prehearing viewing of the DVR evidence. You also made similar arguments at the hearing.

I can find no merit in these submissions.

The DVR evidence revealed that the behaviour for which you were charged occurred on September 3. However, the inmate offence report clearly shows that staff were not aware of this until September 12 when they completed a DVR review, at which time the charge against you was prepared. During this time you remained unimpeded on your regular living unit. I cannot agree that there was an unreasonable delay in laying this charge.

There is no requirement at an administrative hearing for all the evidence to be made available for your review prior to the hearing. You are entitled to be informed of the case against you and this is done by way of service of the inmate offence report prior to the hearing. At the hearing you are entitled to examine, hear and understand the case against you and to present your case.

If you required more time to view the DVR evidence when it was presented at the hearing on September 29, you could have requested that. You did not. The DVR evidence against you was reviewed in detail and was not rushed 'at the last minute' as ^{s.22} claims you allege. I do not believe that the handling of the DVR evidence at this hearing raises any fundamental issues of unfairness or obstruction.

I have concluded that your disciplinary hearing held on September 13, 20 and 29, 2011 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
- Mr. P. Coulson, Provincial Director, Corrections Branch
- Mr. G. Davis, Warden, SPSC
- ^{s.22} Legal Advocate, Prisoners' Legal Services



Mailed Oct 17am
October 14, 2011

59320-20/10-140
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Prince George Regional; Correctional Centre (IPGRCC) on October 9, 2011.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I obtained and reviewed the documents, the digital video recording and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(a) of the CAR which states “an inmate must not disobey a direction from a staff member or the person in charge”. You were accused of continuing to draw on another inmate’s head after you were given a direct order to stop by the officer. Your hearing was opened on October 2 and adjourned so you could contact legal counsel. Your hearing reopened on October 9 and you stated you were ready to proceed.

You pled not guilty. After reviewing the evidence, the hearing officer found you guilty and your disposition was cell confinement from 2100 hours on October 1 to unlock the next morning.

In your defence, you stated the officer who gave you the order did not allow for an informal resolution as outlined in CAR Section 22. The second point you raised was that you were charged for disobeying an order to stop an activity that is not a breach of any rule outlined in the regulations. The hearing officer acknowledged your statements. She reminded you that the charge was about disobeying a direct order and it is your responsibility to follow the direction of an officer.

Following my review, I can see no grounds to interfere with the hearing officer’s decision in this matter. I have concluded that your disciplinary hearing held on October 9 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to Section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under Section 27.

I am therefore dismissing your appeal.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "L. Pineau".

L. Pineau
Inspector
Investigation and Standards Office

/gd

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director
Ms. J. Hawkins, Warden, PRGCC



Mailed Oct 18am

October 14, 2011

59320-20/11-076

CS# s.22

s.22

c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing further to your undated letter that was received at the Investigation & Standards Office (ISO) on October 12, 2011, requesting a review of two disciplinary hearings held at Fraser Regional Correctional Centre (FRCC) pertaining to the following allegations s. 21(1)(a) and (y) Correction Act Regulation (CAR). Pursuant to s. 29(2), CAR I obtained and reviewed a copy of the documents and listened to the audio records of both hearings. I also reviewed DVR (Digital Video Recording) evidence for the s. 21(1)(a), CAR allegation.

- S. 21(1)(a), CAR which states "An inmate must not disobey a direction of a staff member or of the person in charge." Specifically, the charging officer reported that "Inmate s.22 did not exit cell s.22 when directed by CS Jansen and CO Cox

According to the proceedings, you pleaded not guilty to the allegation filed against you. The hearing officer heard evidence from the charging officer and the officer who had to open your cell door. During your explanation and submissions, you admitted to blocking the door with your foot and stated that you took full responsibility for blocking the door.

Based on the information presented, the hearing officer found you guilty of the allegation and, after reviewing your institutional record, he imposed seven days segregation from October 5, the day you were placed in segregation, to be satisfied on October 11.

In review, I found your hearing administratively fair and I found the penalty reasonable, under the circumstances. Therefore, I am confirming the decision made and the penalty imposed. Your appeal for this matter is dismissed.

- S. 2191)(y) CAR which states "An inmate must not attempt to obtain, or possess contraband."
Specifically, the charging officer reported that "Inmate s.22 possessed s.22"

According to the proceedings, you pleaded not guilty to the allegation. The hearing officer heard evidence presented by the charging officer and listened to your explanation. Subsequently, the hearing officer found you guilty of the allegation of possessing contraband. After listening to your submissions and reviewing your institutional history, the hearing officer imposed 10 days segregation consecutive to the previous penalty. He advised you that your penalty would start on October 12 and would be concluded on October 21.

In review, I determined that your hearing was administratively flawed for the following reason. In order for a hearing officer to find an inmate guilty of being in possession of contraband, he/she must establish, on a balance of probabilities, that you had knowledge of the contraband that you are charged with possessing.

In this case, I am not satisfied that the hearing officer, on a balance of probabilities, established the element of knowledge. Therefore, pursuant to s. 29(4)(c), CAR, I am rescinding the decision made and the penalty imposed for this matter. Pursuant to s. 29(4)(c)(i), CAR, I direct that the person in charge change your record to reflect the rescission.

Yours truly,



Larry Chow
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Mr. S. DiCatri, Warden, FRCC
Mr. J. Meskas, ADW, Hearing Officer



Mailed Oct 18am
October 17, 2011

59320-20/06-063
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing further to your letter dated October 14, requesting a review of a disciplinary hearing that was concluded on October 13, 2011 at North Fraser Pretrial Centre (NFPC). You stated that you only plead guilty to breaching s. 21(1)(c), Correction Act Regulation (CAR), which states 'An inmate must not enter a cell or living unit that is not assigned to the inmate without permission of a staff member' because a correctional supervisor advised you that you would probably only receive a couple of evenings of lock-ups.

Pursuant to s. 29(2), CAR, I obtained and reviewed a copy of the documents and listened to the audio record of your disciplinary hearing.

According to the documents and proceedings, you plead guilty to being in a cell without obtaining permission from a staff member. You did not dispute the circumstances and provided your reasons for not being forthright with the officer's initial question as to which cell you were inside. After listening to the officer's evidence and your statements, the hearing officer found you guilty of the allegation.

During your submissions, you acknowledged that you had s.22 previous institutional infractions. s.22

The hearing officer reviewed your institutional history and confirmed the previous breaches. He advised you that in consideration that s.22 he would be imposing a deterrent penalty. The hearing officer also advised you that the supervisor had no authority to tell you what you would be getting as a disposition. Subsequently, the hearing officer imposed 10 evenings of intermittent confinement to cell from 1730 hours to 2145 hours, commencing October 13 to be satisfied after your last evening of lock up on October 22.

In review, I found your hearing administratively fair. I support the decision made.

I also agree with the hearing officer's comment that the supervisor had no authority to advise you what you might possibly receive as a penalty for this violation. Subject to review by Investigation & Standards Office (ISO), where under s. 29(4)(b), CAR we may substitute another penalty under s. 27, it is the responsibility of the hearing officer to determine a penalty provided in s. 27, CAR.

Despite the supervisor's action, the court recognizes that inmate disciplinary proceedings are administrative proceedings in nature. As such it states, 'there is no requirement to conform to any particular procedure or to abide by the rules of evidence. However, there is an overall duty to act fairly in the sense that the prisoner must be aware of the allegations and the evidence against him and be afforded a reasonable opportunity to respond.'

In this case, you acknowledged having breached the rule. You provided reasons for entering a cell that was not assigned to you for the purpose of visiting with the other inmate. You admitted that you had done this in the past, with or without permission from a staff member. The hearing officer advised you that staff are not to allow inmates to visit another inmate inside of a cell. You were not denied the opportunity to respond to the allegation or cross-examine the charging officer. In addition, in my view, this was not a complex matter. Furthermore, in listening to the proceedings, you stated that you understood the allegation filed against you; therefore, I am satisfied that you had the capacity to understand it and present a defence to the allegation.

In view that this was a repeated breach of the CAR, I found the penalty reasonable under the circumstances. Therefore, I am confirming the decision made and the penalty imposed. Your appeal is dismissed.

Yours truly,

Larry Chow
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Mr. J. Pastorek, Warden, NFPC
Mr. M. Jonas, ADW, Hearing Officer



Mailed Oct 19
October 18, 2011

59320-20/07-047
CS# s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to a request from your lawyer, s.22 for a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC) on October 8, 2011.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(a) of the CAR which states that “an inmate must not disobey a direction of a staff member or of the person in charge.” You pled not guilty. After reviewing the evidence the hearing officer found you guilty and sentenced you to 5 days in segregation.

In her letter, s.22 writes that “the ground of appeal is simply as follows: the Assistant Deputy Warden presiding over the hearing terminated counsel’s questions/submissions prematurely.”

There is no indication on the audio record of the hearing officer denying, cutting off or otherwise impeding your counsel from speaking. Only once does the hearing officer interrupt your counsel when, just prior to delivering his determination, he states that he is ready to make a decision. No comment, rebuttal or challenge was made by your counsel to this remark. If your counsel felt that she had submissions to make or further evidence to review she should have made that clear to the hearing officer at that time.

I am satisfied from the audio record that you were afforded an adequate opportunity to question the case against you and present your own evidence.

Therefore, following my review I can see no grounds to interfere with the hearing officer's decision in this matter. I have concluded that your disciplinary hearing held on October 8, 2011 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Mr. J. Pastorek, Warden NFPC
Mr. R. Nash, Hearing Officer
s.22 Barrister and Solicitor (Fax: s.22



Mailed Oct 20

October 18, 2011

59320-20/09-137

CS # s.22

s.22

Nanaimo Correctional Centre
Bag 4000
Nanaimo, BC V9R 5N3

Dear s.22

I am writing further to your undated letter received at the Investigation & Standards Office (ISO) on October 14 requesting a review of Acting/Assistant Deputy Warden (ADW) B. Wheaton's response to your s. 27(4), Correction Act Regulation (CAR) application. You believe that A/ADW Wheaton stated that he would return all of the earned remission to you, which he forfeited at the September 2, 2011 hearing, if you had 'good logs'. Pursuant to s. 29(2), CAR, I obtained and reviewed a copy of the documents and listened to the penalty portion of your hearing. I also obtained and reviewed a copy of A/ADW Wheaton's response to your s. 27(4), CAR application.

According to the documents, you pleaded guilty to breaching s. 21(1)(y), CAR which states that "An inmate must not attempt to obtain, or possess contraband." Specifically, the charging officer reported that you made a telephone call to

s.15, s.22

so that s.22 could retrieve,
conceal and bring it into the correctional centre. A/ADW Wheaton found you guilty of the breach.

At the penalty phase, A/ADW Wheaton imposed 8 hours of extra duties that were to be done in 2 hour sessions each evening commencing at 1800 hours and, forfeited 4 days of Earned Remission. A/ADW Wheaton read out to you in verbatim, sections 27(4) & (5) and advised that you could write to him within 2 or 3 weeks of your release, requesting a review under the provisions outlined in s. 27(4), CAR.

A/ADW Wheaton did not explicitly advise you that you would get all of your time back. He advised you that a review would be conducted upon receipt of your s. 27(4), CAR application.

In review, I determined that you have been treated fairly in this case. A/ADW Wheaton reviewed your application and only returned 2 of the 4 days he had forfeited. I see no compelling reason that I should recommend that A/ADW Wheaton re-examine this matter. I am confirming A/ADW Wheaton's s. 27(4), CAR decision.

Yours truly,

Larry Chow
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Mr. R. Hodgson, Acting Warden, NCC
Mr. B. Wheaton, hearing officer



Mailed Oct 20
October 19, 2011

59320-20/08-126
CS# s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing to advise you of the outcome of the review that you requested under Section 29 (1), Correction Act Regulation (CAR), for your disciplinary hearing held at Fraser Regional Correctional Centre (FRCC).

Your disciplinary hearing concluded October 16, 2011 and the Investigation and Standards Office (ISO) received your request for review dated October 16, via fax, October 17.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR), the audio record of the hearing and photographs of physical evidence viewed at the hearing.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you October 14, 2011 under s. 21 (1) (y), CAR, which states, "An inmate must not attempt to obtain, or possess contraband." The charging officer specified, "*A razor was found hidden in s.15 that (was) removed from inmate s.22 cell. Cell s.22*"

Assistant Deputy Warden (ADW) Racette, presiding as hearing officer, opened your disciplinary hearing October 16. He confirmed that you had received a copy of the IOR and that you understood the charge against you. He also confirmed that you were aware of your right to seek legal counsel. You advised him that you were ready to proceed and you pled not guilty to the charge.

The investigating officer read the written circumstances from the IOR into the record. She also presented information from her investigation and answered questions from the hearing officer.

You gave your account of the circumstances wherein you denied having any knowledge of the razor that staff discovered in the s.15 taken from your cell. You confirmed that the s.15 presented as physical evidence belonged to you. You indicated that tape was holding the s.15 together and that it only had one battery when an officer issued it to you October 7. You advised that you found and inserted a second battery into the s.15 and that you did not remove its battery compartment plate after that date.

The hearing officer noted that the batteries were not present in the sealed evidence bag and he asked you what happened to them. You advised him that you did not know and you noted that the battery compartment plate was also missing. When the hearing officer questioned you further about the missing batteries, you noted that the charging officer was not the staff member that removed the s.15 from your cell. The hearing officer agreed; however, he did not believe that staff took the batteries. You suggested that staff possibly removed the batteries and the hearing officer advised that he did not know if that had occurred.

The hearing officer placed the onus of responsibility for the s.15 on you because you occupied the cell alone. He therefore concluded on a balance of probabilities that you placed the razor in s.15 and he subsequently found you guilty.

The hearing officer then moved into the penalty phase of the hearing. He heard your submissions towards potential penalty and he reviewed your institutional records. The hearing officer noted recent negative Client Log (CLOG) entries preceding the breach and that you had received s.22 other institutional charges since entering custody in s.22. He also reflected on the seriousness of the charge, the nature of the contraband and its concealment. The hearing officer subsequently imposed a penalty of 7 days segregation and he credited two days of time served under s.24, CAR towards that penalty.

Before he concluded the hearing, the hearing officer advised you of your rights under s. 27(5) to request a reduction or suspension of the penalty and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed. You confirmed understanding those rights.

Review Findings

In review, I found that there was insufficient evidence to support the decision of guilt reached in this case. The evidence for a charge of possessing contraband must prove some form of knowledge of that contraband.

I found that fair consideration of the evidence presented at your hearing tilted the scales towards a finding of not guilty based on a balance of probabilities. I found that the hearing officer could not reasonably draw an inference of knowledge from the proven facts:

- Unidentified staff removed s.15 from Living Unit 1A cells. Staff tagged each item with its cell number.
- Officer Jansen received the s.15 for frisking. He observed that the s.15 s.22 removed from cell s.22 had tape holding it together. He also observed that its batteries and battery compartment plate were missing.
- Officer Jansen removed the tape, opened the control unit and discovered a razor attached to its s.15
- You were the lone occupant of cell s.22
- Officer Kent had issued that s.15 to you.

The evidence did not establish whether the s.15 had tape holding it together before or after you received it, and the hearing officer did not call Officer Kent to appear as a witness.

Although the hearing officer considered the absence of the batteries and battery compartment plate significant evidence, it did not support holding you responsible for their whereabouts. Officer Jansen's written report did not identify the staff that removed s.15 from your cell, and the hearing officer did not seek his/her identity so that he could call him/her to appear as a witness.

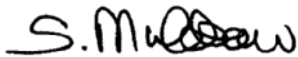
In summary, the evidence presented at the hearing indicated that someone disassembled the s.15 in question and attached a razor blade to s.15. However, I found it unreasonable to conclude on the evidence presented that you placed the razor in the s.15 or that you had knowledge of it. I therefore found the decision of guilt unfair.

Review Decision

I have exercised my authority under s.29 (4) (c), CAR to rescind the decision made and the penalty imposed under s.27, and (i) to direct that the person in charge change your record to reflect the rescission.

I am holding your file open pending confirmation that the person in charge at your current location has completed that action.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director, Corrections Branch
 Mr. S. DiCatri, Warden, FRCC
 Mr. J. Pastorek, Warden, NFPC
 Mr. B. Racette, Assistant Deputy Warden Hearing Officer



Mailed Oct 25
October 24, 2011

59320-20/06-123
CS# s.22

s.22

c/o Surrey Pretrial Services Centre
14323 57th Avenue
Surrey, BC V3X 1B1

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Surrey Pretrial Services Centre (SPSC) on October 13, 2011.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing. I have also reviewed the DVR evidence.

You were charged with breaching section 21(1)(k) of the CAR, which states that “an inmate must not physically fight with another person.” You pled not guilty. After reviewing the evidence, the hearing officer found you guilty and sentenced you to three days in segregation.

In your letter you provide three grounds for appeal. These are as follows:

- Your name is spelled wrong on the inmate offence report.
- You were not the aggressor in this incident.
- There was a contact alert on your CORNET file in respect of the other inmate and you should not have been placed in the same cell as him.

Following my review I have reached the following conclusions in respect of these arguments:

- While your name is spelled wrong on the top of page one of your copy of the inmate offence report, the error is a simple transposing of two letters s.22 instead of s.22 . Your name appears correctly spelled further down on the same page in the two boxes beginning SPECIFICALLY and CIRCUMSTANCES. Your CS number on the report is correct and at the hearing you agreed that the person named on the charge was you. There is also no dispute that this incident involves you. This spelling mistake does not therefore give rise to any doubts as to your identity or involvement.
- The hearing officer came to the opinion, after reviewing the video evidence, that you were the aggressor in this fight. Following my review I concur with this conclusion.

- The fact that the Corrections staff were not aware of a contact concern between you and the other inmate does not excuse or condone your behaviour in this incident. The evidence presented, which was not disputed by you, was that you had opportunities to inform staff if you had concerns. You failed to take advantage of these opportunities.

Following my review, I can see no grounds to interfere with the hearing officer's decision in this matter. I have concluded that your disciplinary hearing held on October 13, 2011 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Mr. G. Davis, Warden, SPSC



Mailed Oct 25
October 24, 2011

59320-20/09-018
CS# s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22 :

I am writing further to your letter dated October 21, 2011, received at the Investigation & Standards Office (ISO) on October 24, requesting a review of a disciplinary hearing that was concluded on October 21 at North Fraser Pretrial Centre (NFPC). Pursuant to s. 29(2), Correction Act Regulation (CAR), I obtained and reviewed a copy of the documents and listened to the audio record of your hearing.

According to the documents, the charging officer reported that you breached s. 21(1)(y), CAR which states "An inmate must not attempt to obtain, or possess contraband." Specifically, the officer reported that you possessed contraband. You plead not guilty to the allegation. The charging officer testified where and how he discovered the contraband item. The hearing officer heard you describe the process of cleaning the cell when you moved into it.

The hearing officer advised you that on a balance of probabilities he was satisfied that you had knowledge of the contraband item found in the cell. This was based on your description on how you cleaned the cell for occupancy, the fact that you had been occupying that cell for several days alone, and where and how the officer discovered the item.

After reviewing and discussing your institutional conduct, the hearing officer asked you several times if you wanted to make submissions about a penalty. You did not state much other than to say you didn't know about the item. The hearing officer described that the contraband item was s.15

He advised you that the object jeopardizes the safety of officers and other inmates. Based on the information that s.22 in applying progressive discipline he imposed 20 days of segregation, from October 19, your first day in segregation pending this outcome, to be satisfied on November 7.

In review, I found your hearing procedurally correct. The hearing officer provided you with his reason on why he was satisfied, on a balance of probabilities, that you had knowledge of the contraband item that the officer found in your cell.

Inmate disciplinary hearings are administrative proceedings. Nevertheless, for breaches of s. 21(1)(y), CAR, the hearing officer must establish, on a balance of probabilities, the element of knowledge. In this case, I am satisfied that the hearing officer established the element of knowledge for this particular case. Therefore, I am confirming the decision made and the penalty imposed for this matter. Your appeal is dismissed.

Be advised that pursuant to s. 27(4), CAR, you may write to Assistant Deputy Warden R. Nash to request a reduction or a suspension of the penalty he imposed. Your request for such consideration should describe the reasons why he should consider your request.

Yours truly,



Larry Chow
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Mr. J. Pastorek, Warden, NFPC
Mr. R. Nash, ADW, Hearing Officer



Mailed Oct 25
October 24, 2011

59320-20/11-082

s.22

s.22

c/o Vancouver Island Regional Correctional Centre
PO Box 9224 Stn Prov Govt
Victoria, BC V8W 9J1

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under Section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (w), CAR.

Your disciplinary hearing concluded at Vancouver Island Regional Correctional Centre (VIRCC) October 17, 2011 and the Investigation and Standards Office (ISO) received your request for review dated October 17 via mail October 19.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR), the audio record of the hearing and digital video recording (DVR) evidence presented at the hearing.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you October 16, 2011 under s. 21 (1) (w), CAR, which states, "An inmate must not assault or threaten another person." The charging officer reported that you repeatedly struck another inmate with a soup ladle.

Acting Assistant Deputy Warden (ADW) V. Davis, presiding as hearing officer, opened your disciplinary hearing October 17 with you in attendance. She confirmed that you had received a copy of the IOR and she reminded you of your right to seek legal counsel. You advised her that you were ready to proceed. You confirmed that you understood the charge and you entered a plea of guilty.

The hearing officer read the written circumstances into the record, heard your account of the circumstances and viewed some of the DVR evidence with you. It showed you attacking and repeatedly striking another inmate with a soup ladle. The hearing officer asked if you needed to see any more DVR evidence and you responded, "No." She subsequently found you guilty based on your plea, the charging officer's report and the DVR evidence viewed. She then moved into the penalty phase of the hearing.

While reviewing your institutional records and speaking with you, the hearing officer learned that the courts had remanded you into custody ^{s.22} She noted that you had very limited file entries and that your behaviour seemed fine prior to the incident.

The hearing officer advised you that your attack on the other inmate was serious and that she had to send a clear message that the centre will not tolerate such attacks whatsoever. She subsequently imposed the maximum segregation penalty of 30 days effective the date of the breach.

The hearing officer made brief references to your rights under s. 27(4) & (5) to request a reduction or suspension of the penalty and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed. She then concluded the hearing.

Submissions & Review Findings

You requested a review of the penalty because you felt that it was unfair. You submitted, “ ^{s.22} *and the guy called me* ^{s.22} .”

In review, I found the penalty phase of your hearing flawed. I also found imposing the maximum segregation penalty unreasonable and contrary to the principle of progressive discipline under the circumstances.

The hearing officer did not ask you for submissions for her consideration in reaching a penalty decision. A fundamental element of procedural fairness is the accused person’s right to be heard, which applies equally in both the evidence and penalty phases of a disciplinary hearing.

The record of the proceedings indicated that you did make an unsolicited submission wherein you advised that you were not usually like that and that you felt that it is ridiculous to lose your temper and that you do need some type of anger management. The hearing officer, however, did not speak to those comments when imposing her penalty decision.

I reviewed your institutional records available on CORNET and confirmed that ^{s.22} ^{s.22} You had only been in custody for ^{s.22} and you had not received any negative file entries or institutional charges before the incident occurred. I therefore accepted your related submission as a reason for a lesser penalty in this matter.

I also viewed the DVR evidence, in full. I found no evidence of the other inmate provoking you or even acknowledging your presence when you entered the area. Based on entries in your Client Log (CLOG) and the DVR evidence in its entirety, I found it reasonable to believe that something else precipitated the assault. Nevertheless, the alleged comment, despite its nature, would not excuse or warrant such an extreme response from you as seen in the DVR evidence. I therefore did not accept your submission regarding provocation as a reason for a lesser penalty in this matter.

Lastly, I considered you taking responsibility through your guilty plea, your comments to the hearing officer indicating remorse and your absolute compliance with staff that intervened in the incident as additional reasons to support a lesser penalty in this matter.

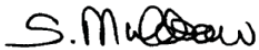
Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (b), CAR to confirm the decision made and substitute another penalty under s.27. I have substituted a penalty of 15 days segregation for the following reasons:

- Serious nature of the charge
- Seriousness of the incident
 - Unprovoked attack on another person
 - Using an item as a weapon in the attack
 - Pursuing the victim as he attempted to flee the area
- s.22 when the incident occurred
- No reports of inappropriate behaviour and no previous institutional charges
- Degree of responsibility for the breach and acknowledging responsibility
- Remorse for behaviour and recognizing the need to address it
- Incentive not to engage in such behaviour in future given the likelihood of increased disciplinary penalties

I have notified the person in charge of my decision and directed that she have your records changed to reflect it. Centre staff will recalculate the expiry date of the substituted penalty and advise you accordingly.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director Adult Custody Division
 Ms. D. Green, Warden, VIRCC
 Ms. V. Davis, Assistant Deputy Warden Hearing Officer



Mailed Oct 27

s.22

59320-20/09-051

CS# s.22

s.22

c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Fraser Regional Correctional Centre (FRCC) on October 18, 2011.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing. I have also reviewed the DVR evidence.

You were charged with breaching section 21(1)(w) of the CAR which states that “an inmate must not assault another person.” You pled not guilty. After reviewing the evidence the hearing officer found you guilty and sentenced you to 20 days in segregation.

In your letter you made three submissions in support of your appeal. These are:

1. You were not allowed to cross examine the correctional officer witness.
2. You were not allowed to see the DVR evidence.
3. You were not allowed to call a witness.

My response to these submissions is as follows:

- **CROSS EXAMINATION:** you were told to direct any questions through the hearing officer. Some hearing officers insist upon this and the practice does not necessarily amount to preventing cross examination. In this case, you clearly remained free to pose any questions you wished.

- **DVR EVIDENCE:** The audio record indicates that the DVR was briefly viewed by the hearing officer and correctional officer witness. You were not involved in this conversation and did not raise the issue of DVR at the hearing. It is unclear from the audio if you could see the DVR screen or not. You had an opportunity at that time to either request to see it or to register any objections but did not do so. I note that the DVR evidence only proved your presence at the scene and it does not show the assault. In your testimony you agreed that you were present and the DVR evidence therefore does not address your contention that you were present but did not participate in the assault.
- **DENIAL OF WITNESS:** I could find no indication on the audio record that you requested any witness to attend the hearing.

The evidence against you concerning this assault was the direct testimony of the correctional officer who testified that he saw you hitting the other inmate.

Following my review, I can see no grounds to interfere with the hearing officer's decision in this matter. I have concluded that your disciplinary hearing held on October 18, 2011 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Mr. S. DiCatri, Warden, FRCC



Mailed Oct 27
October 27, 2011

59320-20/11-072
CS# s.22

s.22

12725 67th Avenue
Surrey, BC V3W 1G5

Dear s.22

I am writing further to your letter dated September 12, 2011, received at the Investigation & Standards Office (ISO) on October 7, requesting a review of a disciplinary hearing that was concluded on September 8 at Surrey Pretrial Services Centre (SPSC). Pursuant to s. 29(2), Correction Act Regulation (CAR), I obtained and reviewed a copy of the documents and listened to the audio record of your hearing.

Due to the date which ISO received this particular request from you, I discussed the process for handling requests for a review of a disciplinary hearing with A/Warden G. Davis,

A/Warden Davis' delegate advises that your request was not handled properly. The delegate has taken steps to address it with the officer and has sent out communication to supervisors advising them of the expectations and process for handling such requests. I am satisfied of the steps taken to address this matter.

According to the documents, the charging officer reported that you breached s. 21(1)(w), CAR, which states "An inmate must not assault or threaten another person." Specifically, the officer reported that you had threatened to slap her. You plead not guilty to the allegation. The charging officer provided her evidence and the hearing officer heard your explanation of the circumstances. The hearing officer also considered your request for a witness. You advised the hearing officer that your witness would state that the charging officer did not leave you and your roommate with any extra clothes at all; therefore, the officer was lying about the circumstances. You also admitted to having spoken to your witness earlier that morning about appearing as your witness.

The hearing officer clarified with the charging officer how she conducted the cell frisk, the clothing that she permitted you and your room mate to keep and the manner in which she removed the extra clothing. You acknowledged that you were angry and verbally abusive towards the officer. You also admitted to swearing at the officer in English and in s.22

The hearing officer accepted that your witness would state that the officer removed all of the clothing from the cell except what you were both wearing. The hearing officer also considered the fact that you had spoken to this inmate earlier that morning. After considering your request, the hearing officer declined to have your witness attend.

The hearing officer summarized the evidence presented by the officer and your explanation and information from your discussion with the hearing officer about the search. The hearing officer indicated that the circumstances noted that the officer wrote that each inmate is entitled to two sets of clothing and you were left with a sufficient amount and the rest was removed. You admitted to having extra clothes; however, the hearing officer advised you that this was not about you swearing at the officer, it was about you threatening the officer.

In this case, the hearing officer, on a balance of probabilities, found you guilty of threatening the officer. The hearing officer advised you that she based her decision on the basis that you were angry with the officer and in your anger you likely threatened her and determined that the officer's evidence was more credible than your explanation of the circumstances. After listening to your submissions and reviewing your institutional history, the hearing officer imposed 20 days segregation which was satisfied on September 26.

In review, I determined that your hearing was administratively fair and I found the penalty reasonable under the circumstances. I am confirming the decision made and the penalty imposed. Your appeal is dismissed.

Yours truly,



Larry Chow
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Mr. G. Davis, A/Warden, SPSC
Ms. M. Zabel, ADW, Hearing Officer



Mailed Oct 28
October 26, 2011

59320-20/09-051
CS# s.22

s.22

c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC) on August 24, 2011.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(w) of the CAR which states that “an inmate must not threaten another person.” You pled not guilty. After reviewing the evidence the hearing officer found you guilty and sentenced you to 16 days in segregation.

The evidence against you concerning this threat was the direct testimony of the correctional supervisor who testified that he heard you threaten to harm anyone who might be double bunked with you.

You denied threatening anybody and questioned who it was you were accused of threatening.

In this case I am satisfied that the hearing officer’s decision to prefer the testimony of the correctional supervisor over your testimony was reasonable. The officer provided direct testimony of what he heard you say.

However, you questioned the application of this charge and asked whether another charge might have been more appropriate. You demanded to know who it was you are accused of threatening.

As a result, I sought legal advice regarding this charge. It was established that:

- The purported words in this matter meet the criteria of a threat to cause actual bodily harm.
- A threat can include a threat conditional upon some course of conduct.
- The fact that the victim was unknown when a threat was made does not bar conviction. A threat to cause death to a member of an ascertained group of persons contravenes s.264.1 of the Criminal Code.

- The offence is complete upon the threat being uttered.
- The accused (in this case, yourself) must have the intention to *threaten*, but not necessarily the intention to carry out the threatened deed.

I am therefore satisfied that this charge is applicable and appropriate in these circumstances.

Following my review, I can see no grounds to interfere with the hearing officer's decision in this matter. I have concluded that your disciplinary hearing held on August 24, 2011 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Mr. S. DiCatri, Warden, FRCC
Mr. J. Pastorek, Warden, NFPC
Mr. B. Crowe, ADW, Hearing Officer.



Mailed Nov 2
November 1, 2011

59320-20/10-005
CS# s.22

s.22

c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under Section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (w), CAR.

Your disciplinary hearing concluded at Prince George Regional Correctional Centre (PGRCC) October 20, 2011 and the Investigation and Standards Office (ISO) received your request for review dated October 21 via mail October 31.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR), the audio record of the hearing and digital video recording (DVR) evidence presented at the hearing.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you October 19, 2011 under s. 21 (1) (w), CAR, which states, "An inmate must not assault or threaten another person." The charging officer reported that you assaulted another inmate.

Assistant Deputy Warden (ADW) M. McFadyen, presiding as hearing officer, opened your disciplinary hearing October 20 with you in attendance. He confirmed that you had received a copy of the IOR and that you had read and understood the charge. He reminded you of your right to seek legal counsel and you advised him that you were ready to proceed. You entered a plea of guilty.

The charging officer read the written circumstances and investigation report into the record. The hearing officer then heard your account of the circumstances and viewed DVR evidence with you. He observed that it showed you attacking and repeatedly punching and kicking another inmate. The hearing officer subsequently found you guilty based on your plea and the DVR evidence. He then moved into the penalty phase of the hearing.

While reviewing your institutional records and questioning you, the hearing officer learned that you entered custody at PGRCC s.22 and that you had received no other institutional charges since that date. The charging officer also answered his questions about the incident.

The hearing officer subsequently imposed a penalty of 20 days segregation effective the date of the breach and provided you his reasons for that decision. He considered the assault “*pretty brutal*” and unprovoked. He noted that you caught the victim off-guard and injured him. He explained that the penalty needed to serve as a deterrent as well because the centre cannot have inmates assaulting each other. He also noted that the resulting emergency code interrupted the centre’s operations and placed other persons at risk.

The hearing officer advised you of your rights under s. 27(4) & (5) to request a reduction or suspension of the penalty, and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed. You advised him that you did not have any questions and he concluded the hearing.

Submissions & Review Findings

You requested a review of the penalty because you felt that it was unfair. You described the incident as a fight and submitted, “*I’m new to the jail; don’t know nothing about the rules. I just came in on s.22*”

You felt that 20 days segregation was too harsh for your first offence. You suggested that others have received five to seven days, and you asked for a reduction of your penalty.

In review, I found the penalty phase of your hearing flawed. The hearing officer did not provide you an opportunity to make submissions for his consideration towards reaching a penalty decision. A fundamental element of procedural fairness is the accused person’s right to be heard, which applies equally in both the evidence and penalty phases of a disciplinary hearing.

I reviewed your institutional records available on CORNET. Contrary to your submission, I found that this is your s.22 term in adult custody and that you have served each term at PGRCC. You served s.22 I therefore dismissed your claim about being new to the centre and not knowing the rules.

Upon further review, I found that you had not received any negative file entries or institutional charges prior to the incident in question. I also viewed the DVR evidence and confirmed that it showed you attacking another inmate and repeatedly punching and kicking him. I also observed that you did not disengage when living unit staff attempted to intervene. The DVR evidence clearly contradicted your description of the altercation as a “*fight*”.

Review Decision

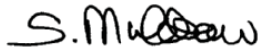
In light of my findings, I have exercised my authority under s.29 (4) (b), CAR to confirm the decision made and substitute another penalty under s.27. I have substituted a penalty of 15 days segregation for the following reasons:

- Serious nature of the charge
- Seriousness of the incident
 - Unprovoked attack on another person
 - Injuring that person
 - Failure to comply when staff attempted to intervene

- Reasonable to conclude on a balance of probabilities that you are aware of the rules governing the conduct of inmates
- No reports of inappropriate behaviour and no previous institutional charges during this term in custody
- Degree of responsibility for the breach and acknowledging that responsibility
- As an incentive not to engage in such behaviour in future given the likelihood of increased disciplinary penalties

I have notified the person in charge of my decision and directed that she have your records changed to reflect it. I have made the substituted penalty effective the date of the incident. Centre staff will recalculate its expiry date and advise you accordingly.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director Adult Custody Division
 Ms. J. Hawkins, Warden, PGRCC
 Mr. M. McFadyen, Assistant Deputy Warden Hearing Officer



Mailed Nov 2

November 1, 2011

59320-20/10-172

CS# s.22

s.22

c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing in response to the request, written on your behalf by s.22 of Prisoners' Legal Services (PLS), for a review of your recent disciplinary hearing held at Fraser Regional Correctional Centre (FRCC) on October 20 and 27, 2011.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(y) of the CAR which states that "an inmate must not possess contraband." Your hearing was opened on October 20 and adjourned to allow you to contact legal counsel. When the hearing reconvened on October 27 you were unrepresented and declined to enter a plea. This was noted on the inmate offence report by the hearing officer. You were subsequently found guilty and sentenced to 10 days in segregation.

At this hearing on October 27 you requested legal representation. s.22 Prisoners' Legal Services (PLS), has submitted that you "were not accorded procedural fairness by virtue of being denied reasonable access to legal assistance."

Evidence was presented that you had had ample time to contact counsel. CS Konowalchuk testified that he had spoken to PLS on October 27 prior to your hearing and had been advised that you could call PLS at once and speak to legal advocate s.22 When informed of this you declined to do so, claiming that you had already contacted PLS and had been told to ring back on Monday. The hearing officer determined that you had had sufficient opportunity to contact legal counsel and decided to proceed with the hearing.

I note that after you were charged you remained on your unit and had a week to contact counsel. I also note that during this time neither you nor PLS informed the centre of your legal arrangements. At the hearing you provided no indication as to your legal situation and merely repeated that you wanted a lawyer.

In her submission s.22 reveals that you contacted PLS on October 21 and 25. She also states that you were unable to speak to an advocate due to 'high volume' on the phone lines although "an intake was created" for you on both of these days. Copies of these intake forms were provided. They contained your name and particulars, a date and the box labelled Disciplinary Charge was ticked. There was no indication of any further action having been taken by PLS.

The presented evidence suggests that the centre was active in their attempts to ensure you had contacted legal counsel so that the hearing could proceed. In these circumstances, I believe the decision by the hearing officer to proceed was reasonable.

s.22 noted in her letter that when she was contacted by CS Konowalchuk on October 27 she was unable to inform him if you had contacted this office "as it would breach client-solicitor privilege." I am not aware that the mere fact of contact with a lawyer is a confidential matter. This is a position that PLS might want to review.

However, when your hearing proceeded I note that no direct evidence was presented against you. The charging officer was absent and instead CS Konowalchuk, as directed, read out the charge and circumstances as written on the inmate offence report. Two photographs of a bag containing a purported brew were also tabled and the evidence against you rested at that.

You were invited to comment, but did not participate other than to register an objection to not having legal representation.

The verbal recitation by a third party of a written allegation is an insufficient basis upon which to reach a finding of guilt at a hearing.

The failure of the hearing officer to require direct evidence from the charging officer or another witness to these events is a fatal flaw.

Therefore pursuant to section 29(4) (c) (ii) of the CAR, I am rescinding the decision made and the penalty imposed under section 27. I am also directing that a new disciplinary hearing be convened and presided over by a person appointed by the assistant deputy minister.

I will also be directing that your institutional record is amended to reflect this.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, BC Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody Division
Mr. S. DiCasteri, Warden FRCC
Mr. J. Meskas, Hearing Officer
s.22 Legal Advocate, PLS



Mailed Nov 8

November 7, 2011

59320-20/95-180

CS# s.22

s.22

c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Kamloops Regional Correctional Centre (KRCC) on November 2, 2011.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documentary record and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(w) of the CAR which states that "an inmate must not threaten another person." You pled guilty. After reviewing the evidence the hearing officer confirmed the finding of guilt and sentenced you to 30 days in segregation. This is the maximum possible segregation penalty for an offence of this nature.

This matter came to light when staff checking outgoing inmate mail noticed a threat written in large letters on a letter of yours. When asked about this you stated that you had suspected staff were reading your mail and decided that this was a good way to find out.

Staff are permitted to check inmate mail for contraband under section 14(4) of the Correction Act Regulation. It is clear from an inspection of your letter that the statements at the bottom of each page were intended to be noticed and the threat at the end of the letter is clearly addressed at KRCC staff and not the person the letter was addressed to.

I also believe that having seen such a written threat staff had a duty to follow up on the matter.

In your letter to this office you did not dispute the determination but asked that the sentence be reduced.

A 30 day segregation penalty can be considered severe. I note that you pled guilty and admitted to making the threats. However, at the hearing you did not express any remorse or seek to retract the threats. I also note that the last threat in your letter was to kill someone. In such circumstances I do not believe that the awarded disposition can be considered either manifestly unfair or unreasonable.

Following my review, I can see no grounds to interfere with the hearing officer's decision in this matter. I have concluded that your disciplinary hearing held on November 2, 2011 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, BC Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody Division
Mr. E. Vike, Warden, KRCC



Mailed Nov 9
November 8, 2011

59320-20/95-180
CS# s.22

s.22

c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing further to your letter dated November 4, 2011, received at the Investigation & Standards Office (ISO) on November 7, requesting a review of a disciplinary hearing that was concluded on November 4 regarding an incident that occurred on October 20 at Kamloops Regional Correctional Centre (KRCC). Pursuant to section 29(2), Correction Act Regulation (CAR), I obtained and reviewed a copy of the documents and listened to the audio record of your disciplinary hearing.

According to the documents, the charging officer reported that you breached s. 21(1)(w), CAR which states 'An inmate must not assault or threaten another person.' Specifically, the officer reported that you threatened another person. You plead not guilty to the allegation. The hearing officer heard evidence from the charging officer and listened to your explanation of the circumstances. During your explanation, you admitted to making the threats, out of anger and frustration. The hearing officer found you guilty of the charge, and after listening to your submissions and reviewing your institutional record, imposed 15 days segregation, consecutive, to any other penalty being served.

In your letter, you believe that too much time transpired from the time of the adjournment to the hearing, and you were not given the opportunity to apologize. You feel this constitutes grounds to allow your appeal. You also assert that the consecutive penalty is unreasonable.

I found the delay between the date and time of the adjournment to the conclusion of your hearing reasonable as you requested the adjournment to consult with legal counsel.

In response to your submission that you were not given the opportunity to apologize, s. 22 provides in part 'if the circumstances allow ... (a) stop the breach from occurring or, (b) give the inmate an opportunity to stop the breach from occurring or give the inmate an opportunity to correct the breach if the person aggrieved by the breach consents...' Subsection (2) provides in part that 'If, in the opinion of the staff member referred to in subsection (1), the breach has not been or cannot be satisfactorily resolved by the actions described in that subsection, the staff member must, as soon as practicable, file a written report....'

In my view, in consideration of the abovementioned information, the nature of the circumstances and in light of the fact that the officer filed the written report against you, I do not support your assertion that an apology is an applicable resolution.

After reviewing your institutional history, the hearing officer imposed 15 days segregation, consecutive to any other penalty being served. In this case, ^{s.22}

^{s.22} stated that ^{s.22} The hearing officer also and that your PDD (probable date of discharge) was ^{s.22} He referenced the nature of the charge (threatening) that resulted in the 30 day segregation penalty as reasons for imposing the consecutive penalty.

In review, I found the consecutive penalty unreasonable, based on the information that your institutional history for this term of incarceration does not support such a penalty. Pursuant to s. 29(4)(b), CAR, I am confirming the decision made and substituting another penalty under s. 27, CAR. Under this particular section, I am substituting that the penalty be served concurrent with the 30 day segregation penalty that was imposed on November 2.

I am requesting that the person in charge change your records to reflect my decision.

Yours truly,



Larry Chow
Inspector
Investigation & Standards Office

/dk

C: Brent Merchant, Assistant Deputy Minister
Pete Coulson, Provincial Director
Even Vike, Warden, KRCC
Brad Tiessen, A/Assistant Deputy Warden (ADW), Hearing Officer



Mailed Nov 9
November 8, 2011

59320-20/11-089
CS# s.22

s.22

c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under Section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (w), CAR.

Your disciplinary hearing concluded at Ford Mountain Correctional Centre (FMCC) October 28, 2011 and the Investigation and Standards Office (ISO) received your request for review dated November 1 via fax November 3.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR) and the audio record of the hearing.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you October 27 under s. 21 (1) (y), CAR, which states, "An inmate must not attempt to obtain, or possess contraband."

Assistant Deputy Warden (ADW) S. Whitehead, presiding as hearing officer, opened your disciplinary hearing October 28 with you in attendance. She confirmed that you had received a copy of the IOR and that you had read and understood the charge. She confirmed that you were aware of your right to seek legal counsel and you advised her that you were ready to proceed. You entered a plea of guilty.

The charging officer read the written circumstances into the record and presented physical evidence to support the charge. The hearing officer viewed that evidence and heard your account of the circumstances. You denied being out of bounds and s.22 that staff found in your cell. You did however admit that you knew that that contraband was in your cell.

The hearing officer subsequently found you guilty based on your plea, the charging officer's report and you admitting knowledge of the contraband. She then moved into the penalty phase of the hearing.

The hearing officer reviewed your institutional records and discussed them with you. She determined that:

- You had received no other institutional charges
- You had been in custody for approximately s.22
- You had been at FMCC for approximately s.22
- You had three ‘unsatisfactory’ reports in your Client Log (CLOG)

The hearing officer advised that she would consider your concerns about one of the reports. She also discussed the significant concerns surrounding the contraband in question with you and you indicated that you understood those concerns. The hearing officer also heard your submissions for consideration in reaching her penalty decision.

The hearing officer subsequently imposed a total penalty of two days segregation effective the date of the breach and forfeiture of five days earned remission (aka ‘LER’), and she provided you her reasons for that decision.

The hearing officer advised you of your rights under s. 27(4) & (5), CAR to request a reduction or suspension of the penalty, and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed. She considered your request for a reduction of the penalty and advised you to make an application closer to your release date.

The hearing officer concluded the hearing after determining that you had no questions or submissions.

Submissions & Review Findings

You requested a review because you believed that you had been “grossly mistreated”. You submitted that:

- the hearing officer said nothing about you losing your s.22 custody status, yet the centre reclassified and transferred you to s.22 custody later that day
- your cellmate claimed lone responsibility yet the hearing officer still found you guilty
- you only admitted knowledge that the contraband was in your shared cell and that there was no evidence to contradict your denial of ownership

In review, I found the finding of guilt reasonable and appropriate under the circumstances. You pled guilty to the charge and you admitted knowledge of the contraband. The record of the proceedings indicated that the hearing officer heard no evidence regarding your cellmate’s claim of ownership. Nevertheless, she reasonably concluded that you shared responsibility for the contraband based on your knowledge of its presence in your cell.

The record of the proceedings indicated that the hearing officer did not advise or indicate that you would lose your s.22 custody status. I found that she made no error however because that is a classification decision and it lies outside the disciplinary process.

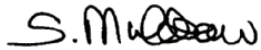
Notwithstanding the above, upon reviewing your sentence records available on CORNET, I found the penalty phase of your hearing flawed. You had no earned remission credited to your sentence when the breach occurred. Consequently, the hearing officer could not impose forfeiture of earned remission as a penalty.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (b), CAR to confirm the decision made and substitute another penalty under s.27. I have substituted a penalty of two days segregation effective the date of the breach based on the hearing officer's reasons, which I found reasonable and appropriate.

I have notified the person in charge of my decision and directed that he have your records changed to reflect it.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director Adult Custody Division
 Mr. S. DiCasteri, Warden, FRCC
 Mr. D. Tosh, Deputy Warden, FMCC
 Ms. S. Whitehead, Assistant Deputy Warden Hearing Officer



Mailed Nov 28

November 28, 2011

59320-20/01-048
CS# s.22

s.22

c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing concluded at Fraser Regional Correctional Centre (FRCC) on November 18, 2011.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing. I have also reviewed the DVR record.

You were charged with breaching section 21(1)(w) of the CAR which states that "an inmate must not threaten another person." You pled not guilty. After reviewing the evidence the hearing officer found you guilty and sentenced you to 15 days in segregation (time served) and 15 days loss of earned remission.

During my review I noted that you were afforded the opportunity to cross-examine the charging officer and another staff witness and to review the DVR evidence. Another inmate was also called at your request to give evidence.

Following my review, I can see no grounds to interfere with the hearing officer's decision in this matter. I also find that this disciplinary hearing concluded on November 18, 2011 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Therefore, pursuant to section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under section 27. I am therefore dismissing your appeal.

Yours sincerely,

Lyall Boswell
Inspector
Investigation and Standards Office

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Mr. S. DiCasteri, Warden, FRCC



Mailed Nov 29

November 28, 2011

59320-20/02-282

CS# s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing further to your letter received at the Investigation & Standards Office (ISO) this date requesting a review of a disciplinary hearing that was conducted on November 17 at North Fraser Pretrial Centre (NFPC). Pursuant to s. 29(2), Correction Act Regulation (CAR), I obtained and reviewed a copy of the documents and listened to the audio record of your disciplinary hearing.

According to the documents, the charging officer reported that you breached s. 21(1)(y), CAR which states: "An inmate must not attempt to obtain, or possess contraband." Specifically, the officer charged you with possessing contraband – "a shank." You pleaded not guilty to the allegation. The record of the proceedings indicated that you denied having knowledge of the item when the search team confronted you after the frisk and you repeated this during your explanation.

After hearing evidence presented by the charging officer and the second officer who searched your cell as well as listening to your explanation, the hearing officer found you guilty of possessing contraband. After reviewing your institutional history, the hearing officer imposed 20 days of segregation from November 17 to be satisfied on December 6.

In review, as this is an allegation of possession of contraband, the hearing officer must, on a balance of probabilities, establish that you had knowledge of the item you were charged with possessing. In this case, I am not satisfied that he established the element of knowledge. Therefore, pursuant to s. 29(4)(c), CAR, I am rescinding the decision made and the penalty imposed for this matter. Pursuant to s. 29(4)(c)(i), CAR, I direct that the person in charge change your record to reflect the rescission.

Yours truly,

Larry Chow
Inspector
Investigation & Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Mr. J. Pastorek, Warden, NFPC
Mr. R. Lacroix, Hearing Officer



December 2, 2011

mailed Dec 05noon

59320-20/11-097

CS# s.22

s.22

c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge BC V2X 7G3

Dear s.22

I am writing to advise you of the outcome of the review that you requested under Section 29 (1), Correction Act Regulation (CAR), for your disciplinary hearing held at Fraser Regional Correctional Centre (FRCC).

Your disciplinary hearing concluded November 28, 2011 and the Investigation and Standards Office (ISO) received your request for review dated November 29, via fax, December 1.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR), the audio record of the hearing and digital video recording (DVR) evidence presented at the hearing.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you November 27 under s. 21 (1) (w), CAR, which states, "An inmate must not assault or threaten another person." The charging officer specified that you assaulted another inmate.

Assistant Deputy Warden (ADW) Seckler, presiding as hearing officer, opened your disciplinary hearing November 27 with you and an investigating officer coordinator in attendance. He confirmed that you had received a copy of the IOR and that you had read and understood it. He also reminded you of your right to seek legal counsel. You advised him that you wanted to exercise that right and he adjourned the hearing to allow you to do so.

ADW Meskas, presiding as hearing officer, reconvened your disciplinary hearing November 28 with you and the charging officer in attendance. He confirmed that you had received a copy of the IOR and that you understood the charge. He also confirmed that you received an opportunity to seek legal counsel. You advised him that you were ready to proceed and you entered a plea of not guilty.

The charging officer read the written circumstances into the record. The hearing officer then heard your account of the circumstances and viewed DVR evidence with you. You argued that the victim could have had the injuries in question before he entered the s.15. You dismissed the unit officer's report that those injuries were not present prior to the incident, arguing that supervising 40 inmates made it highly unlikely that he could have made such an observation.

The hearing officer did not accept your arguments and he subsequently found you guilty based on the written report and the DVR evidence. He then moved into the penalty phase of the hearing.

The hearing officer provided you an opportunity to make submissions towards potential penalty and you only commented about the finding of guilt and evidence. The hearing officer noted three negative Client Log (CLOG) entries and no institutional charges when he reviewed your current institutional records. He also reflected on the seriousness of the breach, your absence of remorse, and your demeanour before imposing a penalty of 15 days segregation.

The hearing officer advised you of your rights under s. 27(4) & (5) to request a reduction or suspension of the penalty and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed. You confirmed that you understood those rights and the hearing officer concluded the hearing.

Review Findings

Based on the DVR evidence and the charging officer's report, I found it reasonable to conclude on a balance of probabilities that you and two other inmates committed a premeditated assault on another inmate. I therefore found the guilty decision reasonable and appropriate.

I also found the penalty imposed reasonable and appropriate under the circumstances. Under CAR, the hearing officer could impose up to 30 days segregation penalty given the seriousness of the incident. However, he considered your institutional record of no prior disciplinary matters and overall satisfactory performance as mitigating circumstances. You made no submissions that may have given him cause to consider imposing an even lesser penalty.

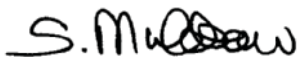
Overall, I found your hearing administratively correct and procedurally fair.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (a), CAR to confirm the decision made and the penalty imposed under s.27, and thereby dismiss your appeal.

In closing, I wish to remind you of your right under s. 27 (5), CAR to apply to the hearing officer for a reduction or suspension of the penalty imposed. You may exercise that right at any time while serving your penalty and you should make your application in writing.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

/gd

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody Division
Mr. S. DiCatri, Warden, FRCC
Mr. J. Meskas, Assistant Deputy Warden Hearing Officer



Mailed Dec 7

December 7, 2011

59320-20/11-101

CS# s.22

s.22

c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing further to your correspondence dated December 1, 2011, received that same date, requesting a review of a disciplinary hearing that was concluded at Fraser Regional Correctional Centre (FRCC) on November 7. Pursuant to s. 29(2), Correction Act Regulation (CAR), I obtained and reviewed a copy of the documents and listened to the audio record of your disciplinary hearing. I also reviewed the DVR (Digital Video Recording) that the hearing officer reviewed during the proceedings.

According to the proceedings, you plead guilty to breaching s. 21(1)(k), CAR, which states “an inmate must not physically fight with another person.” The hearing officer heard evidence from the charging officer, listened to your explanation of the circumstances and reviewed DVR evidence. In your explanation, you stated that your actions were in self-defence.

After listening to all of the information and reviewing the DVR, the hearing officer found you guilty of being in a physical fight with the other inmate. He advised you that while there is no audio from DVR, he was satisfied that your actions of changing the television station, after the other inmate had changed it, plus whatever may have been said between the two of you, made it obvious to him that you and the other inmate had a disagreement about something. You had acknowledged punching the other inmate.

After reviewing and discussing your institutional history, the hearing officer imposed five days segregation and forfeited ten days of earned remission. The segregation penalty commenced November 5, the day that officers placed you in segregation under s. 24, CAR and was satisfied on November 9. As for the forfeited earned remission, the hearing officer suspended it, advising you that if you were charged and found guilty of breaching another CAR, then the suspended penalty would be re-imposed.

In review, I am satisfied that your hearing was administratively fair and procedurally correct. I support the decision made and found the penalty reasonable, under the circumstances. I am confirming the decision made and the penalty imposed. Your appeal is dismissed.

Yours truly,



Larry Chow
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Mr. S. DiCatri, Warden, FRCC
Mr. R. Juliusson, ADW, Hearing Officer



Mailed Dec 8
December 7, 2011

59320-20/05-210
CS# s.22

s.22
c/o Surrey Pretrial Services Centre
14323 57th Avenue
Surrey, BC V3X 1B1

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing concluded at Surrey Pretrial Services Centre (SPSC) on November 30, 2011.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(g) of the CAR which states that “an inmate must not unless unreasonably provoked by that person, behave in an insulting and abusive manner toward a person.” You pled not guilty. After reviewing the evidence, the hearing officer found you guilty and sentenced you to three days in segregation.

You have denied insulting the officer. In your letter you claim that you were found guilty because “I am an inmate and the guards stick together.” I note that at your hearing you argued very strongly that you could have been speaking to someone else or that the officer could not have been certain that it was you who had made the comment. However, the charging officer gave direct evidence that he clearly heard you make the comment and went back to speak to you about it.

The hearing officer did not find your defence credible and preferred the evidence of the charging officer. As a result, he found you guilty of this charge.

Following my review, I can see no grounds to interfere with the hearing officer’s decision in this matter. I have concluded that your disciplinary hearing concluded on November 30, 2011 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lyall Boswell', with a stylized flourish at the end.

Lyall Boswell
Inspector
Investigation and Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Mr. G. Davis, A/Warden, SPSC



Mailed Dec 13
December 12, 2011

59320-20/11-102
CS# s.22

s.22
c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing to advise you of the outcome of the review that you requested under section 29 (1), Correction Act Regulation (CAR), for your disciplinary hearing held at Kamloops Regional Correctional Centre (KRCC).

Your disciplinary hearing for a charge under s. 21 (1) (k), CAR concluded December 7, 2011 and the Investigation and Standards Office (ISO) received your request for review, via fax, December 8. You advised that the hearing officer found you guilty and imposed a penalty of three days segregation.

The centre was unable to provide me with the record of the proceedings in accordance with s. 29 (2), CAR. Consequently, my review could not reach conclusions regarding the decision of guilt, the penalty imposed and overall procedural fairness. Therefore, I have exercised my authority under s. 29 (4) (c) (i), CAR to rescind the decision made and the penalty imposed under s. 27, and to direct that the person in charge change your records to reflect the rescission.

Sincerely yours,

S. Muldrew
Inspector
Investigation and Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Ms. D. Hawboldt, A/Provincial Director, Corrections Branch
Mr. E. Vike, Warden, KRCC



Mailed Dec 13
December 12, 2011

59320-20/11-104
CS s.22

s.22
c/o Alouette Correctional Centre for Women
PO Box 1000
Maple Ridge, BC V2X 7G4

Dear s.22

I am writing further to your letter dated December 10, 2011, received at the Investigation & Standards Office (ISO) on December 12, 2011, requesting a review of a disciplinary hearing that was conducted at Alouette Correctional Centre for Women (ACCW) for an offence that occurred on December 8, 2011. In your letter, you state that you are disputing the imposed decision and believe that the “sentencing” (penalty) is “unfair and unreasonable.” In addition, you state that you are in the ‘process of seeking legal representation to dispute the allegation that was foiled against you.’

Pursuant to S. 29(2), Correction Act Regulation (CAR), I obtained and reviewed a copy of the documents and listened to the audio record of your disciplinary hearing. According to the documents, the charging officer reported that you breached s. 21(1)(c), CAR which states “An inmate must not enter a cell or living unit that is not assigned to the inmate without permission of a staff member.” Specifically, you were in a cell that was not assigned to you.

According to the proceedings, in response to the hearing officer’s questions, you received a copy of the Inmate Offence Report (IOR), you had read and understood it and you were ready to proceed without legal consultation. You entered a plea of guilty.

The charging officer reported that in reviewing DVR (Digital Video Recording) evidence, you were seen entering room s.22 and leaving it about two minutes later. The charging officer reported that you were assigned to room s.22 and, during orientation on s.22 CO Byron had informed you that you were not allowed to enter a cell that was not assigned to you. You advised the hearing officer that the reason for this rule was for ‘safety and theft.’

The hearing officer found you guilty and reviewed your institutional record. In response to making any submissions for the hearing officer to consider before imposing a disposition, you responded by saying that you were “okay with anything.” The hearing officer subsequently forfeited five days of Earned Remission as the penalty, stating that she was satisfied that you were quite aware of the Regulations.

The hearing officer also advised you that you could write to her later in your sentence, requesting a reduction or a suspension of the penalty that she had imposed.

In review, I found your hearing procedurally correct and administratively fair. I also found the penalty reasonable under the circumstances. I am confirming the decision made and the penalty imposed. Your appeal is dismissed.

Yours truly,



Larry Chow
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister
Ms. D. Hawboldt, A/Provincial Director
Ms. L. Anderson, Warden, ACCW
Ms. A. Barley, Assistant Deputy Warden, Hearing Officer



Mailed Dec 14

December 13, 2011

59320-20/07-066

CS# s.22

s.22

c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Kamloops Regional Correctional Centre (KRCC) on December 6, 2011.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(a) of the CAR which states that "an inmate must not disobey a direction of a staff member or the person in charge." You pled not guilty. After hearing evidence, the hearing officer found you guilty and you were sentenced to six days in segregation.

You were accused of refusing to participate in a unit investigation. However, at the hearing it was made clear by the hearing officer that you were under no compulsion to talk to the investigating staff. It appears that the charge against you should have reflected your refusal to follow a staff direction to leave your living unit.

I have therefore concluded that this charge against you was incorrectly worded and that accordingly the disciplinary hearing held on December 6, 2011 was fatally flawed.

Pursuant to section 29(4) (c) (i) of the CAR, I am rescinding the decision made and the penalty imposed under section 27. I will also be directing that your institutional record is amended to reflect this.

Yours sincerely,

Lyall Boswell
Inspector
Investigation and Standards Office

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Ms. D. Hawboldt, A/Provincial Director, Corrections Branch
Mr. E. Vike, Warden, KRCC
Ms. T. Haggerty, A/ADW, Hearing Officer



Mailed Jan 3
January 3, 2012

59320-20/11-111
CS# s.22

s.22
c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under Section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (a), CAR.

Your disciplinary hearing concluded at Kamloops Regional Correctional Centre (KRCC) December 16, 2011 and the Investigation and Standards Office (ISO) received your request for review dated December 22 via fax December 29.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR), the audio record of the hearing and digital video recording (DVR) evidence presented at the hearing.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you December 10, 2011 under s. 21 (1) (a), CAR, which states, "An inmate must not disobey a direction of a staff member or of the person in charge." The charging officer reported that you did not lockup during a code yellow after repeated orders.

Assistant Deputy Warden (ADW) N. Morris, presiding as hearing officer, opened your disciplinary hearing December 11 with you in attendance. She confirmed that you had received a copy of the IOR and that you had read and understood the charge, and she reminded you of your right to seek legal counsel. You advised her that you wished to exercise that right and she adjourned the hearing to allow you an opportunity to do so.

ADW E. Doucet reconvened your disciplinary hearing December 16 with you and your lawyer in attendance. You advised him that you were ready to proceed and you entered a plea of not guilty.

The investigating officer read the written circumstances into the record and answered questions from your lawyer and the hearing officer. The hearing officer then heard your account of the circumstances and viewed DVR evidence with you. An officer that witnessed the incident also provided testimony, and he answered questions from you, your lawyer and the hearing officer. The hearing officer subsequently found you guilty based on the DVR evidence and testimonies of the investigating officer and the witness.

While reviewing your institutional records during the penalty phase, the hearing officer noted that you entered custody at KRCC s.22 and that you had received no other institutional charges since that date. He also noted reports of inappropriate behaviour that he felt also reflected the incident in question. The hearing officer subsequently imposed a penalty of five (5) days segregation effective that date and provided you his reasons for that decision.

The hearing officer advised you of your rights under s. 27(4) & (5) to request a reduction or suspension of the penalty, and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed. He answered questions from your lawyer and then concluded the hearing.

Submissions & Review Findings

You felt that the decision of guilt was unfair. You submitted that the DVR evidence showed that you responded within two minutes, which you believed that was reasonable under the circumstances. You explained that you did not hear the initial code yellow announcement because you were in the shower and that, when multiple showers are running, it is difficult to hear a code called over the loudspeaker outside the room. You further explained that you needed to rinse the soap from your body after you heard the direction to lock up and that you would have left the shower room sooner after doing so if staff had not given your towel to an injured inmate.

You also felt that five (5) days segregation was unfair because the inmate that assaulted the other inmate in the shower room received less than 18 hours of segregation time, and you had no prior disciplinary history since arriving at KRCC.

In review, I found sufficient evidence to support the charge and the decision of guilt. I found it reasonable for the hearing officer to believe on a balance of probabilities that the altercation in the shower room would have drawn your attention and that you would have heard the subsequent code yellow announcement because there are speakers in the shower room. While I acknowledge the inconvenience to you, I found it reasonable under the circumstances for staff to expect you to leave the area immediately and lock up in your cell, and that you had ample opportunity to do so.

I was unable to consider the penalty that another inmate received as I may only review the record of the proceedings for your hearing. However, I found the penalty phase of your hearing flawed. The hearing officer did not provide you an opportunity to make submissions for his consideration towards reaching a penalty decision. A fundamental element of procedural fairness is the accused person's right to be heard, which applies equally in both the evidence and penalty phases of a disciplinary hearing.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (b), CAR to confirm the decision made and substitute another penalty under s.27. I have substituted a penalty of three (3) days segregation for the following reasons:

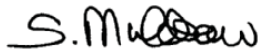
- Nature of the charge and the seriousness of its circumstances
- Your awareness that inmates must lock up immediately when a code yellow is announced
- The negative behaviours documented in your Client Log (CLOG) indicate a reluctance to follow staff direction without delay or confrontation
- As an incentive to comply with staff direction immediately in future given the likelihood of increased disciplinary penalties

I also took your record of no previous institutional charges during this term into account in reaching this penalty decision.

I have notified the person in charge of my decision and directed that he have your records changed to reflect it. I have made the substituted penalty effective the date of the incident, and I consider it satisfied through time served.

My decision has no immediate benefit because you wrote and submitted your request for review after completing your penalty. However, if you are found guilty of breaching a rule under s. 21 (1), CAR again during this term in custody, my decision might affect a potential penalty when progressive discipline is considered.

Sincerely yours,



S. Muldrew
Inspector
Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody Division
Mr. E. Vike, Warden, KRCC
Mr. E. Doucet, Assistant Deputy Warden Hearing Officer



Mailed Jan 4
December 30, 2011

59320-20/11-081
CS# s.22

s.22
c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing further to correspondence received from s.22 your legal counsel on December 29, requesting a review of (2) Correction Act Regulation (CAR), s. 21(1)(w) charges that were heard at Kamloops Regional Correctional Centre (KRCC). Pursuant to s. 29(2), CAR, I obtained and reviewed a copy of the documents and listened to the audio recordings of the two hearings that were concluded on December 23 at KRCC.

Your legal counsel made submissions that the hearings were not concluded “as soon as practicable” as required by the regulations and the findings of guilt were unreasonable.

According to the proceedings and documents you pleaded not guilty both allegations. In this case, Officer Pageau reported that you breached s. 21(1)(w), CAR (x2) which states that “An inmate must not assault or threaten another person.” Specifically, the officer reported that separately you threatened Officer Anderson and then later that same date you threatened the reporting officer (Pageau).

During both hearings, the hearing officer responded to your lawyer’s submission on delay in stating that the hearings were adjourned so that you could obtain legal representation. He stated that you had legal representation from another lawyer for two other institutional matters, who apparently elected not to or was not prepared to deal with these two matters, and that this was the earliest opportunity that all parties (charging officer, present lawyer and suitable hearing officer) were available to attend for these particular matters.

The hearing officer heard testimony from Officer Pageau and heard submissions from you and your legal counsel for both hearings. After listening to all of the information and submissions, the hearing officer was satisfied that the officers perceived your comments to them were threats; therefore, he found you guilty on both charges. After listening to your submissions and reviewing your institutional history, the hearing officer imposed penalties of five days segregation and three days segregation, to be served concurrently from December 23 (segregation penalties for these matters were satisfied on December 27).

In review, I do not support your legal counsel's submission that the delay was in breach of the regulations. The regulations stipulate that a disciplinary hearing must be commenced as soon as practicable, and no later than 72 hours from the time that of the order to convene the hearing. In my review, I determined that your initial hearing commenced within 72 hours of the time of the order to convene a hearing. During the initial hearing, you requested to consult with legal counsel. Therefore the hearing was adjourned in response to your request. The hearing officer also advised you at that time that if you were intending to have legal counsel assist you in these matters then you were advised to inform staff so that a convenient time could be coordinated. As previously stated, December 23 was the date that your current lawyer, charging officer and hearing officer were all available to deal with these matters. In addition, I considered your legal counsel's submissions regarding the findings of guilt and I am satisfied that the evidence supports the findings of guilty in both cases.

In review, I found both hearings procedurally correct and administratively fair. I also found the penalties reasonable, under the circumstances.

In conclusion, I am confirming the decision made for both charges as well as the penalties imposed for these matters. Your appeal is dismissed.

Yours truly,



Larry Chow
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Mr. E. Vike, Warden, KRCC
Mr. J. Lumley, Hearing Officer, A/ADW

s.22



January 6, 2012

mailed Jan 09

59320-20/11-024

CS s.22

s.22

c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George BC V2L 5J9

Dear s.22

I am writing to advise you of the outcome of the review that you requested under Section 29 (1), Correction Act Regulation (CAR), for your disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC).

Your disciplinary hearing concluded January 2, 2012 and the Investigation and Standards Office (ISO) received your request for review dated January 3, via fax, January 5.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR) and the audio record of the hearing.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you January 1 under s. 21 (1) (l), CAR, which states, "An inmate must not take an intoxicant into his or her body." The charging officer specified, "*Inmate s.22 was smoking marijuana.*"

Assistant Deputy Warden (ADW) Pendleton, presiding as hearing officer, opened your disciplinary hearing January 2. She confirmed that you had received a copy of the IOR and that you understood the charge against you. She also confirmed that you were aware of your right to seek legal counsel. You advised her that you were ready to proceed.

The charging officer read the written circumstances and witness statements from the IOR into the record, and you pled not guilty to the charge. You then gave your account of the circumstances and asked the hearing officer to call a witness.

The hearing officer allowed your request and your former roommate attended the hearing room. The hearing officer questioned the witness with you present. He confirmed your account of the circumstances, and he advised her that he did not see you smoking marijuana. The hearing officer excused the witness and then questioned the charging officer further about the incident.

Based on the charging officer's report and oral evidence, the hearing officer concluded on a balance of probabilities that you were smoking marijuana and she subsequently found you guilty.

The hearing officer then moved into the penalty phase of the hearing. She heard your submissions towards potential penalty and she reviewed your institutional records with you. The hearing officer noted recent negative Client Log (CLOG) entries preceding the breach and that you had received s.22 previous institutional charges since entering custody at PGRCC. She subsequently imposed a penalty of eight days segregation effective January 1, and provided her reasons for that penalty.

The hearing officer advised you of your rights under s. 27(4) & (5), CAR to request a reduction or suspension of the penalty and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed. She ensured that you understood those rights before concluding the hearing.

Review Findings

In review, I found that there was insufficient evidence to support the decision of guilt reached in this case.

Although the IOR specified that you were smoking marijuana, the evidence indicated that no one actually observed you doing so. The evidence also indicated that the charging officer and the supervisor that subsequently attended the unit did not inspect neighbouring cells to determine whether the odour of marijuana was either isolated to or strongest in your cell. Furthermore, no other evidence was presented to establish on a balance of probabilities that you had taken an intoxicant into your body.

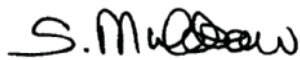
In light of the above, I found it unreasonable to conclude on the evidence presented that you were smoking marijuana and thereby had taken an intoxicant into your body. I therefore found the decision of guilt unfair.

Review Decision

I have exercised my authority under s.29 (4) (c), CAR to rescind the decision made and the penalty imposed under s.27, and (i) to direct that the person in charge change your record to reflect the rescission.

I am holding your file open pending confirmation that the person in charge has completed that action.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

/gd

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director, Corrections Branch
 Ms. J. Hawkins, Warden, PGRCC
 Ms. S. Pendleton, Assistant Deputy Warden Hearing Officer



Mailed Jan 10
January 9, 2012

59320-20/96-134
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your letter of December 30, 2011 in which you requested a review of a disciplinary hearing held at Prince George Regional Correctional Centre on that same date.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(a) of the CAR which states that "an inmate must not disobey a direction of a staff member or the person in charge." You pled not guilty and, after hearing evidence the hearing officer found you guilty. You were sentenced to 3 days in segregation (time served).

I noted that at your hearing the charging officer was not present. I also noted that, for what I believe were technical reasons, the DVR evidence was not reviewed at the hearing either. There was therefore no direct evidence presented against you at the hearing. Instead, an investigating officer read out written circumstances from part I and III of the Inmate Offence Report.

In view of your insistence that you did not disobey the charging officer's verbal directions, I consider that the evidence presented was insufficient to support the finding of guilt against you.

I have therefore concluded that your disciplinary hearing held on December 30, 2011 was fatally flawed.

Pursuant to section 29(4) (c) (i) of the CAR, I am rescinding the decision made and the penalty imposed under section 27. I will also be directing that your institutional record be amended to reflect this.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Ms. J. Hawkins, Warden PGRCC
Ms. S. Urbanski, ADW, Hearing Officer



Mailed Jan 17
January 16, 2012

59320-20/11-115
CS# s.22

s.22

c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing further to your letter dated January 11, 2012, received at the Investigation & Standards Office (ISO) on January 12, requesting a review of a disciplinary hearing (Document Control # 89964) that was concluded on January 8. Pursuant to s. 29(2), Correction Act Regulation (CAR), I obtained and reviewed a copy of the documents and listened to the audio record of your hearing.

According to the documents, the reporting officer charged you with breaching s. 21(1)(k), CAR which states that "An inmate must not physically fight with another person." According to the proceedings, you plead guilty to the allegation. In your explanation, you stated that an issue had been 'brewing for a week and a half' with the other inmate which resulted in name calling directed at you from the other inmate, as well as a challenge to engage in a fight. During your explanation, you admitted to approaching and confronting the other inmate about 'what was the problem'. Subsequently, the other inmate began throwing punches at you and you admitted to engaging in a fight with this inmate.

After listening to the evidence and your explanation, the hearing officer found you guilty of being in a fight with another person. After listening to your submissions about a penalty to consider, the hearing officer reviewed your Client Log where she noted s.22 previous charges, s.22

Consequently, the hearing officer imposed five days of segregation from January 7 (credited for the day before for being held in segregation pursuant to s. 24, CAR) to be satisfied on January 11. The hearing officer provided you with verbal reasons for the penalty then confirmed that in her written reasons on part four of the Inmate Offence Report that is provided to you.

In review, I am satisfied that the hearing was procedurally correct and administratively fair. Therefore, I am confirming the decision made and the penalty imposed. Your appeal is dismissed.

Yours truly,



Larry Chow
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Mr. S. DiCasteri, Warden, FRCC
Ms. D. McNaughton, ADW, Hearing Officer



Mailed Jan 24

January 24, 2012

59320-20/11-119

CS# s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing to advise you of the outcome of the review that you requested under Section 29 (1), Correction Act Regulation (CAR), for your disciplinary hearing held at North Fraser Pretrial Centre (NFPC).

Your disciplinary hearing concluded January 20, 2012 and the Investigation and Standards Office (ISO) received your request for review dated January 20, via fax, January 23.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR), the audio record of the hearing and digital video recording (DVR) evidence.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you January 19 under s. 21 (2), CAR, which states, "An inmate must not assist or attempt to assist another inmate to do anything referred to in subsection (1)."

The charging officer referenced subsection (1) (c), which states, "An inmate must not enter a cell or living unit that is not assigned to the inmate without permission of a staff member." He specified, "*Inmate s.22 (561) kept watch for corrections staff outside cell s.22 while two of his peers went into that cell; a cell that they were not assigned to and did not have permission from staff to be in.*"

Assistant Deputy Warden (ADW) Lacroix, presiding as hearing officer, opened your disciplinary hearing January 20. You confirmed that you had received a copy of the IOR and that you were aware of your right to seek legal counsel. You advised him that you were ready to proceed and he read the charge to you. You advised the hearing officer that you did not really understand the charge and he adjourned the hearing so that the disciplinary hearing coordinator could explain it to you.

ADW Lacroix reconvened the hearing approximately ten minutes later. You advised him that you now understood the charge and you entered a plea of not guilty. The charging officer read the written circumstances and presented DVR evidence that you viewed with the hearing officer. You addressed that evidence and gave your account of the circumstances wherein you denied assisting inmates to enter the cell in question.

Based on the charging officer's report and DVR evidence, the hearing officer concluded that you assisted the other inmates as alleged and he subsequently found you guilty.

The hearing officer then moved into the penalty phase of the hearing. He reviewed your institutional records with you and provided you an opportunity to make submissions towards potential penalty. The hearing officer noted that you had received s.22 previous institutional charges since entering custody. He subsequently imposed a penalty of ten days segregation effective January 19, and provided his reasons for that penalty.

The hearing officer advised you of your rights under s. 27(4) & (5), CAR to request a reduction or suspension of the penalty and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed. He ensured that you understood those rights before concluding the hearing.

Review Findings

In review, I found that there was insufficient evidence to support the charge and the decision of guilt reached in this case.

The IOR indicated that the officer charged you and wrote the report based on his review of DVR footage following an incident on your living unit. He presented that footage as evidence at the hearing; however, it did not show you assisting any inmate to enter the cell in question. It did show you following several inmates to the cell and those inmates entering the cell through its open door. You did not follow them into the cell and you closed its door ajar after one inmate left the cell. You did not open the door for another inmate to enter the cell later.

As reported, the DVR evidence did show you appearing to stand watch outside the cell and to intentionally block an officer from viewing the cell as he passed by. However, those actions all occurred while the others were in the cell.

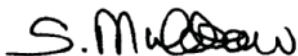
In light of the above, I found it unreasonable to conclude on the evidence presented that you assisted other inmates to enter the cell as the charge alleged. I therefore found the decision of guilt unfair.

Review Decision

I have exercised my authority under s.29 (4) (c), CAR to rescind the decision made and the penalty imposed under s.27, and (i) to direct that the person in charge change your record to reflect the rescission.

I am holding your file open pending confirmation that the person in charge has completed that action.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director, Corrections Branch
 Mr. J. Pastorek, Warden, NFPC
 Mr. R. Lacroix, Assistant Deputy Warden Hearing Officer



Mailed Jan 26
January 25, 2012

59320-20/11-102
CS# s.22

s.22

c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing in response to a letter from you dated January 16, 2012 requesting a review of a disciplinary hearing held at Kamloops Regional Correctional Centre (KRCC) on January 12, 2012. In the letter you indicate the grounds for requesting a review are as follows:

- There is an error on your record of inmate institutional conduct and on the Inmate offence report that affected the penalty decision made by the hearing officer.
- No DVR was produced at the hearing.

Pursuant to Section 29(2), Correction Act Regulation (CAR), I reviewed the documents and audio recordings of the disciplinary hearing.

You were charged and found guilty of violating s. 21(1)(c), CAR which states that "An inmate must not enter a cell or living unit that is not assigned to the inmate without permission of a staff member." The hearing officer heard evidence from the charging officer and yourself. The hearing officer accepted your evidence that you were in the cell to offer advice to the cell's occupant at his request. He found you guilty on the balance of probabilities as he found you admitted the breach and concurred with the circumstances of the charge. He subsequently reviewed your disciplinary history and imposed a disposition of two days loss of earned remission.

In reviewing the proceedings, I have determined that:

- **The hearing officer did not deny you the opportunity to view the DVR.** The hearing officer was prepared to make the DVR of the incident available to you however you told him it was unimportant and advised him that you just wanted to impart the information he would see on the DVR to indicate that the cell occupant approached asking you for assistance prior to your entering the cell. The hearing officer accepted your evidence that you were assisting the cell occupant at his request and confirmed with you that you did in fact enter the inmate's cell. The decision made with respect to guilt was based on your admission of being in the cell rendering the observation of the DVR as unnecessary.

- **As you noted above, the disposition phase of the disciplinary hearing contains an error regarding your disciplinary record that may have affected the disposition imposed by the hearing officer.** Although not stated on the audio recording, the hearing officer appears to have incorrectly considered that you were found guilty of an assault offence resulting in 30 hours of intermittent cell confinement as stated on the Inmate offence report under the "Record for institutional conduct". Upon review of your record it is apparent that the hearing officer was in error as your records contain no indication that you have ever been found guilty of this charge.
- **The imposed disposition is excessive given your institutional conduct and the circumstances of the breach.**

Based on my review of your institutional conduct during the current custodial term, I note that you have no disciplinary breaches although you were warned on December 28 not to enter another inmate's cell and were also warned on January 3 not to converse through doors. Consequently, the principle of progressive discipline does apply. Given the warning you received for the same offence within a couple of weeks previous, a disposition of a warning or reprimand would not be an appropriate disposition in this circumstance. I concur with the hearing officer that a segregation disposition is also not appropriate in this circumstance given that the hearing officer accepted your evidence concerning the reason for the breach.

While I appreciate the hearing officer's consideration for the potential effect a disposition of intermittent cell confinement may have on your classification, any disciplinary disposition may trigger a review of an inmate's classification.

Although the hearing officer's disposition is made in accordance with s. 27(1), CAR it is excessive for this offence given your lack of previous convictions for breaching s. 21(1), CAR regulations and the circumstances of the breach. Therefore, I am altering the disposition. Intermittent cellular confinement on the living unit in circumstances where an inmate is not involved in harming another person is generally a more appropriate disposition for this type of breach than loss of earned remission.

Based on the reasons noted above, I am confirming the decision made and substituting a new penalty for the penalty imposed by the hearing officer pursuant to s. 29(4)(c), CAR. I am imposing a new disposition of intermittent confinement in a cell on the living unit for a total period of 10 hours pursuant to s. 27(1)(c), CAR. The intermittent confinement will be served during your leisure hours from 1645 hours to 2145 hours commencing January 25, 2012. I am also directing that your record be amended to reflect the change in disposition.

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Mr. E. Vike, Warden, KRCC
Mr. D. Spencer, A/Assistant Deputy Warden, Hearing Officer



January 26, 2012

Mailed Jan 27 pm

59320-20/11-121

CS s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam BC V3C 1S2

s.22

I am writing in response to your letter requesting a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC) which concluded on January 24, 2011. In your letter you stated you should not have been found guilty of fighting as you were acting in self defence as the grounds for the review. Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recording of the disciplinary hearing.

You were charged and plead not guilty to violating Correction Act Regulation (CAR) Section 21(1)(k) which states; "An inmate must not physically fight with another person". The record of proceedings indicated that you were found guilty based on evidence you presented during the hearing. The hearing officer did not accept that you were acting in self defence, as he stated that inmates have a right to defend themselves that right is limited, when they gain the upper hand they cannot start causing injury to the other party. He also indicated that you could have pressed the cell call button as an alternative to engaging further in the physical altercation but you chose not to request assistance.

The Hearing Officer imposed a disposition of seven (7) days segregation granting you two days time served for time spent in segregation pursuant to Correction Act Regulation (CAR), Section 24 (1)(b) after reviewing your disciplinary history and behaviour on the living unit.

In reviewing the proceedings, I have determined that the disciplinary hearing was conducted in an administratively and procedurally a fair manner. With respect to your grounds for review, I concur that self defence can be a valid defence to this charge. If an inmate is not able to disengage after being attacked he or she can rely on the defence of self defence. The amount of force used however cannot be excessive and should not be more than is necessary to repel the assault.

The hearing officer gave you sufficient opportunity to present your defence to the charge of fighting. The hearing officer noted that several times you had opportunity to call for staff assistance. Your testimony however indicates that you deliberately chose not to call for staff assistance. The hearing officer also found that you exceeded the force necessary to disengage from the assault when you threw punches at the instigator's face while you were on top of him and holding him down. It seems that if

you were holding him down that you had an opportunity to protect yourself from his blows by either restraining his hands and arms or using your hands and arms to protect your body from any ensuing blows. Under the circumstances I must concur with the hearing officer that you did not use the means at your disposal to disengage and seek assistance and that you exceeded the force necessary to repel the attack.

In regards to the disposition imposed the hearing officer considered your client log and found you had no previous charges since your admission to custody on s.22 He noted that there were s.22 He also noted that using physical violence is not an acceptable means for resolving disagreements.

Given the seriousness of the physical violence and the existence of reasonable alternatives to disengage from the physical altercation, the disposition imposed of seven days segregation is not unreasonable and is in accordance with CAR, Section 27(1). The disposition hopefully may act as a deterrent to you and to other inmates in engaging in such behaviour when viable alternatives to violence are available. Under the circumstances I found no reasons to alter the disposition imposed by the hearing officer.

I am therefore confirming the decision made and the penalty imposed by the Hearing Officer pursuant to CAR, Section 29(4)(a). The hearing officer advised you that you may apply for a suspension or reduction of the disposition imposed.

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

/gd

c: Mr. B. Merchant, Assistant Deputy Minister, B.C. Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Mr. J. Pastorek, Warden, NFPC



Mailed Jan 31
January 31, 2012

59320-20/11-122
CS # s.22

s.22
c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing further to your correspondence dated January 28, 2012, received at the Investigation & Standards Office (ISO) on January 30, requesting a review of a disciplinary hearing that was concluded on January 26 at Kamloops Regional Correctional Centre (KRCC). Pursuant to s. 29(2), Correction Act Regulation (CAR), I obtained and reviewed a copy of the documents and listened to the audio record of the hearing.

According to the documents, the reporting officer charged you with breaching s. 21(1)(g), CAR, which states "An inmate must not unless unreasonably provoked by that person, behave in an insulting or abusive manner toward a person." Specifically, the officer reported that you stated " s.22

The circumstances and proceedings indicated that you broke the sprinkler head in your segregation cell at about 1825 hours on January 25. Officers relocated you and your room mate to another area in order to clean up the water in the cell and surrounding area. Information was heard that officers decided to separate you and your room mate as your behaviours together were of a concern to them. The behaviours were not made known.

Officers then provided you with a coat and placed you in the segregation yard from about 1915 hours to about 1928 hours. During that period, the officer reported that you were repeatedly banging on and yelling through the door. When the officer opened the door, she reported that you yelled and swore at her. The officer reported that she informed you that when you were able to show cooperation, compliance, cease your swearing and name calling, then they would change and move you. You complained that the temperature was freezing and that you still had wet clothes on.

After listening to the information and your explanation, the hearing officer found you guilty of the allegation. After reviewing your institutional history, the hearing officer imposed three days segregation, consecutive to the seven days in segregation imposed for the matter that you had assaulted another inmate.

In review, I determined from the information presented that you were unreasonably provoked; therefore, pursuant to s 29(4)(c), CAR, I am rescinding the decision made and the penalty imposed for this particular charge. Pursuant to s. 29(4)(c)(i), CAR, I direct that the person in charge change your record to reflect the rescission.

Yours truly,



Larry Chow
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Mr. E. Vike, Warden, KRCC
Mr. E. Doucet, ADW, Hearing Officer



Mailed Feb 1

January 31, 2012

CS# s.22
59320-20/07-066

s.22
c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Kamloops Regional Correctional Centre (KRCC) on January 26, 2012.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing. I also reviewed the DVR evidence.

You were charged with breaching section 21(1)(w) of the CAR which states that “an inmate must not assault another person.” You pled not guilty. After hearing evidence, the hearing officer found you guilty and you were sentenced to 12 days in segregation.

In your letter to this office you provided no reasons for your request for a review. However, at the hearing you objected to the absence of the charging officer and contended that without his attendance the evidence submitted was insufficient to support the charge.

In this case, although the charging officer was absent, there was DVR evidence. This evidence corroborated the written circumstances provided by the charging officer.

Following my review, I can see no grounds to interfere with the hearing officer’s decision in this matter. I have concluded that your disciplinary hearing held on January 26, 2012 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lyall Boswell', with a stylized flourish at the end.

Lyall Boswell
Inspector
Investigation and Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Mr. E. Vike, Warden, KRCC



Mailed Feb 2
February 1, 2012

59320-20/11-124
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing to advise you of the outcome of the review that you requested under Section 29 (1), Correction Act Regulation (CAR), for your disciplinary hearing held at North Fraser Pretrial Centre (NFPC).

Your disciplinary hearing concluded January 24, 2012 and the Investigation and Standards Office (ISO) received your request for review dated January 31, via fax, February 1. Your legal counsel, s.22 made the request with submissions on your behalf.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR) and the audio record of the hearing.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you January 8 under s. 21 (1) (y), CAR, which states, "An inmate must not attempt to obtain, or possess contraband." The charging officer specified, "Inmate s.22 was in possession of contraband electrical wiring."

Assistant Deputy Warden (ADW) Nash, presiding as hearing officer, opened your disciplinary hearing January 9. You confirmed that you had received a copy of the IOR and that you were aware of your right to seek legal counsel. You advised him that you wished to exercise that right and he adjourned the hearing to allow you an opportunity to do so.

ADW Jonas, presiding as hearing officer, reconvened the hearing January 10. You advised him that you were not ready to proceed until your legal counsel could attend to represent you. He subsequently adjourned the hearing pending your counsel's attendance.

ADW Penner, presiding as hearing officer, reconvened the hearing January 24 with you and your legal counsel in attendance. You entered a plea of not guilty after the charging officer read the written circumstances and presented physical evidence to the hearing officer. Your counsel questioned the charging officer and then you gave your account of the circumstances.

You admitted to knowingly possessing the wires in question and submitted that you had relied on the implied permission of staff to possess the wiring. Your counsel then presented arguments based on case law and CAR to support dismissing the charge.

The hearing officer did not consider your testimony and counsel's submissions adequate grounds for dismissing the charge. He concluded that you possessed contraband as alleged and he subsequently found you guilty.

The hearing officer then moved into the penalty phase of the hearing. He reviewed your institutional records with you and provided you an opportunity to make submissions towards potential penalty. The hearing officer considered your overall behaviour satisfactory during your s.22 in custody, with the exception of an institutional charge in s.22. He subsequently imposed a penalty of intermittent cellular confinement to be served between 1730 hours and 2145 hours for five evenings effective January 24, and provided his reasons for that penalty.

The hearing officer advised you of your rights under s. 27(4) & (5), CAR to request a reduction or suspension of the penalty and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed. He ensured that you understood those rights before concluding the hearing.

Review Findings

The record of the proceedings indicated that you s.15 your television to the s.15 when s.15. You testified that two officers saw the s.15 and said nothing to you about it or took any other action. You asserted that you would have surrendered the wires immediately if either staff had indicated that your actions were inappropriate and/or that the wires were considered contraband. You believed that the officers had therefore condoned your possession and use of the wires.

Your counsel cited case law indicating that it is unjust if an activity is condoned or not acted upon and then later enforced and punishment flows from that. Case law principle considered such circumstances lulling the accused into a false sense of security.

The hearing officer did not seek evidence to corroborate or contradict your testimony and he decided that the case law principle was not adequate grounds for dismissing the charge.

In review, I found it reasonable to conclude that inmates would understand that they are not permitted to s.15 and that they would understand that materials used to do so could be considered contraband. However, in the absence of contradictory evidence, I found it reasonable for you to believe that the staff in question had condoned your possession and use of the wires. I therefore found that the principle established in case law applied to this matter and that the hearing officer failed to properly consider it.

The hearing officer also did not explore your counsel's submission regarding the violation of s. 22 (1) (a), CAR, and the charging officer did not respond to that submission. Submissions concerning s. 22 (1) (a), CAR must be addressed when its application is questioned as s. 22 (1) (b), CAR clearly indicates that a charge can only follow when a breach has not been or cannot be resolved under (1) (a).

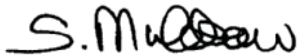
In light of the above, I found it unreasonable to charge you under s. 21 (1) (y), CAR and to subsequently uphold that charge under the circumstances. I therefore found the decision of guilt unfair.

Review Decision

I have exercised my authority under s.29 (4) (c), CAR to rescind the decision made and the penalty imposed under s.27, and (i) to direct that the person in charge change your record to reflect the rescission.

I am holding your file open pending confirmation that the person in charge has completed that action.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director, Corrections Branch
 Mr. J. Pastorek, Warden, NFPC

s.22



Mailed Feb 6

February 3, 2012

59320-20/10-032

CS# s.22

s.22

c/o Surrey Pretrial Services Centre
14323 57th Avenue
Surrey, BC V3X 1B1

Dear s.22

I am writing further to your letter dated January 19, 2012, as well as a letter from s.22 Barrister and Solicitor, who represented you at your disciplinary hearing that was concluded on January 18 at Surrey Pretrial Services Centre (SPSC). You and your counsel submit that because the hearing officer did not allow you and your counsel to make complete submissions to the allegation filed against you that you were denied your right to fundamental justice and that the decision to find you guilty was a significant miscarriage of justice. Pursuant to Correction Act Regulation (CAR) s. 29(2), I obtained and reviewed a copy of the documents and listened to the audio record of your disciplinary hearing.

According to the proceedings, you pled not guilty to breaching CAR s. 21(1)(w) which states "An inmate must not assault or threaten another person." The charging officer reported that you made a direct threat at her. The hearing officer found you guilty and imposed eight days segregation. He provided you with a credit of four days pending this outcome, so you had four days to serve which was satisfied on January 21.

During the proceedings, you provided an explanation for your actions. The hearing officer did cut you off at points as he questioned the relevance of your submissions to the matter at hand. I found this appropriate, as you were commenting on what you felt were concerns from the time you were admitted to custody.

Your lawyer, s.22 also made submissions and provided case law as an example; however, the hearing officer did not allow s.22 to complete her submission for the second case law reference she wanted the hearing officer to consider.

In review, I am rescinding the decision made and the penalty imposed as I determined that a significant breach of procedural fairness occurred when the hearing officer did not allow s.22 to complete her second submission. Pursuant to CAR s. 29(4)(c), I am rescinding the decision made and the penalty imposed. Further, pursuant to CAR s. 29(4)(c)(i), I direct that the person in charge change your record to reflect the rescission.

Yours sincerely,



Larry Chow
Inspector
Investigation and Standards Office

/dk

- c. Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Mr. G. Davis, Acting Warden, SPSC
Mr. C. Myers, ADW, Hearing Officer
s.22 Barrister and Solicitor (Fax: s.22)



Mailed Feb 8
February 6, 2012

59320-20/05-198
CS # s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22 :

I am writing further to your letter dated February 1, 2012, received at the Investigation & Standards Office on February 6, requesting a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC). You state that you were unable to contact your lawyer, denied the opportunity to review DVR evidence and not permitted to cross-examine the witness (cell-mate). Pursuant to s. 29(2), Correction Act Regulation (CAR), I obtained and reviewed a copy of the documents and listened to the audio record of the hearings held on January 30 and January 31 for this particular matter.

According to the documents, the charging officer reported that you breached s. 21(1)(w), CAR, which states that "An inmate must not assault or threaten another person." Specifically, you were charged with assaulting your cell-mate on January 28.

On January 30, you requested that the proceedings be adjourned because you wanted to question the witness, which was your cell-mate. Upon direction from the hearing officer, a supervisor went to find and ask the witness to attend the hearing. A few minutes later, the supervisor returned and stated that the witness was not available as he was at court. You requested and the hearing officer granted you an adjournment until the witness was back in the correctional centre.

On January 31, the hearing officer reconvened the hearing and a supervisor advised the hearing officer that the witness (cell-mate) declined to attend the proceedings.

The hearing officer heard testimony from the investigating officer who advised that he had interviewed the charging officer, the witness and yourself. The investigating officer stated that the witness had advised you of the nature of his charges, you took offense and this triggered the incident. The investigating officer reported that the witness adamantly stated that you had assaulted him.

After considering all of the information presented, the hearing officer found you guilty of assaulting your cell-mate. After listening to your submissions and reviewing your institutional record, the hearing officer imposed 15 days segregation from January 28 to be satisfied on February 11.

In review, at no time during the proceedings (January 30 or January 31) did you raise an issue about not being able to make contact with your lawyer. You did mention at one point that Prisoners' Legal Services (PLS) had advised you that you could ask for the witness to attend your hearing. Also, at no time during both proceedings, did you mention or request viewing DVR evidence. As for the witness not attending, be advised that there is nothing to compel an inmate witness to attend a disciplinary hearing.

In review, based on the information presented, I am satisfied there is sufficient information to support the finding of guilt and I found the penalty reasonable under the circumstances. Therefore, I am confirming the decision made and the penalty imposed. Your appeal is dismissed.

Yours truly,



Larry Chow
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Mr. J. Pastorek, Warden, NFPC
Mr. B. Penner, ADW, Hearing Officer



Mailed Feb 8
February 8, 2012

59320-20/11-125
CS# s.22

s.22
c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22 :

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under Section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (z.1), CAR.

Your disciplinary hearing concluded at Kamloops Regional Correctional Centre (KRCC) February 5, 2012. The Investigation and Standards Office (ISO) received your request for review dated February 5 via fax February 7.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR) and the audio record of the hearing.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you February 4 under s. 21 (1) (z.1), CAR, which states, "An inmate must not create or participate in a disturbance." The charging officer specified, *"I/M did incite others during a disturbance in UA by banging his door, and yelling "Smash up" and by being abusive toward staff and other inmates."*

Assistant Deputy Warden (ADW) Doucet, presiding as hearing officer, opened your disciplinary hearing February 5. You confirmed that you had received a copy of the IOR and that you had read and understood it. You also confirmed that you were aware of your right to seek legal counsel. You advised that you did not wish to exercise that right and that you were ready to proceed, and you entered a plea of not guilty.

The charging officer read the written circumstances into the record and he answered questions from the hearing officer. You then gave your account of the circumstances wherein you denied yelling "Smash up" as alleged in the IOR. You also disagreed with the charging officer's order of events involving your alleged participation. You did however admit to banging on your cell door and yelling while two inmates were causing a disturbance on the living unit.

The hearing officer questioned the charging officer further and allowed you to respond. Although the charging officer was confident that you made the reported comment, you maintained that you did not make it. You also continued to dispute the order of events involving your alleged participation. You stated that you did not make any comments or kick your door before the two inmates threw a microwave and a brew jug at the cell door next to your cell. You advised that you kicked your door when staff s.15 those inmates and ordering them to go to their cell. You did not believe that yelling and kicking your door at that point constituted egging them on and inciting them to do things. You then stated, "Well, maybe it is."

The charging officer indicated in his testimony that the escort officer attending the hearing had witnessed the disturbance, and the hearing officer questioned that officer. The officer advised him that he could only recollect that you and your roommate were yelling and hitting your cell door. He could not recall specific comments or identify your voices.

You indicated that your roommate would support your account of the circumstances, and the hearing officer subsequently called that inmate as a witness in your defence. He advised the hearing officer that he went to the cell door and started banging on it when the two inmates were causing the disturbance. He further advised that he did not know what you were doing at that time because you were behind him.

The hearing officer allowed you an opportunity to question the inmate. You asked him if you specifically said "smash it up" at any particular point of time and he responded, "No." You advised the hearing officer that that was your only question. The hearing officer asked the inmate if you or he made the statement in question, and he responded, "No." You declined the opportunity to question the inmate further.

The hearing officer summarized the evidence. He noted that you and your roommate disputed the charging officer's assertion regarding the statement in question, and that the witness officer could not recall hearing it. He further noted that the officer recalled you and your roommate yelling and banging on your cell door, and that you admitted to banging on it only when staff s.15 the two inmates. You agreed with the hearing officer that those inmates could have acted out further because they were not restrained at that time.

The hearing officer also considered the charging officer's account regarding his familiarity with you and his relative proximity to your cell, and accepted his evidence about your actions based on a balance of probabilities. He subsequently found you guilty and then moved into the penalty phase of the hearing.

The hearing officer heard your submissions toward potential penalty wherein you stated, "I know what I did was immature," and you apologized for your behaviour. You advised that you had been under considerable stress and you described the issues affecting you. The hearing officer reviewed your institutional records with you and noted no other charges since your arrival at the centre s.22. He explained the seriousness of your actions and subsequently imposed a penalty of four days segregation effective from the date of the offence.

The hearing officer advised you of your rights under s. 27(4) & (5) to request a reduction or suspension of the penalty, and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed. You advised him that you did not have any questions and he concluded the hearing.

Review Findings

You submitted a request for review without citing any specific grounds to support it or raising any concerns about the hearing. I therefore conducted a general review of the proceedings for procedural fairness as well as administrative correctness.

In review, I found the charging officer provided sufficient evidence to support the charge. I found the finding of guilt reasonable and appropriate based on the evidence heard. The disputed statement aside, you did nonetheless participate in the disturbance and you subsequently recognized that you had done so.

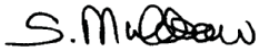
While I noted that the penalty imposed was significantly lower than penalties usually seen for such a serious offence, I found that it reflected the circumstances and your candid accountability reasonably and fairly.

Overall, I found your hearing administratively correct and procedurally fair.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (a), CAR to confirm the decision made and the penalty imposed under s.27, and thereby dismiss your appeal.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director Adult Custody Division
 Mr. E. Vike, Warden, KRCC
 Mr. E. Doucet, Assistant Deputy Warden Hearing Officer



February 13, 2012

mailed Feb 14

59320-20/11-118

CS s.22

s.22

c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George BC V2L 5J9

Dear s.22

I am writing further to your letter dated February 9, 2012, that was received at the Investigation & Standards Office (ISO) on February 10, requesting a review of two disciplinary hearings that were held at Prince George Regional Correctional Centre (PGRCC). Pursuant to s. 29(2), Correction Act Regulation (CAR), I obtained and reviewed a copy of the documents and listened to the audio records of both hearings.

- S. 21(1)(k), CAR which states “*An inmate must not physically fight with another person*”.

On February 2, Officer Teschuk reported that you were involved in a fight with another inmate. At your hearing on February 4, Assistant Deputy Warden (ADW) Love found you guilty and imposed seven days segregation commencing from February 2 to be satisfied on February 8.

In review, I found this hearing procedurally flawed. Therefore, pursuant to s. 29(4)(c), CAR, I am rescinding the decision made and the penalty imposed for this hearing. Further, pursuant to s. 29(4)(c)(i), CAR, I direct that the person in charge change your record to reflect the rescission.

- S. 21(1)(g), CAR which states that “*An inmate must not unless unreasonably provoked by that person, behave in an insulting or abusive manner toward a person*”.

On February 8, Officer Johnson reported that you called him a s.22. At your hearing on February 8, ADW Richard found you guilty and imposed seven days segregation, consecutive to the previous seven days segregation imposed by ADW Love for fighting and, forfeited five days of Earned Remission.

In review, since I allowed your appeal for the s. 21(1)(k), CAR breach, you had no previous institutional charge convictions on your record; therefore, pursuant to s. 29(4)(b), CAR, I confirmed the decision made and substituted another penalty of just two days segregation.

Pursuant to s. 29(4)(c)(i), CAR, I direct that the person in charge change your record to reflect my decision pertaining to this particular matter.

Yours sincerely,



Larry Chow
Inspector
Investigation & Standards Office

/gd

- c. Mr. B. Merchant, Assistant Deputy Minister
- Mr. P. Coulson, Provincial Director
- Ms. J. Hawkins, Warden, PGRCC
- Ms. A. Love, ADW, Hearing Officer
- Mr. R. Richard, ADW, Hearing Officer



Mailed Feb 23

February 22, 2012

59320-20/11-131

s.22

s.22

c/o Vancouver Island Regional Correctional Centre
PO Box 9224 Stn Prov Govt
Victoria, BC V8W 9J1

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Vancouver Island Regional Correctional Centre (VIRCC) on February 12, 2012.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

Correctional Officer Raposa charged you with breaching section 21 (1) (k) of the CAR, which states “an inmate must not physically fight with another person.” You pled guilty. After reading the circumstances and asking you for your side of the story, the hearing officer found you guilty.

In your mailed request to this office, you asked specifically for a review of your disposition without citing any grounds to support a lesser penalty. I therefore conducted a general review of the proceedings. Prior to the charging officer imposing a penalty during your hearing, he asked you if you had anything you wanted him to consider. You had no comments. The hearing officer reviewed your institutional records with you and noted no other charges. He explained the seriousness of fighting at VIRCC and subsequently imposed a penalty of 10 days segregation, effective February 11, 2012.

Following my review, I found your hearing administratively correct and procedurally fair. I found the disposition imposed (10 days segregation) reflected the circumstances and was reasonable.

Pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and penalty imposed under section 27.

I am therefore dismissing your appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Marchenski'.

M. Marchenski
Inspector
Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. D. Green, Warden, VIRCC



Mailed Feb 29
February 29, 2012

59320-20/02-047
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at North Fraser Pretrial Centre on February 22, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(a) of the CAR which states that “an inmate must not disobey a direction of a staff member or of the person in charge.” You pled not guilty but after hearing evidence the hearing officer found you guilty. You were sentenced to three days in segregation (time served).

You were charged with disobeying a staff direction. However, your inmate offence report states: “SPECIFICALLY: Contraband found on inmate’s laptop.” At the hearing, the hearing officer stated to you that you were “charged with having contraband on the laptop you were given.” There is a separate rule in the CAR governing contraband. If you were in possession of contraband you should have been so charged.

However, the offending article in question was a document found on your institutional laptop. This was the resume of another inmate. Such an item does not meet the definition of contraband as defined in the Correction Act.

It is my opinion that the charge against you was confused and incorrectly worded. It is essential that any charge be clear and accurate.

I have therefore concluded that your disciplinary hearing held on February 22, 2012 was fatally flawed.

Pursuant to section 29(4) (c) (i) of the CAR, I am rescinding the decision made and the penalty imposed under section 27. I will also be directing that your institutional record is amended to reflect this.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Ms. L. Anderson, Warden, NFPC
Mr. B. Penner, Hearing Officer



Mailed March 5
March 2, 2012

59320-20/11-132
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under Section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (w), CAR.

Your disciplinary hearing concluded at North Fraser Pretrial Centre (NFPC) February 25, 2012, and the Investigation and Standards Office (ISO) received your request for review dated February 25 via fax February 28.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR), the audio record of the hearing and digital video recording (DVR) evidence presented at the hearing.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you February 23, 2012 under s. 21 (1) (w), CAR, which states, "An inmate must not assault or threaten another person." The charging officer reported that you assaulted another inmate.

Assistant Deputy Warden (ADW) M. Jonas, presiding as hearing officer, opened your disciplinary hearing February 25 with you in attendance. He confirmed that you had received a copy of the IOR and that you had read and understood the charge. He reminded you of your right to seek legal counsel and you advised him that you were ready to proceed. You entered a plea of not guilty.

The investigating officer read the written circumstances from the IOR that the charging officer filed and his own investigation report into the record. The hearing officer then viewed DVR evidence with you and heard your account of the circumstances. He subsequently found you guilty based on the officers' reports and the DVR evidence, and on a balance of probabilities. He then moved into the penalty phase of the hearing.

The hearing officer directed staff to remove you from the hearing room because he found your behaviour too disruptive. After a few minutes passed, he allowed you an opportunity to rejoin the proceedings with the expectation that you remain calm. Shortly after you re-entered the hearing room, he directed staff to remove you again because he found your behaviour still too disruptive.

The hearing officer continued the proceedings in your absence. Upon reviewing your institutional records, he learned that you entered custody at NFPC ^{s.22} and that you had received no other convictions for breaching CAR rules. He subsequently imposed a penalty of 25 days segregation effective the date of the breach while commenting that your file for the most part was acceptable.

Before concluding the hearing, the hearing officer directed the disciplinary hearing coordinator to provide you a copy of his written reasons for the decision reached and the penalty imposed. He also directed him to advise you of your rights under s. 27(4) & (5) to request a reduction or suspension of the penalty, and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed.

Submissions & Review Findings

You requested a review of the guilty decision because you felt that it was not made based on facts or evidence. You submitted that the decision was unreasonable because the evidence and the balance of probabilities could not support the allegation that you stabbed the other inmate. You also felt that the same applied to claims made at the hearing about the seriousness of the inmate's injuries.

Upon reviewing the evidence phase of your hearing, I found sufficient evidence to support the charge of assault and the guilty decision.

The DVR evidence showed the inmate in question enter the unoccupied cell and you enter it approximately one-and-a-half minutes later. A few seconds later, something occurred that suddenly drew the attention of inmates and the unit officer towards the vicinity of the cell. I found it reasonable to conclude on a balance of probabilities that those persons heard the loud scream that the charging officer reported hearing come from the cell. The DVR evidence then showed you exit the cell seconds later, walk directly towards staff and present your hands behind your back before they reach you.

I found no evidence, however, to support the charging officer's closing statement that the cuts that the inmate sustained were "consistent with a stabbing." The hearing officer did not receive or seek any evidence to corroborate that statement, and therefore he could not determine the nature of the assault on a balance of probabilities.

Upon reviewing the penalty phase of your hearing, I found the penalty imposed on you unfair.

In his written reasons, the hearing officer stated, "The assault resulted in serious injuries to the victim." However, no evidence was presented at the hearing to support that statement. The charging officer did not provide any details about the injuries that the inmate sustained beyond "cuts ^{s.22} consistent with a stabbing." The investigating officer did not provide photographs of the injuries, injury reports or witness accounts regarding the injuries. The hearing officer did not ask for that evidence or call the inmate to appear at the hearing so that he could view the inmate's injuries and ask him about them.

In review, the hearing officer could not determine the degree of those injuries without reliable evidence, and I found it reasonable to conclude that he relied on the charging officer's uncorroborated statement, "consistent with a stabbing" to define the injuries as "serious." I therefore found it unfair to consider "serious injuries" as the primary grounds to impose a substantial segregation penalty.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (b), CAR to confirm the decision made and substitute another penalty under s.27. After considering all relevant circumstances that either tended to increase (aggravate) the penalty or tended to reduce (mitigate) it, I have substituted a penalty of 15 days segregation effective the date of the breach. My reasons for imposing that penalty are:

Aggravate

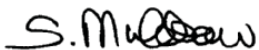
- 'Assault' is a serious offense under CAR.
- The assault caused injuries to another person.
- Evidence presented at the hearing and reports in your Client Log (CLOG) indicated that the incident resulted from your displeasure about the decision to double-bunk the inmate in your cell.
- A report in your CLOG that DVR evidence indicated that the incident caused the living unit officer to call an emergency code for staff assistance. Incidents requiring such action significantly disrupt the operation of a correctional centre.
- As stated in the hearing officer's other written reason for the penalty that he imposed, you showed no remorse or accountability for the incident.
- The need to deter you and other inmates from engaging in such behaviour.

Mitigate

- You have no previous convictions for breaching CAR rules during this term in custody.
- Your CLOG entries generally indicated an acceptable level of behaviour.
- To provide you an incentive to follow CAR rules on the understanding that further breaches of CAR rules during this term in custody may result in increased disciplinary penalties.

I have notified the person in charge of my decision and directed that she have your records changed to reflect it. I have made the substituted penalty effective the date of the incident. Centre staff will recalculate its expiry date and advise you accordingly.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director Adult Custody Division
 Ms. L. Anderson, Warden, NFPC
 Mr. M. Jonas, Assistant Deputy Warden Hearing Officer



Mailed March 7
March 6, 2012

59320-20/11-027
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing concluded at North Fraser Pretrial Centre (NFPC) on February 29, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing. I have also reviewed the DVR record.


You were charged with breaching section 21(1)(a) of the CAR, which states that “an inmate must not disobey a direction of a staff member or the person in charge.” You were accused of shaking a vending machine contrary to the written notice on the machine. You pled not guilty but after hearing evidence the hearing officer found you guilty. You were sentenced to 15 days in segregation.

At the hearing it was established that the unit officer had given permission to another inmate to shake the machine ‘gently’. The DVR evidence showed you shaking the machine alongside that inmate. You stated that the inmate had asked you to help him. You also testified at the hearing that this other inmate had been acquitted at his disciplinary hearing because he had been given permission. These assertions were not challenged or otherwise explored at your hearing.

It is clearly unreasonable to find you guilty of disobeying staff when a correctional officer had given permission to another inmate and the only evidence shows you assisting that inmate. I have therefore concluded that your disciplinary hearing concluded on February 29, 2012 was fatally flawed.

Pursuant to section 29(4) (c) (i) of the CAR, I am rescinding the decision made and the penalty imposed under section 27. I will also be directing that your institutional record be amended to reflect this.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Ms. L. Anderson, Warden, NFPC
Mr. R. Nash, ADW, hearing officer



Mailed March 8

March 7, 2012

59320-20/11-134

CS# s.22

s.22

c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to letters received from you on March 1, 2012, and from your legal counsel, Mr. s.22 which was forwarded by Prisoners' Legal Services on March 6, 2012. Both letters requested a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC). The hearing commenced on February 19, 2012 and concluded on February 27, 2012.

Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recording of the disciplinary hearing.

You were charged and found guilty of violating CAR, Section 21(1)(k) which states: "An inmate must not physically fight with another person." The hearing officer heard evidence from you and the charging officer, which included witness statements. She found you guilty. After she reviewed your disciplinary history, she imposed a disposition of five (5) days segregation for which you were granted time served.

In the letter from your legal counsel, the grounds for requesting a review are as follows:

- The hearing officer should not have relied upon a statement given by the other inmate allegedly involved in this incident as you had no opportunity to cross examine this inmate.
- The only evidence presented by the correctional centre was the evidence of the charging officer who indicated you were seen with the other inmate in a headlock and that you did not let go when told to do so and that as a result a code yellow was called. Your counsel argued that based on your testimony the headlock was a defensive action. There was no other evidence presented of any aggressive actions by you towards the other inmate which could constitute fighting.
- The hearing officer speculated on the thoughts of the other inmate and did not give sufficient weight to your testimony that your actions were defensive.
- The hearing officer did not give sufficient attention to the evidence regarding the banging heard by the charging officer that you claim you did to alert staff to the incident.
- When the charging officer finished his testimony the hearing officer immediately asked for your side of the story before giving you or your counsel a chance to cross examine the witness.

- You and your counsel believe that the hearing officer had her mind made up regarding your guilt prior to any submissions being made by you or your counsel.

Regarding the concerns of your legal counsel about procedural fairness, I agree that when the charging officer finished his testimony, the hearing officer immediately asked you for your side of the story.

While it is a best practice that a hearing officer should ask an inmate if he has any questions or wants to cross examine a witness, there is nothing stopping the inmate from having asked for the opportunity to cross examine the witness before giving his testimony.

In reviewing the proceedings, I have determined that the disciplinary hearing was not conducted in an administratively and procedurally fair manner. Reasons:

Improper use of hearsay evidence - In making her determination, the hearing officer relied on a statement given to the charging officer by the other inmate allegedly involved in the incident, which resulted in this charge. The hearing officer also used the other inmate's untested and uncorroborated statement to test your evidence.

PGRCC did not call the other inmate as a witness and there was no other evidence to corroborate that inmate's statement; therefore, the statement cannot be relied upon. In addition the hearing officer also presented reasons why the centre would be generally unwilling to produce the other inmate as a witness.

The absence of the witness did not allow you the opportunity to cross examine the witness regarding his statement. Although the hearing officer stated that you could have asked to call the witness, the statement of this witness was being presented by the centre as evidence against you, and therefore PGRCC should have either produced the witness at the hearing or presented evidence corroborating the hearsay statement. It is not acceptable procedure to use hearsay evidence to impugn another witness's testimony as there is no basis for the hearing officer preferring that evidence over the evidence of the accused.

Insufficient evidence to determine guilt of the charge under CAR, s. 21(1)(k) -The hearing officer must rely only on the evidence presented in the hearing to make the decision on the guilt or innocence of an accused.

The only evidence given by charging officer concerning the alleged fight is that:

- he heard a consistent thumping which led him to attend at the inmate's cell,
- the noise had ceased before he got to the cell,
- Once at the door, he saw you holding your cell mate in a headlock and that
 - You did not immediately release the other inmate from the headlock when told to do so.
- He then called a code yellow and noted that you and the other the inmate separated.

There was no other evidence of aggressive actions by you presented in the hearing.

You testified that you were acting in self defence in response to the other inmate pushing and hitting you. You testified that you employed the headlock as a defensive action to stop the other inmate from hitting you further. Your evidence was that after you put the other inmate in a headlock that you banged on the door to alert staff and that you let the other inmate go after you heard the code yellow called and when you told the other inmate you would let him go if he was calm. None of your evidence appears contrary to the observations of the charging officer.

In addition, the hearing officer conceded that the headlock could have been used as a defensive act and stated that she believed that you did not want to get involved in an altercation.

The hearing officer also indicated that the fact that you did not comply immediately with the charging officer's direction to stop was indicative that you were fighting. If an inmate does not stop what he is doing when told by an officer that is evidence of a charge under CAR, Section 21(1)(a), not necessarily of CAR, Section 21(1)(k). In light of your testimony that you were acting in self defence, a person defending oneself may apply reasonable means to repel the threat of harm. You testified that you had the other inmate in a headlock to stop him from hitting you and that you let the other inmate out of the headlock when you heard the code yellow and advised the other inmate you would let him out of the headlock if he would be calm.

The hearing officer also appears to have relied upon her speculations of what may have occurred as evidence.

The hearing officer speculated that you provoked the other inmate into fighting as you tried to pass the other inmate when he was agitated in order to get to the door in your attempt to summon staff. The hearing officer speculated that the other inmate saw your effort to get past him to the door as provocation and that he probably believed he had to protect himself from you. A hearing officer cannot speculate on what a potential witness may have felt or observed. The hearing officer should have had that individual produced as a witness.

The hearing officer also speculated that the thumping heard by the charging officer could have been part of the altercation, thereby ignoring the charging officer's evidence that the noises heard were five thumps and that it was a consistent sound. The evidence of the noise being a consistent sound tends to support your testimony that you banged on the door to alert staff as the noises from a scuffle are more likely to have been random. A hearing officer must consider the evidence presented and cannot speculate on alternate explanations of what may have happened in making a determination regarding the guilt of an accused.

Apprehension of Bias

The hearing officer also appeared to have her mind made up prior to you or your legal counsel making submissions regarding the evidence presented.

Your legal counsel had to ask twice if he could make submissions regarding the evidence presented while the hearing officer appeared to be giving reasons about why she thought you were guilty.

Based on the reasons noted above, I am rescinding the decision made and the penalty imposed by the hearing officer pursuant to CAR, Section 29(4)(c)(i). I am also directing that your record be amended to reflect the rescission.

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Ms. J. Hawkins, Warden, PGRCC
Ms. A. Love, Hearing Officer
Mr. s.22 Barrister & Solicitor (Fax: s.22)
Ms. s.22 Legal Advocate, Prisoners' Legal Services



Mailed March 12
March 9, 2012

59320-20/02-047
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your letter requesting a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC). The hearing concluded on March 1, 2012. Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recordings of the disciplinary hearing.

You were charged and found guilty of violating CAR, Section 21(1)(g) which states that "An inmate must not unless unreasonably provoked by that person, behave in an insulting or abusive manner toward a person." The hearing officer heard evidence from the charging officer and yourself. He found you guilty as he found the evidence of the charging officer more credible than your evidence. He subsequently reviewed your disciplinary history and imposed a disposition of five days segregation, as you had one previous charge and did not take responsibility for the breach.

In reviewing the proceedings, I have determined that the disciplinary hearing was not conducted in an administratively and procedurally fair manner.

Reasons:

The hearing officer did not respond to your requests for inmate witnesses or a digital video recording of the incident. The reason given for denying your request to call a correctional supervisor that you believed may have heard the incident was not reasonable as a hearing officer cannot speculate on what a potential witness may or may not have heard.

In addition, the finding of guilt was based on the hearing officer finding the charging officer's evidence more credible than yours. I found however that there was no evidence presented that corroborated either witness' testimony and the hearing officer did not present any reasons as to why he preferred the evidence of the charging officer over yours. As the finding of guilt must be based on it being more probable than not that you committed the breach, I do not find that there is sufficient evidence presented by the custody centre for a finding of guilt in this matter.

Based on the reasons noted above, I am rescinding the decision made and the penalty imposed by the hearing officer pursuant to CAR, Section 29(4)(c)(i). I am also directing that your record be amended to reflect the rescission.

You also indicated in your letter that you were denied telephone access to legal advice prior to the hearing. I do note however that the hearing officer confirmed in the hearing that you were aware of your right to consult legal counsel and that you wanted to proceed with the hearing. At no time during the hearing did you request access to legal counsel. If you have any concerns about your access to telephones prior to the hearing, you may submit a complaint to the custody centre pursuant to CAR, Section 37.

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. L. Anderson, Warden, NFPC
Mr. B. Penner, Hearing Officer



March 9, 2012

mailed March 12

59320-20/11-138

CS# s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC) on March 4, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents listened to the audio record of the disciplinary hearing. I have also reviewed the DVR record.

You were charged with breaching section 21(1)(c) of the CAR which states that “an inmate must not enter a cell or living unit that is not assigned to the inmate without permission of a staff member.” This incident came to light following an assault on an inmate in his cell. DVR evidence shows you entering that cell.

You pled guilty and were sentenced to 12 days in segregation. In imposing the disposition, the hearing officer referred to his belief that you were responsible for the assault.

You object to the disposition, arguing that it is too severe and that you did not assault the inmate.

The written circumstances of this charge mention that shortly after your cell visit, the occupant was found to have been assaulted. The DVR evidence shows you entering the cell and closing the door after you.

In a charge of this nature, the circumstances that led to the charge are clearly legitimate matters for the hearing officer to review and may be considered when determining an appropriate disposition.

Following my review, I have concluded that your disciplinary hearing held on March 4, 2012 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lyall Boswell', with a stylized, flowing script.

Lyall Boswell
Inspector
Investigation and Standards Office

/gd

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Ms. L. Anderson, Warden, NFPC



Mailed m15
March 14, 2012

59320-20/01-231
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your letter requesting a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC) which concluded on March 10, 2012. Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recording of the disciplinary hearing.

You plead not guilty to violating CAR, Section 21(1)(a) which states that "An inmate must not disobey a direction of a staff member or of the person in charge." The record of proceedings indicated that you were found guilty based on your admissions that you disobeyed the direction of an officer three times on March 9, 2012. The hearing officer imposed a disposition of five days segregation, with one day time served.

In reviewing the proceedings, I have determined that the disciplinary hearing was conducted in an administratively and procedurally a fair manner.

In your letter you presented several reasons why you requested the review.

You indicated that you were denied access to digital video recording (DVR) of the incidents which you indicated will contradict the statement of the charging officer.

Upon review, I found that the hearing officer initially asked you what the DVR would show and you advised him the DVR would disagree with some of the statements made by charging officer. The hearing officer determined that he would defer his decision on whether the DVR was necessary for the hearing until after you gave the rest of your evidence.

In your testimony you made admissions that made it clear that you had in fact refused to obey the direction of an officer three times by your physical responses and verbal statements to the officer, and that you felt justified in doing so. You also made a number of statements describing how the DVR would deviate from the charging officer's narrative.

The hearing officer considered your testimony and determined that the differences you cited between the charging officer's statement and the DVR were irrelevant to the charge of failing to comply with the directions of an officer given your admissions regarding your actions. He also noted there is no DVR in the cells.

I concur with the decision by the hearing officer that the DVR would not be necessary for the hearing. The DVR evidence, given your assertions regarding how it deviated from the charging officer's statement, would only be helpful in determining your actions and the time span between your receiving the first direction to lock up and when you actually returned to your cell. You had already made admissions regarding what your actions were and these clearly indicated that you had not complied with the verbal direction of the officer when it was given. Under the circumstances, the DVR would have minimal probative value to the hearing. As noted by the hearing officer, there is no DVR that would show what occurred in the cell. You also had already testified that you refused to comply twice with the direction by the officer that you sit down while in your cell.

Although in your letter you also denied the offence, you clearly admitted to all three instances of not obeying the direction of an officer noted in the charging officer's statement during the hearing.

You state that your actions were justified as you felt like you were being singled out and picked on by the charging officer and that

s.22

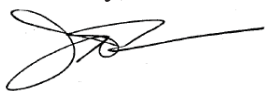
As the hearing officer pointed out, an inmate has the right to make a written complaint about an officer's actions but, pursuant to CAR Section 21(1)(a), cannot fail to comply with the lawful direction of a staff member or person in charge.

You advised that you feel the disposition is too harsh as you have no previous charges.

You received a disposition of five days segregation from the hearing officer. I note that you were given credit for one day segregation per CAR, Section 27(3)(b) for time spent in segregation prior to the hearing. The hearing officer considered that you had no previous disciplinary convictions since your admission to NFPC on s.22 The hearing officer also considered your lack of remorse for your actions and the need to ensure you understand the serious consequences of refusing to obey the lawful direction of an officer.

The disposition imposed is in accordance with CAR, Section 27(1)(d) and 27(2). The disposition does not appear excessive given the facts that you disobeyed three different directions from the staff member and were very argumentative during this event. I concur with the hearing officer that you lack remorse for your actions. Under the circumstances, I find no reason to alter the disposition imposed by the hearing officer. I am therefore confirming the decision made and the penalty imposed by the hearing officer pursuant to CAR, Section 29(4)(a).

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. L. Anderson, Warden, NFPC



Mailed M20
March 19, 2012

59320-20/08-126
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC) on March 14, 2012.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing. I also reviewed the DVR evidence.

An officer charged you with breaching section 21(1) (k) of the CAR which states that "*An inmate must not physically fight with another person.*" You pled not guilty and gave your account of the circumstances. You stated you defended yourself from the attacker's blows by striking him until you felt safe. According to your evidence, this was after you struck the attacker unconscious. After hearing the evidence and reviewing the DVR, the hearing officer found you guilty and you were sentenced to 10 days in segregation.

Further to review, I found the finding of guilt reasonable and appropriate based on the evidence presented. I also found the penalty of 10 days segregation to be fair, given the seriousness of the fight.

Pursuant to section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under section 27. Therefore, I am dismissing your appeal.

Sincerely,

M. Marchenski
Inspector
Investigation and Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. L. Anderson, Warden, NFPC



Mailed M23
March 22, 2012

59320-20/02-047
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to a letter from you which was received on March 22, 2012 requesting a review of a disciplinary hearing held at North Fraser Pretrial Centre. The hearing concluded on March 22, 2012. In the letter you indicate that the charge as stated on the inmate offence report was worded incorrectly and therefore not proven by the evidence.

Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recordings of the disciplinary hearing.

You were charged and found guilty of violating CAR, Section 21(1)(a) which states that "An inmate must not disobey a direction of a staff member or of the person in charge." The hearing officer heard evidence from the charging officer, and yourself. He found you guilty based on the verbal evidence of the charging officer and your admission. He subsequently reviewed your disciplinary history and imposed a disposition of five days segregation.

In reviewing the proceedings, I have determined that the disciplinary hearing was not conducted in an administratively and procedurally fair manner. Reasons:

An inmate has the right to know the case against him in order to ensure that he has an opportunity to prepare his defence to the charge.

The evidence presented by the charging officer at the hearing is substantially inconsistent with the circumstances as cited on the inmate offence report. It was clear in the hearing that you had prepared your defence to the charge based on the circumstances as written by the charging officer, not on the new set of facts verbally presented by the charging officer in the hearing.

There was insufficient evidence presented by the custody centre to support the charge as written.

Based on the reasons noted above, I am rescinding the decision made and the penalty imposed by the Hearing Officer pursuant to CAR, Section 29(4)(c). I am also directing that your record be amended to reflect the rescission.

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Ms. L. Anderson, Warden, NFPC
Mr. B. Penner, Hearing Officer



April 04, 2012

mailed Apr 4

59320-20/12-004

CS s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC) on March 7 and March 28, 2012. In your request for a review, you state the hearing proceeded without your legal counsel present.

Pursuant to section 29(2) of the Correctional Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

On March 7, 2012, the hearing officer adjourned the proceedings indefinitely because you requested to contact legal counsel. On March 28, 2012, the hearing officer reconvened the hearing when you again requested legal counsel to be present. The hearing officer denied your request based on the fact you had ample time (since March 7, 2012) to contact your lawyer and your phone records reflected calls to a lawyer's office. The hearing officer also took into consideration the inconsistent versions you presented to the hearing as to why your lawyer was not present. In my view, the hearing officer did not properly balance your request for legal counsel to be present with the effect of a second adjournment on the proceedings. As a result, I conclude your disciplinary hearing held on March 28, 2012 was flawed.

Pursuant to section 29(4) (c) (i) of the CAR, I am rescinding the decision made and the penalty imposed under section 27. I am also directing NFPC to amend your institutional records to reflect this.

Sincerely,

M. Marchenski
Inspector
Investigation and Standards Office

/gd

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Ms. L. Anderson, Warden, NFPC



April 4, 2012 [mailed Apr 5](#)

59320-20/02-047

CS# [s.22](#)

[s.22](#)

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam BC V3C 1S2

Dear [s.22](#)

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under Section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (w), CAR.

Your disciplinary hearing concluded at North Fraser Pre-Trial Centre (NFPC) April 1, 2012 and the Investigation and Standards Office (ISO) received your request for review via fax April 2.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR), the audio record of the hearing and a digital video recording (DVR).

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you March 30, 2012 under s. 21 (1) (w), CAR, which states, "An inmate must not assault or threaten another person." The charging officer specified that you assaulted another inmate.

Acting Assistant Deputy Warden (A/ADW) Bradley, presiding as hearing officer, opened your disciplinary hearing on April 1 with you and the charging officer in attendance. He confirmed that you had received a copy of the IOR and that you had understood it. He reminded you of your right to seek legal counsel. You advised him that you did not wish to exercise that right and that you were ready to proceed.

The hearing officer read the charge and you pled not guilty to it. The charging officer read his written report into the record. The hearing officer then provided you an opportunity to speak to the charge and he responded to your arguments. He also viewed DVR evidence with you and the charging officer. The hearing officer subsequently found you guilty based on the charging officer's testimony and the DVR evidence.

The hearing officer then moved into the penalty phase of the hearing. He reviewed your institutional records and heard your submissions regarding those records and the incident. He subsequently imposed a penalty of 20 days segregation effective the date of the offence, and stated his reasons for that penalty.

The hearing officer advised you of your rights under s. 27(4), CAR to request a reduction or suspension of the penalties and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed, and he confirmed that you understood those rights. He then concluded the hearing and provided you written reasons for his decisions.

Submissions

You provided several documents with your request for review, but you provided no written submissions regarding them. However, the record of the proceedings indicated that you made several references to similar documents during the hearing and that you advised the hearing officer that they would support an appeal if he found you guilty.

During the hearing, you argued that the hearing officer should dismiss the charge because the IOR did not cite your correct initials and it cited an impossible timeline for serving the charge and advising you about matters related to it. You considered both significant administrative errors and you attempted to enter several documents into evidence to support those arguments.

In review, I found that the charging officer cited the initials for the given names documented in CORNET when you entered custody. He cited your correct correctional service number that is unique to you and no other inmate. He clearly identified you as the person that he directly witnessed involved in an altercation with the other inmate. He subsequently identified you as the assailant when he reviewed DVR footage of the incident. Lastly, he identified you in that footage while viewing it with you and the hearing officer. Consequently, I found that citing the initial 'E' did not cast any doubt on your identity or affect procedural fairness.

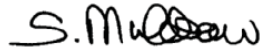
The IOR indicated that you received a copy from CO Banga at 1600 hours March 30 and that he also advised you of your segregation placement under s. 24, CAR at that time. I found that timeline reasonable and that your concerns about it did not affect procedural fairness.

Review Findings and Decision

In review, I found the finding of guilt reasonable and appropriate based on the evidence provided. I also found the penalty imposed reasonable and appropriate under the circumstances. Overall, I found your hearing administratively correct and procedurally fair.

In light of my findings, I have exercised my authority under s.29 (4) (a), CAR to confirm the decision made and the penalty imposed under s.27, and thereby I have dismissed your appeal.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

/gd

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
- Mr. P. Coulson, Provincial Director Adult Custody Division
- Ms. L. Anderson, Warden, NFPC
- Mr. S. Bradley, Acting Assistant Deputy Warden Hearing Officer



April 4, 2012 mailed Apr 5

59320-20/11-123

CS s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam BC V3C 1S2

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing concluded at North Fraser Pretrial Centre (NFPC) on March 25, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing. I have also reviewed the DVR evidence presented at this hearing.

You were charged with breaching section 21(1)(k) of the CAR which states that “an inmate must not physically fight with another person.” You pled not guilty. After reviewing the evidence, the hearing officer found you guilty and sentenced you to 10 days in segregation.

You have claimed that you were only acting in self defense. However, the hearing officer concluded that the DVR recording showed you “went well beyond” defending yourself.

I have reviewed the DVR and I can see no grounds to interfere with the hearing officer’s decision in this matter. I have concluded that this disciplinary hearing was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lyall Boswell', with a stylized, flowing script.

Lyall Boswell
Inspector
Investigation and Standards Office

/gd

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody Division
Ms. L. Anderson, Warden, NFPC



April 4, 2012

mailed Apr 5

59320-20/12-002

CS s.22

s.22

c/o Vancouver Island Regional Correctional Centre
PO Box 9224 Stn Prov Govt
Victoria BC V8W 9J1

s.22

I am writing in response to a personal request form addressed to a deputy warden dated April 2, 2012. The request form was forwarded by the custody centre to the Director, Investigation and Standards Office (ISO) pursuant to Correction Act Regulation (CAR) Section 29(1) as the form requested a review of a disciplinary hearing held at Vancouver Island Regional Correctional Centre (VIRCC) on March 30, 2012.

Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recordings of the disciplinary hearing.

You were charged and found guilty of violating Correction Act Regulation (CAR) Section 21(1)(g) which states; "An inmate must not unless unreasonably provoked by that person, behave in an insulting or abusive manner toward a person." The hearing officer heard the allegation as written on the inmate offence report from the charging officer, and your evidence. He found you guilty as he states he did not believe your evidence and indicated that he knows the charging officer to have a high level of integrity, and therefore believed his allegation against you. He indicated he had previously reviewed your client log and recalled negative entries. He then imposed a disposition of four (4) days segregation. He granted you time served from March 28 as you were placed in segregation pending your disciplinary hearing pursuant to CAR Section 24(1)(b).


In reviewing the proceedings, I have determined that the disciplinary hearing was not conducted in an administratively and procedurally fair manner. An inmate is entitled to a hearing before a neutral decision maker.

The allegation of the charging officer was not tested although there were potentially other witnesses and the possibility that video evidence may have probative value. The decision of guilt was made solely on the hearing officer's personal belief in the integrity of the charging officer.

The hearing officer's previous review of your client log prior to the hearing suggests that negative entries in the past may have also impacted his decision making. Given the conduct of the hearing as noted above, an apprehension of bias was created.

Based on the reason noted above, I am rescinding the decision made and the penalty imposed by the hearing officer pursuant to CAR, Section 29(4)(c). I am also directing that your record be amended to reflect the rescission.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

J. Parkin
Inspector
Investigation & Standards Office

/gd

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Ms. S. Morgan, A/Warden, VIRCC



Mailed Apr 10
April 5, 2012

59320-20/07-031
CS# s.22

s.22
c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under Section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (2), CAR in reference to subsection (1) (w), CAR.

Your disciplinary hearing concluded at Fraser Regional Correctional Centre (FRCC) March 17, 2012 and the Investigation and Standards Office (ISO) received your request for review April 4.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR) and the audio record of the hearing.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you March 7, 2012 under s. 21 (2), CAR, which states, "An inmate must not assist or attempt to assist another inmate to do anything referred to in subsection (1)." The charging officer specified that you assisted another inmate to breach subsection (1) (w), CAR assault another person.

Assistant Deputy Warden (ADW) Seckler, presiding as hearing officer, opened your disciplinary hearing on March 9 with you and the charging officer in attendance. He confirmed that you had received a copy of the IOR and that you had understood it. He reminded you of your right to seek legal counsel. You advised him that you did not wish to exercise that right and that you were ready to proceed.

The hearing officer read the charge and you pled not guilty to it. The charging officer read her written report into the record and she responded to questions from you and the hearing officer. You submitted an inmate offence report into evidence and read its written circumstances into the record. You gave your account of the circumstances, and the charging officer responded to further questions from you and the hearing officer. You subsequently asked for an adjournment to seek legal counsel and the hearing officer granted your request.

ADW Seckler, presiding as hearing officer, reconvened your disciplinary hearing on March 17 with you, your legal representative and the charging officer in attendance. Your representative made submissions in your defence and questioned the charging officer. The charging officer also answered questions from the hearing officer.

After considering the evidence and submissions presented to him, the hearing officer subsequently found you guilty based on a balance of probabilities and the charging officer's evidence.

The hearing officer then moved into the penalty phase of the hearing. He reviewed your institutional records and discussed them with you. He also heard submissions from you and your representative towards potential penalty. He subsequently imposed a penalty of 15 days segregation effective the date of the offence, and stated his reasons for that penalty.

The hearing officer advised you of your right under s. 27(4), CAR to request a reduction or suspension of the penalties. You exercised that right and the hearing officer subsequently reduced your penalty to 13 days segregation. He then advised you of your right under s. 29 (1), CAR to request a review of the decision made and the penalty imposed, concluded the hearing and provided you written reasons for his decisions.

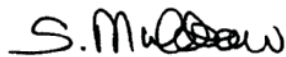
Review Findings and Decision

In review, I found insufficient evidence to support the charge and the finding of guilt reached in this matter. While an assault did occur, I found that the evidence presented did not form a reasonable connection between your conversation with the other inmate and his subsequent actions. The actions of that inmate were considerably different than the details of an earlier event that you described in your account of the conversation and the charging officer reported overhearing.

The charging officer reported that conversation in the written circumstances and its details were similar to those that you read from the earlier inmate offence report. Although the charging officer also reported hearing you giving the other inmate "instruction on s.22", she provided no details in her written report about that alleged instruction. Furthermore, when asked about "throwing", she recounted the details described earlier that involved using a piece of paper to s.22 through a door.

In light of my findings, I have exercised my authority under s.29 (4) (c), CAR to rescind the decision made and the penalty imposed under s.27, and (i) direct that the person in charge change your record to reflect the rescission. I am holding your file open pending confirmation that the person in charge has completed that action.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
- Mr. P. Coulson, Provincial Director Adult Custody Division
- Mr. S. DiCastri, Warden, FRCC
- Mr. E. Vike, Warden, KRCC
- Mr. R. Seckler, Assistant Deputy Warden Hearing Officer, FRCC



Mailed A16
April 13, 2012

59320-20/02-047
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC) on April 10, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing. I have also reviewed the DVR evidence presented at this hearing.

You were charged with breaching section 21(1)(a) of the CAR which states that “an inmate must not disobey a direction of a staff member or the person in charge.” You pled not guilty. After reviewing the evidence, the hearing officer found you guilty and sentenced you to seven days in segregation, to be served from April 24 to 30 (consecutively to a previous disposition.)

You have made three main submissions regarding your hearing:

- Your hearing conducted by ADW Penner was biased and unfair.
- The charging officer did not give you a direction not to cover your cell camera.
- The charging officer acted in a disrespectful and improper manner towards you after your covered cell camera had been discovered.

Following my review I have determined the following:

- Your behaviour at the hearing was flippant and inconsistent. You began the hearing by entering a plea of insanity and ended by asking how you could get more days in segregation. In between you mixed submissions with irrelevant comments. This made it hard for the hearing officer to deal with your behaviour. However, I concluded that ADW Penner considered all the evidence in a consistent, thorough and impartial manner.
- Evidence was given, which you freely acknowledged, that staff had told you prior to this event not to cover your cell camera.
- The DVR evidence shows you covering the camera.
- Any alleged incorrect behaviour by the charging officer after this event is not relevant to the facts of this case and can be pursued by you through the complaint process.

I have concluded that this disciplinary hearing was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances. Pursuant to section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody Division
Ms. L. Anderson, Warden, NFPC



Mailed A17
April 16, 2012

59320-20/02-047
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC) on April 6, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(a) of the CAR, which states that “an inmate must not disobey a direction of a staff member or a person in charge.” You were accused of covering your cell light with two t-shirts. Your hearing was opened on March 29, 2012 and was adjourned for you to seek legal counsel. Your hearing resumed on April 6, 2012 and you indicated you were ready to proceed. You pled not guilty to the charge.

You admitted to covering a light with your shirt but claimed the light was not working. Your defence was that the charging officer, Mr. Diehl, never gave you an order not to cover your cell light. The hearing officer responded by referring to the charging officer’s written circumstances which stated you had been warned several times not to cover your lights. Your response to this was “I’m sure I have s.22

After reviewing the evidence, the hearing officer found you guilty based on the charging officer’s statement and by your own admission. He reviewed your client log and noted there were several occasions where you disobeyed a direct order. He sentenced you to 5 days segregation, time to be served consecutively to an existing disposition.

Based on my review, I can see no grounds to interfere with the hearing officer’s decision in this matter. I have concluded that your disciplinary hearing held on April 6, 2012 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to Section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under Section 27.

I am therefore dismissing your appeal.

Yours truly,

A handwritten signature in cursive script, appearing to read "L. Pineau".

L. Pineau

Inspector

Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director
Mr. L. Anderson, Warden, NFPC



Mailed A17
April 17, 2012

59320-20/10-164
CS# s.22

s.22

c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing concluded at Prince George Regional Correctional Centre (PGRCC) on April 2, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing. I have also reviewed the DVR evidence presented at this hearing, along with the submitted photographs.

You were charged with breaching section 21(1)(w) of the CAR which states that “an inmate must not assault another person.” You were represented by your lawyer and pled not guilty. After reviewing the evidence, the hearing officer found you guilty and sentenced you to 12 days in segregation.

Your lawyer, s.22 submitted that the evidence presented against you was circumstantial and that there was no direct evidence that you had assaulted anyone or indeed that an assault had even taken place.

A disciplinary hearing of this nature is an administrative proceeding and is not a judicial process. As such, the hearing officer has a duty to conduct a fair hearing and you have the right to know the case against you and to be heard. The proceedings are not constrained by the higher standards of the criminal courts and this is most evident in the standard of proof, which is that of the balance of probability.

The evidence presented at this hearing established that you had gone into a small room with two other inmates, one of whom was seen shortly afterwards with facial injuries. Your observed behaviour when located in that room was not consistent with your account that the injured inmate had fallen. The evidence of blood splattering did not support the account of a fall and photographic evidence showed that the injured inmate had facial injuries. Finally, I did not find your account of these events to be plausible.

In reviewing this hearing I could find no grounds to interfere with the hearing officer's determination of guilt or the disposition imposed.

I have concluded that this disciplinary hearing was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances. Pursuant to section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody Division
Ms. J. Hawkins, Warden, PGRCC
s.22 (Fax: s.22)



Mailed A19

April 19, 2012

59320-20/10-060

CS# s.22

s.22

c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing further to correspondence that the Investigation & Standards Office (ISO) received from your lawyer, s.22 via fax April 5, 2012.

s.22 faxed ISO a copy of Mr. C. Carleton's letter to you dated April 5, 2012 regarding a disciplinary hearing completed at Prince George Regional Correctional Centre (PGRCC) April 2, 2012. In the fax cover note, s.22 advised that he was submitting that letter and a letter addressed to another inmate in support of the appeals that you and that inmate would be submitting.

The closing paragraph of Mr. Carleton's letter to you also indicated that you would be submitting an appeal. It stated, "I understand that you will be requesting an appeal of this decision. I am therefore forwarding a copy of this correspondence to Investigation & Standards in support of your appeal."

To date, ISO has not received a written request for review from you as required under section 29 (1), Correction Act Regulation (CAR), and the seven-day time limit for making that request expired April 9, 2012. Consequently, we cannot exercise our authorities under s. 29 (2) through (4), CAR to review the decision and/or the penalty imposed at your disciplinary hearing.

Sincerely yours,

S. Muldrew
Inspector
Investigation & Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Ms. J. Hawkins, Warden, PGRCC
s.22 Trial Lawyer (Fax s.22)



Mailed A20

April 19, 2012

59320-20/09-115

CS# s.22

s.22

c/o Surrey Pretrial Services Centre
14323 57th Avenue
Surrey, BC V3X 1B1

Dear s.22

I am writing in response to your letter dated April 13, 2012 requesting a review of a disciplinary hearing held at Surrey Pretrial Services Centre on April 13, 2012. Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recordings of the disciplinary hearing.

You were charged and found guilty of violating CAR, Section 21(1)(k) which states that "An inmate must not physically fight with another person." The hearing officer found you guilty based on the allegation of the charging officer as written on the inmate offence report and photographs of your injuries entered as evidence. He subsequently reviewed your disciplinary history and imposed a disposition of three days segregation.

In reviewing the proceedings, I have determined that the disciplinary hearing was not conducted in an administratively and procedurally fair manner. Reasons:

The custody centre did not present sufficient evidence to support the charge.

The hearing officer did not properly consider your defence to the charge.

Based on the reasons noted above, I am rescinding the decision made and the penalty imposed by the hearing officer pursuant to CAR, Section 29(4)(c). I am also directing that your record be amended to reflect the rescission.

Sincerely,

J. Parkin
Inspector
Investigation & Standards Office

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Mr. G. Davis, A/Warden, SPSC
Mr. S. Rai, Hearing Officer



Mailed A23
April 23, 2012

59320-20/05-244
CS# s.22

s.22
c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing in response to your letter requesting a review of a disciplinary hearing held at Fraser Regional Correctional Centre (FRCC) which concluded on April 10, 2012. In your letter you indicated that you felt you had been wrongfully charged as the grounds for the review. Please be advised that the Investigation and Standards Office is limited to the record of the disciplinary hearing and any evidence presented during a hearing in our reviews. Under the circumstances, I am therefore unable to review the alleged actions of the charging officer prior to the hearing. If you have concerns in this regard, you may pursue these through the complaint process stated in Correction Act Regulation (CAR) Section 37.

Pursuant to CAR, Section 29(2), I have reviewed the documents and audio recording of the disciplinary hearing.

You were charged and plead not guilty to violating CAR, Section 21(1)(w) which states that "An inmate must not threaten another person." The record of proceedings indicated that you were found guilty based on evidence presented by the charging officer and video recording of the incident. The hearing officer found you guilty on the balance of probabilities and imposed a disposition of 7 days segregation after reviewing your disciplinary history and behaviour on the living unit.

In reviewing the proceedings, I have determined that the disciplinary hearing was conducted in an administratively and procedurally a fair manner.

The hearing officer reviewed all of the available evidence. Witnesses that you requested declined to attend the hearing, one having advised the escort officer that he was not a witness to the event. The hearing officer did not accept your defence that the charging officer misheard your statement as the charging officer's evidence was that you were standing very close so the officer clearly heard the utterance. The charging officer's testimony was supported by the digital video recording of the event which shows you directly across the staff desk counter from the officer which suggests the charging officer would have had no trouble hearing your statement. Under the circumstances, the hearing officer found the evidence presented by the charging officer as more credible.

A decision of guilt is based on there being more evidence supporting the allegation against a person. In this case, the charging officer's testimony being supported by the video of the incident had more weight than your claim that the charging officer misheard your statement. No evidence was presented which supported your claim although potential witnesses were invited to testify on your behalf. The hearing officer's decision of guilt was reasonable as the preponderance of evidence presented in the hearing supports the allegation against you.

With regard to the disposition, the hearing officer reviewed your current record and determined that there had been other incidents of a related nature since your admission s.22. He noted you had a previous breach of CAR, Section 21(1)(g) in which you behaved in an insulting and abusive manner s.22. He also considered that you did not take responsibility for your actions during the hearing. You were given an opportunity to make submissions regarding the disposition. The hearing officer reasonably considered the behaviour of threatening an officer as presenting a serious risk to all staff and imposed a 7 day disposition. The hearing officer advised you that you may apply for a suspension or reduction of the disposition imposed.

The hearing officer has complied with adult custody policy concerning disciplinary hearings. As the disposition is moderate and made in accordance with progressive discipline and CAR, Section 27(1) and (2), I found no reason to alter the disposition.

As the hearing was conducted in a procedurally and administratively fair manner, I am confirming the decision made and the penalty imposed by the hearing officer pursuant to CAR, Section 29(4)(a).

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, B.C. Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Mr. S. DiCatri, Warden, FRCC



Mailed A23

April 23, 2012

59320-20/12-010

CS# s.22

s.22

c/o Vancouver Island Regional Correctional Centre
PO Box 9224 Stn Prov Govt
Victoria, BC V8W 9J1

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing concluded at Vancouver Island Regional Correctional Centre on April 20, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1) (g) of the CAR which states that “an inmate must not unless reasonably provoked by that person, behave in an insulting or abusive manner toward a person.” You entered a plea of guilty. After reviewing the evidence, including your version of events, the hearing officer found you guilty and sentenced you to 7 days in segregation.

In your request to this office, you stated the disposition was not fair and you wished us to review the penalty imposed.

Further to review, I have concluded the hearing officer conducted your disciplinary hearing held on April 20, 2012 in an administratively fair and procedurally correct manner. I found the penalty imposed (seven days segregation) reflected the circumstances of the breach and was reasonable, given the circumstances.

Given the above, pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and the penalty imposed under section 27. I am therefore dismissing your appeal.

Sincerely,

M. Marchenski
Inspector
Investigation and Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Ms. S. Morgan, A/Warden, VIRCC



Mailed A25
April 24, 2012

59320-20/11-084
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your letter requesting a review of the disposition imposed in a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC) which concluded on April 19, 2012. In your letter you indicated that you believe the disposition imposed is excessive as you have no prior offences since your admission.

Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recording of the disciplinary hearing.

You plead guilty to violating CAR, Section 21(1)(w) which states that "An inmate must not assault another person." The record of proceedings indicated that you were found guilty based on evidence presented by the charging officer and your admissions regarding your actions. The hearing officer imposed a disposition of 12 days segregation, with one day time served after reviewing your disciplinary history and behaviour on the living unit.

In reviewing the proceedings, I have determined that the disciplinary hearing was conducted in an administratively and procedurally fair manner and that the disposition imposed is reasonable.

I concur with the hearing officer that assaulting another person is a serious offence. It is one that can also result in criminal charges. In this incident the assault by you was an unprovoked attack on an unsuspecting inmate. It is only mitigated by the facts that you walked away before staff had to become involved and you took responsibility for your actions at your hearing. An inmate can receive a segregation disposition of up to 30 days for this type of breach under CAR, Section 27(2). Therefore, the disposition is in the more moderate range for this type of breach. You were also granted credit for time served pursuant to CAR, Section 24. The disposition was made in accordance with adult custody policy and CAR, Section 27. I found no reason to change disposition as the hearing officer had already considered your submission of no prior offences.

I am therefore confirming the decision made and the penalty imposed by the hearing officer pursuant to CAR, Section 29(4)(a). The hearing officer advised you that you may apply for a suspension or reduction of the disposition imposed.

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, B.C. Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. J. Hawkins, Warden, PGRCC



Mailed A25
April 25, 2012

59320-20/10-060
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing further to my letter dated April 19, 2012 regarding your disciplinary hearing that concluded at Prince George Regional Correctional Centre (PGRCC) April 2. I advised you that the Investigation & Standards Office (ISO) could not exercise its authorities under the Correction Act Regulation (CAR) to review the decision and/or the penalty imposed because the time limit for requesting a review under section 29 (1), CAR had expired.

Assistant Deputy Warden (ADW) Tuck has subsequently advised ISO that he received a special request form from you seeking a review under s. 29 (1), CAR and that he returned it to you on April 9 with written confirmation that he had faxed it. ADW Tuck further advised that you no longer have the form to verify meeting s. 29 (1), CAR requirements; however, your recollection of associated events is consistent with his own.

ADW Tuck advised ISO that either he made an error when entering the fax number or that the fax transmission failed, and he requested that ISO reconsider its decision and review your disciplinary hearing.

The director determined that the above circumstances provide sufficient justification to withdraw our decision and to conduct a review of your hearing.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR), the audio record of the hearing, and photographs and digital video recordings (DVR) entered as evidence.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you March 26 under s. 21 (1) (w), CAR, which states, "An inmate must not assault or threaten another person." The charging officer specified that you assaulted another inmate.

ADW McKay, presiding as hearing officer, opened your disciplinary hearing on April 1 with you and the charging officer in attendance. He confirmed that you had received a copy of the IOR and that you had understood it, and he reminded you of your right to seek legal counsel. You advised him that you wanted to exercise that right and he granted you an adjournment to do so.

ADW Tuck, presiding as hearing officer, reconvened your disciplinary hearing on April 2 with you, your lawyer and the charging officer in attendance. After confirming that you were ready to proceed, he read the charge and you pled not guilty to it. The charging officer then read his written reports into the record, and presented evidence including photographs, DVR and a drawing that the hearing officer viewed with you and your lawyer. Your lawyer presented arguments in your defence and you provided an account of the circumstances. The charging officer also responded to questions from your lawyer and the hearing officer.

After a brief adjournment to review the evidence, the hearing officer provided his decision. Based on the evidence, he found it unlikely that you did not participate in the assault and he subsequently found you guilty of breaching s. 21 (1) (w), CAR.

The hearing officer then moved into the penalty phase of the hearing. You advised him that you had spent nine days in segregation pending your disciplinary hearing, and you and your lawyer made submissions regarding possible penalty. After considering those submissions and your institutional records, the hearing officer imposed a penalty of nine days segregation ‘time served’ and stated his reasons for doing so.

The hearing officer reminded you of your rights under s. 27(4), CAR to request a reduction or suspension of the penalties and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed. He then concluded the hearing and provided you written reasons for his decisions.

Submissions

Your lawyer made several submissions in support of your appeal, and I considered each of them during the course of my review.

Your lawyer submitted, “Despite the fact that there were two witnesses mentioned in the Violation of Corrections Act Regulation Inmate Offence report, the Centre called only Correction Officer Campbell in support of the charge.”

I noted that the charging officer identified you, himself and another officer as witnesses in Part II, and that he provided witness accounts for each in Part III. I also confirmed that a hearing officer has discretionary authority to call witnesses on his or her own motion, and to allow requests for witnesses.

The record of the proceedings indicated that neither you nor your lawyer requested to have the other officer appear as a witness, and I found no compelling reason to expect the hearing officer to call that officer on his own motion. I therefore determined that no error or failure to act fairly occurred under the circumstances.

Your lawyer submitted that “there was no evidence to support the charge of assault on the balance of probabilities or on any other standard” and that “the evidence was not sufficient to determine that an assault occurred at all, let alone that you participated in or perpetrated an assault”.

I considered all the evidence presented in support of and against the charge. I found it reasonable for the hearing officer to conclude on the balance of probabilities that an assault occurred, rather than a consensual fight or an accident as suggested in your defence. I found that the officers' observations, the nature of the victim's injuries and a medical opinion regarding the cause of those injuries supported reaching that conclusion on the balance of probabilities.

I also found it reasonable for the hearing officer to conclude on the balance of probabilities that you participated in the assault. I found that he reasonably weighed the evidence presented in support of and in defence against the charge. You and two other inmates were in a small area when an incident occurred that resulted in significant injuries to one inmate, yet you observed nothing. When an officer passed by the area, he observed you standing directly behind an inmate who had a swollen face and bloody nose, and another inmate standing directly in front of him. You were not lending assistance to the injured inmate and you impeded staff from entering the area. Neither you nor the other inmate had any visible injuries.

Your lawyer further submitted that you were mischarged under CAR if indeed you played any part in an assault "as a more appropriate charge would have been s. 21 (2) assisting another inmate to commit an offence referred to in s. 21 (1)."

I found the decision to file a charge under s. 21 (1) (w), CAR reasonable given the evidence. Charging you under s. 21 (2), CAR would require evidence indicating that the other inmate committed the actual assault.

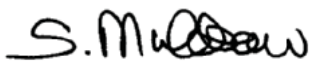
Lastly, your lawyer also submitted that the hearing officer's decision "did not address the evidence or the arguments that I made in support of a dismissal of the charge." In review, I found that the hearing officer's summary of the evidence before announcing his decision did not fully address your lawyer's submissions. However, he did provide sufficient reasons for finding you guilty in this matter. Nonetheless, your lawyer's submission has merit and I have brought it to the hearing officer's attention.

Review Findings and Decision

In review, I found the finding of guilt reasonable based on the evidence provided. I also found the penalty imposed reasonable and appropriate under the circumstances. Overall, I found your hearing administratively correct and procedurally fair.

In light of my findings, I have exercised my authority under s.29 (4) (a), CAR to confirm the decision made and the penalty imposed under s.27, and thereby I have dismissed your appeal.

Sincerely yours,



S. Muldrew
Inspector
Investigation & Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Ms. J. Hawkins, Warden, PGRCC
Mr. M. Tuck, Assistant Deputy Warden Hearing Officer

s.22 (Fax: s.22)



Mailed A25

April 25, 2012

59320-20/09-051

CS# s.22

s.22

c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing in response to your request for a review of a hearing concluded at Kamloops Regional Correctional Centre (KRCC) on April 13, 2012.

Pursuant to s. 29(2), Correction Act Regulation (CAR), I obtained and reviewed a copy of the documents and listened to the audio record of your hearing.

You were charged with breaching Section 21(1)(a) of the CAR, which states that “an inmate must not disobey a direction of a staff member or the person in charge.” You were represented by your lawyer s.22 and pled not guilty. The hearing officer found you guilty and imposed a disposition of 8 days lost remission.

You were accused of covering your cell windows and your defence was that it had been your cellmate who had done this.

The only evidence that the centre was able to produce was an account by the investigating officer of a phone conversation he had had with the charging officer. This is not sufficient when the facts of the case are being contested. Furthermore, at the determination stage of the hearing the hearing officer stated that she placed no weight on this evidence.

I have concluded that the evidence presented at this hearing was insufficient to support the finding of guilt against you.

Pursuant to Section 29(4)(c), CAR, I am rescinding the decision made and the penalty imposed. I have advised the warden at KRCC of this decision and requested that your institutional record and remission amount be changed to reflect this.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lyall Boswell', with a stylized flourish at the end.

Lyall Boswell
Inspector
Investigation and Standards Office

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody Division
Mr. E. Vike, Warden, KRCC
Ms. A. Kennedy, Hearing Officer, KRCC



Mailed A26

April 26, 2012

59320-20/12-011

CS# s.22

s.22

Ford Mountain Correctional Centre
c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing to advise you of the outcome of the review that you requested under Section 29 (1), Correction Act Regulation (CAR), for your disciplinary hearing at Ford Mountain Correctional Centre (FMCC).

Your disciplinary hearing concluded April 21, 2012 and the Investigation and Standards Office (ISO) received your request for review, via fax, April 23.

Under section 29 (2), CAR, I obtained and examined the record of proceedings, including the Inmate Offence Report (IOR) and the audio record of the hearing.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you April 20, 2012 under s. 21 (1) (c), CAR, which states, "An inmate must not enter a cell or living unit that is not assigned to the inmate without permission of a staff member." The charging officer specified: *Inmate was observed entering C-hut although he is assigned to B-hut room* s.22

Assistant Deputy Warden (ADW) Onucki, presiding as hearing officer, opened your disciplinary hearing April 21. He confirmed that you had received a copy of the IOR and that you had read the charge and understood it. He reminded you of your right to seek legal counsel and you advised him that you were ready to proceed. He read the charge and you entered a plea of guilty.

The investigating officer read the written circumstances from the IOR into the record and you gave your account of the circumstances. The hearing officer found you guilty based on the report and your admission of guilt.

The hearing officer then moved into the penalty phase of the hearing. He heard your submissions towards potential penalty, and he reviewed your institutional records and discussed them with you. He noted that you had received several warnings and negative reports for being in other cells and living units without staff permission, and for being out of bounds. Based on your record of behaviour and upon considering your submissions, the hearing officer imposed a penalty of intermittent cellular confinement.

The hearing officer directed that you serve the penalty in the segregation unit to ensure your compliance, and he defined the following periods of confinement:

- April 28 start at 0930 hours and out April 30 at 0630 hours
- May 5 start at 0930 hours and out May 8 at 0630 hours

The hearing officer advised you of your rights under s. 27(4) to request a further reduction or suspension of the penalty and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed. He concluded the hearing and provided you written reasons for his decisions.

Review Findings

In review, I found the decision of guilt reasonable and appropriate given the evidence and your admission of guilt. However, I found the penalty imposed unreasonable as the terms of its application are not supported under CAR.

Firstly, s. 27 (1) (c), CAR states “intermittent confinement in a cell, other than a cell in the segregation unit...” Secondly, the periods of confinement imposed did not reasonably meet the intent of ‘intermittent’. The periods imposed were extremely long and bore close resemblance to periods of segregation.

I also found the delay in activating the penalty and the gap between the two periods of confinement diminished the penalty’s effectiveness to prompt and encourage your compliance with the rule governing cell and living unit visitation.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (b), CAR to confirm the decision made and substitute another penalty under s.27. To reach my penalty decision, I considered several factors that I will outline in the reasons for my decision.

I have substituted a penalty of 32 ½ hours of intermittent cellular confinement effective April 26 through April 29 to be applied as follows:

Thursday April 26 confined to assigned room

- 1800 hours to 2300 hours

Friday April 27 confined to assigned room

- 1800 hours to 2300 hours

Saturday April 28 confined to assigned room

- 0930 hours to 1245 hours
- 1330 hours to 1630 hours
- 1800 hours to 2300 hours

Sunday April 29 confined to assigned room

- 0930 hours to 1245 hours
- 1330 hours to 1630 hours
- 1800 hours to 2300 hours

My reasons for imposing this penalty are:

- the nature of the charge the rule is in place to protect the safety and security of persons and property
- the circumstances surrounding the charge no further incidents occurred as a result of you entering C-hut without staff permission
- degree of responsibility you entered the hut without staff permission on your own accord
- admission of guilt you were honest and forthright, you did not attempt to play down the incident and you apologized for breaching the rule
- record of behaviour your Client Log (CLOG) contained numerous entries reporting non-compliance with the rule, warnings and attempts to address your behaviour through less punitive measures, and you have one previous institutional charge s.22 during this term of custody
- submissions you acknowledged your history of non-compliance without argument as well as the opportunities that you have had to correct your behaviour, you want to change your behaviour, your current probable discharge date (PDD) is s.22 and you have a practical plan in place for your release from custody
- deterrence a penalty that affects your liberty is necessary to encourage you to change your behaviour, and to reinforce the importance of compliance to you and other inmates

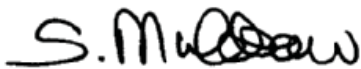
Please understand that the nature of the charge, its circumstances, the degree of your responsibility, your record of behaviour and the need to deter non-compliance with the rule supported a much greater penalty. I imposed a lesser penalty, however, in consideration of your honesty, minimal disciplinary record, determination to correct your behaviour, pending release date and release plans.

It is also important to understand that you may receive greater penalties, including segregation and/or forfeiture (loss) of earned remission, if you breach this rule again or if you breach any other rule under s. 21, CAR.

I have notified the person in charge of my decision and directed that he have your records changed to reflect it.

In closing, I remind you that you have the right under s. 27 (4), CAR to request a reduction or suspension of all or part of the penalty imposed. You may make such a request to ADW Onucki or the person in charge at FMCC if he is not available.

Sincerely yours,



S. Muldrew
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Mr. S. DiCastri, Warden, FRCC-FMCC
Mr. D. Tosh, Deputy Warden i/c, FMCC
Mr. D. Onucki, Assistant Deputy Warden - Hearing Officer



Mailed May 1
April 30, 2012

59320-20/12-018
CS# s.22

s.22
c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing in response to your request, submitted by your lawyer s.22 for a review of a hearing concluded at Kamloops Regional Correctional Centre (KRCC) on April 20, 2012.

Pursuant to s. 29(2), Correction Act Regulation (CAR), I obtained and reviewed a copy of the documents and listened to the audio record of your hearing.

You were charged with breaching Section 21(1)(y) of the CAR, which states that “an inmate must not possess contraband.” You were represented by s.22 and pled not guilty. The hearing officer found you guilty and imposed a disposition of two days segregation.

You were accused of possessing contraband in the form of the blue casing of a pen of the type issued to staff.

At the hearing evidence was given that contraband is ‘anything altered from its original purpose.’ In her written decision the hearing officer wrote that “items not issued to inmates and found in their possession would constitute a contraband item.”

Both of these assertions are incorrect. Contraband is clearly defined in the *Correction Act* and at a hearing it must be established how the alleged contraband item meets the legal definition before any determination of guilt can be reached.

As this was not done in this case, I have concluded that the evidence presented at this hearing was insufficient to support the finding of guilt against you.

Therefore, pursuant to Section 29(4)(c), CAR, I am rescinding the decision made and the penalty imposed. I have advised the warden at KRCC of this decision and requested that your institutional record be changed to reflect this.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody Division
Mr. E. Vike, Warden, KRCC
Ms. A. Kennedy, Hearing Officer, KRCC

s.22



Mailed May 2
May 1, 2012

59320-20/96-134
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC) on April 7, 2012 and April 26, 2012.

Pursuant to section 29(2) of the Correctional Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing. I also reviewed the digital video recording evidence.

On April 7, 2012, the hearing officer adjourned the proceedings indefinitely, because you requested to contact legal counsel. On April 26, 2012, a hearing officer reconvened the hearing at which time your legal counsel was present. You were charged with breaching section 21(1) (a) "An inmate must not disobey a direction of a staff member or of the person in charge." You entered a plea of not guilty. After hearing evidence, including your version of events and your lawyer's submissions, the hearing officer found you guilty and imposed 5.5 hours of intermittent cellular confinement.

In your request to this office, you provided no reasons for request for a review. However, during the hearing, you contended you did not hear the officer giving you verbal direction to "lock-up." In this case, the charging officer, who was present at the hearing, presented sufficient evidence to the contrary. In addition, the digital video recording, even though it did not have audio, corroborated the circumstances provided by the charging officer.

In review, based on the information presented, I am satisfied there is sufficient evidence to support the finding of guilt and I find the penalty imposed reasonable under the circumstances. I have concluded that your disciplinary hearing held on April 26, 2012 was conducted in an administratively fair manner.

Pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and the penalty imposed under section 27. Based on this, I am therefore dismissing your appeal.

Sincerely,



M. Marchenski
Inspector
Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director
Ms. J. Hawkins, Warden, PGRCC



May 4, 2012

mailed May 7

59320-20/07-008

CS# s.22

s.22

c/o Vancouver Island Regional Correctional Centre
PO Box 9224 Stn Prov Govt
Victoria BC V8W 9J1

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under Section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (w), CAR.

Your disciplinary hearing concluded at Vancouver Island Regional Correctional Centre (VIRCC) April 29, 2012 and the Investigation and Standards Office (ISO) received your request for review via fax May 3.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR), the audio record of the hearing and a digital video recording (DVR).

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you April 28, 2012 under s. 21 (1) (w), CAR, which states, "An inmate must not assault or threaten another person." The charging officer specified that you assaulted another inmate.

Acting Assistant Deputy Warden (A/ADW) Dempsey, presiding as hearing officer, opened your disciplinary hearing on April 29 with you in attendance. He confirmed that you had received a copy of the IOR and that you had understood it. He reminded you of your right to seek legal counsel. You advised him that you did not wish to exercise that right and that you were ready to proceed.

The hearing officer read the charge and you pled guilty to it. He then read the charging officer's written report into the record and you presented no evidence in your defense when provided an opportunity to speak to the charge. The hearing officer viewed DVR evidence with you and described the scene for the record. He subsequently found you guilty based on your admission of guilt, the charging officer's written account and the DVR evidence.

The hearing officer then moved into the penalty phase of the hearing. He reviewed your institutional records and heard your submissions for consideration towards his penalty decision. The hearing officer subsequently imposed an aggregate penalty of 25 days segregation effective the date of the breach and forfeiture of 15 days earned remission. He also stated his reasons for those penalties.

The hearing officer advised you of your rights under s. 27(4), CAR to request a reduction or suspension of the penalties and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed, and he confirmed that you understood those rights. He then concluded the hearing and provided you written reasons for his decisions.

Submissions

You felt that the aggregate penalty was unreasonable because you had told the hearing officer that you would prefer a longer segregation penalty than lose earned remission. You made three submissions to support your request for review:

1. You do not agree with the written report stating that an assault occurred. You stated that it was a fight and the actions that you took were necessary to protect yourself from danger.
2. You did not purposely try to put the staff member that intervened in harm. You continued to fight because you felt that you would be “put in harm from Jail Politics if I didn’t stick up for myself.”
3. The DVR evidence does not show who started the altercation.

I considered your submissions and found no grounds for allow your appeal. You advised the hearing officer that you understood the charge and you pled guilty to it. You had an opportunity to present evidence in your defense and you did not do so, and you did not raise any concerns about the DVR evidence to the hearing officer. You also did not raise any concerns to the hearing officer about his penalty decision reasons that included your actions when staff intervened.

Review Findings and Decision

In review, I found the finding of guilt reasonable and appropriate based on your admission of guilt and the evidence provided. However, I found the penalty imposed unreasonable.

In his written reasons, the hearing officer described the incident as a “very serious assault on another inmate”. He further stated that your actions “caused harm” to the other inmate and that he “required an emergency trip to the hospital”.

When imposing his penalty decision at the hearing however, the hearing officer only described the incident as a “serious offence”. He also made no statements about you causing harm to the other inmate or that inmate requiring an emergency trip to the hospital, and that information was not available to him in the charging officer’s written report or your Client Log (CLOG).

In light of the above, I found that the written reasons in question created an apprehension of bias that affected procedural fairness and the penalty imposed on you. Consequently, I have exercised my authority under s.29 (4) (b), CAR to confirm the decision made and to substitute another penalty under s.27.

After considering the circumstances surrounding this matter, I have substituted 25 days segregation effective April 28, 2012 and forfeiture of seven (7) days earned remission for the following reasons:

Aggravating factors, i.e. circumstances that tend to increase a penalty

- the serious nature of the charge, ‘assault another person’
- the seriousness of the incident DVR evidence showed that the other inmate attempted to flee from you at the onset of the incident; the inmate did not retaliate when you repeatedly struck him with your fists, knees and feet; you continue to strike the inmate when he was on the ground and when an officer intervened and attempted to move you away from the inmate; and, your continued assault on the inmate placed the intervening officer at risk of injury
- degree of responsibility your actions do not reflect your later claim of acting in self-defense
- disciplinary record you have now received s.22 disciplinary charge convictions since entering custody s.22 and, you have s.22 previous convictions for breaching s. 21 (1) (w), CAR [assault or threaten to assault] and s.22 for breaching s. 21 (1) (k), CAR [fighting]
- the need for progressive discipline your most recent disciplinary penalties were 25 days segregation for breaching s. 21 (1) (w), CAR in s.22 5 days segregation and 15 days forfeiture of earned remission for breaching s. 21 (1) (k), CAR in s.22 and, 5 days forfeiture of earned remission for breaching s. 21 (1) (y), CAR [possess or attempt to obtain contraband] in s.22
- the need for a deterrence a penalty that affects your liberty is necessary to encourage you to change your behaviour, and to reinforce to you and other inmates the seriousness of breaching s. 21 (1) (w), CAR

Mitigating factors, i.e. circumstances that tend to reduce a penalty

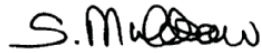
- admission of guilt you pled guilty to the charge and you apologized for your actions
- record of behaviour overall, your CLOG entries for the past six months are positive
- submissions you requested a penalty that did not include forfeiture of earned remission because you have had a lengthy term in custody and s.22 based your expected release from custody s.22

I gave great consideration to your submissions however I found it necessary to impose a forfeiture of earned remission given the aggravating factors surrounding this matter.

I have notified the person in charge of my decision and directed that she have your records changed to reflect it.

In closing, I remind you that you have the right under s. 27 (4), CAR to request a reduction or suspension of all or part of the penalty imposed. You may make such a request to A/ADW Dempsey or the person in charge of VIRCC if he is not available.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

/gd

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
- Mr. P. Coulson, Provincial Director Adult Custody Division
- Ms. S. Morgan, Acting Warden, VIRCC
- Mr. S. Dempsey, Acting Assistant Deputy Warden Hearing Officer



Mailed M10
May 9, 2012

59320-20/05-210
CS# s.22

s.22
c/o Surrey Pretrial Services Centre
14323 57th Avenue
Surrey, BC V3X 1B1

Dear s.22

I am writing in response to a letter dated May 7, 2012 from your legal counsel, s.22 requesting a review of a disciplinary hearing held at Surrey Pretrial Services Centre (SPSC). The hearing commenced on April 20 and concluded on May 4. In the letter s.22 indicates the grounds for requesting a review are as follows:

- That the hearing officer committed an error in law by finding you guilty when the evidence supports that you were acting in self defence in repelling an unprovoked attack by another inmate.
- That the hearing officer's failure to consider the defence submissions was a violation of your right to a full answer and defence and therefore constitutes a breach of procedural fairness.

Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recordings of the disciplinary hearing.

You were charged and found guilty of violating CAR, Section 21(1)(k) which states that "An inmate must not physically fight with another person." The hearing officer heard evidence from the charging officer and yourself. Based on the charging officer's testimony that she saw fists being thrown on both sides, the hearing officer found you guilty on the balance of probabilities. He subsequently imposed a disposition of 5 days segregation.

In reviewing the proceedings, I have determined that the disciplinary hearing was not conducted in an administratively and procedurally fair manner.

Reasons:

The hearing officer created an apprehension of bias as he stated on the record that he was going to look at your file before he made a finding of guilt or innocence.

Although your legal counsel asked for DVR evidence of the incident, there was none available and no plausible reason for its absence given the location of the incident. The hearing officer should have adjourned to attempt to obtain the potential evidence which you believe would have supported your testimony regarding your actions being in self defence or accepted that the DVR evidence would have supported your claims of self defence. The absence of this potential evidence limited your ability to present a full answer and defence to the charge.

The hearing officer did not properly consider your testimony or the submissions presented by your legal counsel regarding your actions being in self defence before finding you guilty of fighting.

Your legal counsel presented a number of submissions with regard to the evidence presented in the hearing. The hearing officer did not address any of the submissions which limited your ability to answer your charges.

The hearing officer stated on the audio record that his decision regarding your guilt was based on the evidence of the charging officer that she saw you and the other inmate both throwing punches. The hearing officer's reliance on the evidence of the charging officer in finding you guilty was problematic as some of this testimony was inconsistent. In one statement she testified that she could not remember seeing you throwing a punch, but in another statement she claimed that she saw you and the other inmate both throwing punches. Your testimony, on the other hand, was relatively detailed and consistent and should have been given greater weight than that of the charging officer, particularly in the absence of evidence to corroborate her testimony.

Additionally, evidence that a person threw a punch, or multiple punches, in an altercation may not be sufficient to prove the charge of fighting as a person may use the force necessary to repel an attacker. The charging officer had also testified she did not see the beginning of the altercation nor did she present any DVR evidence in support of the allegation that you were fighting with the other inmate. There was no evidence presented suggesting that you had provoked the other inmate into attacking you or to disprove that you were acting in self defence to repel the attack and keep the other inmate from hitting you. The evidence presented by the custody centre staff in your hearing was insufficient to prove the charge of fighting on the balance of probabilities given your claims you were acting in self defence.

Based on the reasons noted above, I am rescinding the decision made and the penalty imposed by the Hearing Officer pursuant to CAR, Section 29(4)(c). I am also directing that your record be amended to reflect the rescission.

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Mr. G. Davis, A/Warden, SPSC
Mr. R. Johnston, Hearing Officer

s.22



Mailed M11
May 10, 2012

59320-20/11-024
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to a letter from you dated May 9, 2012, requesting a review of a disciplinary hearing held on May 8 at Prince George Regional Correctional Centre (PGRCC). In the letter you indicate the grounds for requesting a review are as follows:

- Your request for a witness to attend the hearing was ignored by the hearing officer.

Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recordings of the disciplinary hearing.

You were charged and found guilty of violating CAR, Section 21(1)(d) which states that "An inmate must not wilfully or recklessly damage or destroy property that is not property of the inmate." The hearing officer heard testimony from the charging officer who read statements made by another officer and yourself. He found you guilty on the balance of probabilities based on the evidence presented by the charging officer. He subsequently reviewed your disciplinary history and imposed a disposition of seven days segregation.

In reviewing the proceedings, I have determined that the disciplinary hearing was not conducted in an administratively and procedurally fair manner.

Reason:

An accused inmate has the right to present a defence to his charge. During the hearing you requested a witness to attend three times, believing that the witness may support your defence. The hearing officer did not call the witness nor was the potential evidence of the witness accepted by the hearing officer. The hearing officer did not provide any reasons for why the witness was not called. Under the circumstances, you were unable to fully present your defence to this charge, thereby rendering your hearing procedurally unfair.

Based on the reasons noted above, I am rescinding the decision made and the penalty imposed by the Hearing Officer pursuant to CAR, Section 29(4)(c). I am also directing that your record be amended to reflect the rescission.

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Ms. J. Hawkins, Warden, PGRCC
Mr. J. Peters, Hearing Officer, PGRCC



Mailed M11

May 10, 2012

59320-20/11-118

CS# s.22

s.22

c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a hearing concluded at Prince George Regional Correctional Centre (PGRCC) on May 8, 2012.

Pursuant to s. 29(2), Correction Act Regulation (CAR), I obtained and reviewed a copy of the documents and listened to the audio record of your hearing.

You were charged with breaching Section 21(1)(y) of the CAR, which states that “an inmate must not possess contraband.”

I have concluded that this hearing was not conducted in a fair manner and that the process was fatally flawed. Therefore I am exercising my authority under s. 29 (4) (c) (ii), CAR to rescind the decision made and the penalty imposed under s. 27, and I am directing that a new disciplinary hearing be convened and presided over by a person appointed by the assistant deputy minister.

I have advised the Corrections Branch of my decision and I have requested that you be released from your segregation disposition forthwith and that your institutional record is amended to reflect this.

Yours sincerely,

Lyall Boswell
Inspector
Investigation and Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody Division
Ms. J. Hawkins, Warden, PGRCC
Ms. S. Pendleton, Hearing Officer, PGRCC



Mailed M14
May 11, 2012

59320-20/05-214
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC) on April 26, 2012 and May 4, 2012. In your faxed special request to this office, you provide no reasons for your request for a review. However, during the hearing, you stated you acted in self-defence.

Pursuant to section 29(2) of the Correctional Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing. I have also reviewed the digital video recording of this incident.

On April 26, 2012, the hearing officer adjourned the proceedings indefinitely because you requested to contact legal counsel. On May 4, 2012, the hearing officer reconvened the hearing with your lawyer, s.22, present. You were charged and found guilty of violating CAR, Section 21(1) (k) which states, "An inmate must not physically fight with another person." The hearing officer heard evidence from the charging officer and yourself. She also took into consideration submissions from your lawyer. Based on your testimony, and the digital video recording that was submitted as evidence, the hearing officer found you guilty. She subsequently imposed a disposition of 6 days segregation time served.

The charging officer testified he did not directly observe the incident but gathered his evidence from reviewing the digital video recording. In turn, an open cell door obscured the digital video recording, which made it difficult to refute your evidence of self-defence. In addition, your testimony around getting into a verbal exchange with this inmate prior to this incident is not sufficient to negate your evidence of self-defence. On a balance of probabilities, the evidence presented was not sufficient to prove the charge of fighting. As a result, I conclude your disciplinary hearing held on May 4, 2012 was flawed.

Pursuant to section 29(4) (C) (I) of the CAR, I am rescinding the decision made and the penalty imposed under section 27. I am also directing PGRCC to amend your institutional records to reflect this.

Sincerely,



M. Marchenski
Inspector
Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. J. Hawkins, Warden, PGRCC
Ms. A. Love, Hearing Officer, PGRCC
s.22 Barrister & Solicitor (Fax: s.22)



Mailed M15
May 14, 2012

59320-20/11-118
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC) on May 3, 2012.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I obtained and reviewed the documents, listened to the audio record of the disciplinary hearing and viewed the Digital Video Recording.

A correctional officer charged you with breaching section 21 (1) (g) of the CAR, which states “an inmate must not unless unreasonably provoked by that person, behave in an insulting or abusive manner towards a person.” The officer wrote that you called him an abusive name. You pled not guilty. After hearing the evidence, and by your own admission, the hearing officer found you guilty.

You wrote in your letter to this office that you never called the charging officer a name. The hearing officer acknowledged this when he asked for your side of the story. You told him you called two other officers outside of your cell abusive names but not the charging officer. The hearing officer acknowledged the written circumstances of the charge indicated you used this language towards the charging officer. However, the hearing officer stated he was interpreting it as using this language towards anyone. You told him you were provoked because the officers had laughed at you and removed a blanket from your cell. He asked the charging officer if he felt you were provoked and the officer replied he had only removed your blanket as instructed.

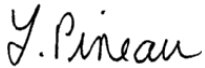
The hearing officer reviewed your client log and considered both positive and negative behaviours. He explained that abusive language sets a tone of disrespect in correctional centres. He imposed a disposition of 8 days loss of earned remission (LOR). He advised you that you could ask for a reduction under CAR, section 27(4) by writing to him.

Following my review, I found your hearing administratively correct and procedurally fair. I remind you that you may request the hearing officer to review this disposition under CAR, section 27(4).

Pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours truly,



L. Pineau
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. J. Hawkins, Warden, PGRCC



Mailed m16
May 15, 2012

59320-20/11-024
CS# s.22

s.22

c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC) on May 13, 2012

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(a) of the CAR, which states that “an inmate must not disobey a direction of a staff member or the person in charge.” You pled guilty and were sentenced to four days in segregation.

Following my review, I can see no grounds to interfere with the hearing officer’s decision in this matter. I have concluded that your disciplinary hearing held on May 13, 2012 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,

Lyall Boswell
Inspector
Investigation and Standards Office

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Ms. J. Hawkins, Warden, PGRCC



Mailed M25

May 25, 2012

59320-20/12-031

CS# s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your faxed request for a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC) on May 18, 2012. In your appeal request to this office, you stated you did not steal anything and you required a lawyer.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing. I also reviewed the digital video recording evidence.

You were charged with breaching section 21(1) (e) of the CAR which states that “an inmate must not steal or possess stolen property.” The charging officer specified you took a bag of apples from the staff desk.

The hearing officer opened your disciplinary hearing on May 18, 2012 with you, the charging officer and the escorting officer in attendance. He confirmed you received a copy of the Inmate Offence Report and that you were aware of your right to legal counsel. You advised him that you were ready to proceed with the hearing and entered a plea of “not guilty.”

The hearing officer provided you an opportunity to speak to the charge and you stated you took the apples off the staff desk because a “cleaner” asked you to. You said you did not think you were stealing but realize now what you did was wrong. After hearing evidence and your version of events, the hearing officer found you guilty based on the charging officer’s testimony, the digital video recording evidence and your own testimony. He reviewed your institutional records and heard your submissions in which you apologized for the infraction and stated you were “in the wrong.” The hearing officer subsequently imposed a penalty of 3 days segregation time served.

Further to review, I found sufficient evidence to support the charge and found the finding of guilt reasonable and appropriate based on the testimony heard and the digital video recording evidence presented. You did not request legal counsel at any time during the hearing. I also found the penalty imposed reasonable and appropriate under the circumstances.

Overall, I found your hearing administratively correct and procedurally fair. Pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and the penalty imposed. I am therefore dismissing your appeal.

Sincerely,



M. Marchenski
Deputy Director
Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director
Ms. L. Anderson, Warden, NFPC



Mailed M28
May 25, 2012

59320-20/12-029
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC) on May 15, 2012.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I obtained and reviewed the documents and listened to the audio record of the disciplinary hearing. I also viewed the Digital Video Recording (DVR).

A correctional officer charged you with breaching section 21 (1) (e) of the CAR, which states that "an inmate must not steal or possess stolen property." The officer wrote on the Inmate Offence Report that you stopped in front of a cell and passed an object under the door. She wrote she interviewed the occupant of the cell (I/M s.22) and he admitted you had passed a pen under the door. She wrote she then spoke with you and you claimed you had taken the pen from the officer's desk. You pled not guilty to the charge.

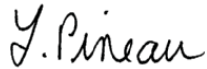
You wrote in your letter to this office that you deny the charge against you and you believe the DVR evidence was inconclusive. The hearing officer heard your side of the story. You told him you only complied with the charging officer's "accusations" because she threatened to turn the unit "inside out" and you did not want to cause any problems on the unit. The hearing officer viewed the DVR as you requested and noted you appeared to slide something under the cell door. After hearing the circumstances, viewing the DVR evidence and by your own admission, the hearing officer found you guilty.

The hearing officer reviewed your client log and noted s.22 prior charges and a number of behavioral concerns. He imposed a disposition of five days in segregation and advised you that you could ask for a review of this disposition under CAR 27(4) by writing to him.

Following my review, I found your hearing administratively correct and procedurally fair. Pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours truly,



L. Pineau
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. L. Anderson, Warden, NFPC



Mailed June 1
May 31, 2012

59320-20/10-033
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC) on May 25, 2012. You wrote in your letter to this office that you felt you were treated unfairly because the other inmate involved in the fight did not receive any segregation time. I am only able to review administrative fairness based on the circumstances of your particular case.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I reviewed the documents and listened to the audio record of the disciplinary hearing.


A correctional officer charged you with breaching section 21 (1) (k) of the CAR, which states “an inmate must not physically fight with another person.” You pled guilty to this charge. After hearing the evidence and by your own admission, the hearing officer found you guilty and imposed a disposition of 15 days in segregation.

I note the hearing officer considered your client log before imposing a disposition and discussed her findings with you. She noted s.22 charges, s.22 for fighting and advised you the reason she decided on the disposition was because this was the s.22 you had been involved in a fight. She advised you that fighting jeopardizes your personal safety as well as the safety of others in the correctional centre. She advised that you could ask for a reduction in the disposition under CAR 27(4) by writing to her.

Following my review, I found your hearing administratively correct and procedurally fair. Pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours truly,

A handwritten signature in cursive script, appearing to read "L. Pineau".

L. Pineau

Inspector

Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Ms. D. Green, A/Provincial Director, Adult Custody Division
Ms. J. Hawkins, Warden, PGRCC



Mailed J4
June 4, 2012

59320-20/09-051
CS# s.22

s.22
c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Kamloops Regional Correctional Centre (KRCC) on May 28, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(a) of the CAR which states that “an inmate must not disobey a direction of a staff member or the person in charge.” You were accused of refusing a direction to remove a towel from your cell light. You pled not guilty. After reviewing the evidence the hearing officer found you guilty and sentenced you to 3 days in segregation (time served).

Your defence is that you did not hear the direction due to a combination of a loud TV and a medical condition s.22 Evidence was given that the charging officer had spoken to you approximately half an hour before and you had complied with her directions at that time. You assert that you were closer to the door when that occurred. The charging officer also testified that she did not hear any excessive noise from the television. Evidence was also obtained from a correctional supervisor who attended the unit when the charging officer was unable to obtain your compliance. This evidence however covered events that occurred after the circumstances concerning this charge and has no direct bearing on this matter.

The hearing officer determined that he preferred the evidence of the charging officer over your evidence. Following my review, I can see no grounds to interfere with the hearing officer’s decision in this matter.

I have therefore concluded that your disciplinary hearing held on May 28, 2012 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lyall Boswell', with a stylized flourish at the end.

Lyall Boswell
Inspector
Investigation and Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Ms. D. Green, A/Provincial Director, Corrections Branch
Mr. E. Vike, Warden, KRCC



Mailed J12
June 11, 2012

59320-20/12-035
CS# s.22

s.22
c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22 :

I am writing in response to a letter from your legal counsel, s.22 requesting a review of the disposition imposed at a disciplinary hearing held at Kamloops Regional Correctional Centre (KRCC) on May 30, 2012. s.22 requested the review on the grounds that the penalty imposed of 2 days segregation and 10 days loss of earned remission was excessive based on your relatively minor role in the incident. He submitted that the penalty would be appropriate for the actual combatants in the incident. He also submitted that the disciplinary chairperson considered the length of your remaining sentence in determining the disposition and was attempting to procure your compliance for the remainder of your sentence by levying such a significant penalty.

Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recording of the disciplinary hearing.

You were charged and plead not guilty to violating CAR, Section 21(1)(z.1) which states that "An inmate must not participate in a disturbance." The record of proceedings indicated that you were found guilty based on evidence presented by the charging officer, digital video recording of the incident and your own admissions. The disciplinary chairperson did accept your submission that your intent was to assist rather than to maliciously engage in the disturbance, however found that on the balance of probabilities that you did "participate in a disturbance".

The disciplinary chairperson heard submissions from your legal counsel and reviewed your disciplinary history and behaviour on the living unit for the past two months. He also considered the seriousness of the incident and the potential for such an incident to be escalated in seriousness by the involvement of other inmates such as yourself. The disciplinary chairperson imposed a disposition of 2 days segregation and 10 days loss of earned remission.

The disciplinary chairperson indicated he considered it “a very serious event” when an inmate engages in an altercation involving a staff member. He advised that he would normally impose a much longer segregation disposition for this act. He did consider your submission that although you participated in the disturbance that your intent was not to cause harm. He also considered your request that he impose a disposition of loss earned remission over a segregation disposition as you had an important visit scheduled for the following day. He indicated in the verbal and written reasons that his decisions in imposing the disposition were to minimize interference to you and to also give you the opportunity to earn the remission back. He advised you could have the lost remission back if you behave yourself.

The disciplinary chairperson indicated that as you only had approximately s.22 left to serve in your sentence that you should apply to him for a reduction or suspension of your disposition. Rather than using the amount of time you have left in custody as a consideration in your disposition, it appears more likely that the disciplinary chairperson intended to provide instruction on when to apply for a reduction or suspension of your disposition and under what conditions he will consider returning the lost remission to you.

A disciplinary chairperson should consider the seriousness of the offence and the effect the disposition may have on the inmate charged with the offence and on the inmate population. The disposition should act as both a deterrent to you and to other inmates. Progressive discipline should also be a guiding principle in determining the disposition imposed on a particular inmate. The penalties imposed must be consistent with section 27 of the *CAR*.

In determining whether the disposition imposed is appropriate, I concur with the disciplinary chairperson that involvement in a disturbance on a living unit such as this one is a very serious matter. The video of the incident shows your involvement to be minor; relative to the actions of the other inmates involved. However, it clearly indicates that you participated in the disturbance.

I have also reviewed your disciplinary history and living unit entries during this incarceration and determined that you have s.22 previous breaches during this custodial sentence since s.22 under *CAR*. Section 21(1)(g) and 21(1)(c). You have received a disposition of 5 days segregation for the first breach on s.22 and 5 days loss of earned remission for your second breach on s.22

I noted that in the *CAR* Section 21(1)(g) charge that 1 day of segregation was suspended due to your acceptable behaviour on the segregation unit while serving the disposition.

The disciplinary chairperson reviewed only the previous two months in determining your disposition. Upon review of your current term of sentenced custody, I note that your client logs s.22

You have received a significant number of warnings for the behaviours noted above and other negative incidents. Although staff members indicate that you often apologize after incidents of unacceptable behaviour, I note that s.22 occurring since your
On the date of the current charge I also noted that prior to the incident s.22

I noted some positive remarks on your client log as well, indicating that on one occasion you provided assistance in cleaning the unit and on another occasion turned in s.15 you found on the floor. There are also positive comments regarding your being polite and respectful to staff. Your s.22 previous disciplinary charges, and the s.22 are aggravating factors in determining your disposition in this offence.

In reviewing the proceedings, I have determined that the disciplinary chairperson imposed the penalty in accordance with CAR, Section 27(1) and (2). Given the pattern of your negative behaviour and the need to deter you from behaving contrary to CAR, Section 21(1) regulations in the future, I see no reason to alter the disposition imposed by the disciplinary chairperson. There is also a substantial need to deter other inmates from engaging in such serious behaviour as the potential consequences of participation in a disturbance can result in harm coming to staff and other inmates.

I am therefore confirming the decision made and the penalty imposed by the disciplinary chairperson pursuant to CAR, Section 29(4)(a). You may apply for a suspension or reduction of the disposition imposed by writing to the disciplinary chairperson.

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, B.C. Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Mr. E. Vike, Warden, KRCC
s.22
Mr. J. Lumley, ADW, KRCC



Mailed J21
June 19, 2012

59320-20/11-118
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22 :

I am writing in response to a letter dated June 15, 2012 from your legal counsel, s.22 requesting a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC). The hearing commenced on May 9, 2012 and concluded on June 15, 2012. Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recordings of the disciplinary hearing.

You were charged and found guilty of violating CAR, Section 21(1)(p) which states that "An inmate must not provide a false or misleading statement to staff member."

The disciplinary chairperson reviewed the documentary evidence and heard testimony from you and the charging officer. He also heard evidence from another officer and saw a digital video recording in support of your view that the charging officer's evidence, and client logs written by the charging officer, were not reliable. The disciplinary chairperson did not accept your submissions that the charging officer lacked credibility and instead found that you lacked credibility in your testimony. He stated that he found you guilty on the balance of probabilities of making a false statement on inmate complaint form #163625 regarding the charging officer. He subsequently reviewed your disciplinary history and imposed a disposition of seven (7) days segregation and five (5) days loss of earned remission.

In reviewing the proceedings, I have determined that the disciplinary hearing was not conducted in an administratively and procedurally fair manner.

Reasons:

An apprehension of bias was created in this circumstance as the disciplinary chairperson heard your written confession and apology before a plea was entered. An inmate has a right to a neutral adjudicator hearing the charge against him. The conduct of the hearing should have been reassigned to another disciplinary chairperson to hear the evidence in this matter and ensure the fairness of the process.

The evidence presented by the custody centre was insufficient for a finding of guilt on the balance of probabilities. In circumstances where the charging officer and inmate are apparently the sole witnesses to an event, the matter must be decided based on the reliability of the parties' evidence. The evidence you presented suggested the reliability of the charging officer's evidence is questionable and should have led the disciplinary chairperson to conclude in your favour.

Based on the reasons noted above, I am rescinding the decision made and the penalty imposed by the disciplinary chairperson pursuant to CAR, Section 29(4)(c). I am also directing that your record be amended to reflect the rescission.

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Ms. J. Hawkins, Warden, PGRCC
Mr. R. Allison, Hearing Officer
s.22 Barrister and Solicitor



July 03, 2012

mailed Jul 03

59320-20/03-086

CS s.22

s.22

c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge BC V2X 7G3

Dear s.22 :

I am writing in response to your request for a review of a disciplinary hearing held at Nanaimo Correctional Centre (NCC) on June 24, 2012.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I reviewed the documents, viewed the Digital Video Recording (DVR) and listened to the audio record of the disciplinary hearing.

A correctional officer charged you with breaching section 21 (1) (r) of the CAR, which states "an inmate must not gamble." You pled guilty to this charge. After hearing the evidence and by your own admission, the hearing officer found you guilty. He imposed a disposition of 10 days loss of earned remission (LOR) and 4 days of segregation with 3 days already served. You asked in your letter for a review of the disposition because you have a good institutional record and find the penalty to be too severe.

The hearing officer acknowledged that your work and institutional records were good when he reviewed your file. He explained to you that gambling is viewed as a serious charge because inmates can incur debt which can then lead to such events as an assault when the debt is not paid. The hearing officer advised you that you could write to him under CAR 27(4) at a time closer to your release date and ask for a return in full or in part, of your days of lost remission. He cautioned you that his decision to do so would be dependent on your behaviour from this point forward.

Following my review, I found your hearing administratively correct and procedurally fair. I found the disposition reasonable given the circumstances. I encourage you apply for a reduction of the disposition imposed by writing to the hearing officer, Mr. Hahndel.

Pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and penalty imposed under section 27.

I am therefore dismissing your appeal.

Sincerely,



Lynette Pineau

Inspector

Investigation & Standards Office

/gd

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Mr. R. Hodgson, Warden, NCC



July 3, 2012

mailed Jul 04

59320-20/05-198

CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George BC V2L 5J9

Dear s.22 :

I am writing in response to the request from s.22 of Prisoner Legal Services for a review of a disciplinary hearing concluded at Fraser Regional Correctional Centre (FRCC) on June 26, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(z.2)(ii) of the CAR which states that "an inmate must not engage in an activity that jeopardizes the management, operation or security of the correctional centre." You were represented by s.22 and pled not guilty. You were found guilty and sentenced to 10 days in segregation and 10 days loss of earned remission.

At your hearing the charging officer was absent. The only evidence presented was from an appointed investigating officer and no direct evidence was presented. As a result you were unable to properly examine the evidence against you. I have therefore concluded that your disciplinary hearing on June 26, 2012 was fatally flawed.

Pursuant to section 29(4)(c)(i) of the CAR I am rescinding the decision made and the penalty imposed under section 27. I will also be directing that your institutional record be amended to reflect this.

Yours sincerely,

Lyall Boswell
Inspector
Investigation & Standards Office

/gd

- c: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director, Adult Custody
Mr. S. DiCasteri, Warden, FRCC
Ms. J. Hawkins, Warden, PGRCC
s.22 , PLS
- bc. Ms. M. Luknowsky, Policy and Program Analyst, Corrections Branch



Mailed J9
July 06, 2012

59320-20/11-106
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at North Fraser Pre-trial Centre (NFPC) on June 30, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I obtained and reviewed the documents, viewed the Digital Video Recording (DVR) and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(w) of the CAR which states that “an inmate must not assault another person.” You were accused of spitting directly into another inmate’s face. You declined to enter a plea. After reviewing the evidence, the hearing officer found you guilty and sentenced you to 12 days in segregation.

The hearing officer heard your side of the story. Your defence was you claimed the other inmate was bothering you when he asked you to make your bed. You told him to go away and he did not so you spat on him. The hearing officer advised you that when you have conflict you need to find a more appropriate way to resolve the matter.

The hearing officer advised you that you could write to him under CAR 27(4) to ask him for a reduction in your segregation time.

Following my review, I can see no grounds to interfere with the hearing officer’s decision in this matter. I have concluded that your disciplinary hearing held on June 30, 2012 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to Section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under Section 27.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "L. Pineau".

L. Pineau

Inspector

Investigation and Standards Office

/gd

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director
Ms. L. Anderson, Warden, NFPC



Mailed J9
July 6, 2012

59320-20/10-077
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC) on June 21, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.


You were charged with breaching Section 21(1)(w) of the CAR, which states that “an inmate must not assault another person.” You were accused of throwing your t-shirt at an officer and when given a warning, proceeded to throw your socks in his direction. You pled guilty. You were found guilty and sentenced to 10 days in segregation to be served consecutively to another disposition.

During your hearing, the hearing officer told you she thought that you were “rude and disrespectful on a constant basis.” She then asked you if you recalled your “verbal barrage in the last day and a half.” She found you guilty after making this statement.

It is important that a hearing officer be a neutral decision maker. In my view, the hearing officer’s statement indicated she had a previous association with you and her conduct showed bias. I have therefore concluded that your disciplinary hearing held on June 21, 2012 was not conducted in a fair manner.

In light of my findings, I have allowed your appeal. I have exercised my authority under s. 29 (4) (c) (i), CAR to rescind the decision made and the penalty imposed under s. 27 and I have asked the person in charge to change your records to reflect this decision.

Yours sincerely,



L. Pineau
Inspector
Investigation and Standards Office

/gd

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
- Mr. P. Coulson, Provincial Director, Corrections Branch
- Ms. J. Hawkins, Warden, PGRCC
- Ms. A. Love, Hearing Officer



Mailed J11
July 10, 2012

59320-20/11-122
CS# s.22

s.22
c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Kamloops Regional Correctional Centre on July 8, 2012. You did not identify any particular areas of concern in your faxed request to this office; therefore, I conducted a general review of the hearing.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1) (y) of the CAR, which states “an inmate must not attempt to obtain or possess contraband.” You were accused of concealing contraband on your person. You pled not guilty. After reviewing the evidence, the hearing officer found you guilty and sentenced you to 15 days in segregation to be served concurrently to another sentence.

The hearing officer asked for your side of the story. You told him your defence was that you had never been in the cell identified on the Inmate Offense Report. The hearing officer acknowledged your defence and asked the charging officer to comment. The charging officer replied he had noted a strong odour emanating from the cell where you resided. He and another officer removed you from the cell, searched you and found the contraband items that were presented as evidence at the hearing. The hearing officer agreed the cell number may have been incorrect, but it did not change your involvement in the events.

Following my review, I can see no grounds to interfere with the hearing officer’s decision in this matter. I have concluded that your disciplinary hearing held on July 8, 2012 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to Section 29(4) (a) of the CAR, I am confirming the decision made and the penalty imposed under Section 27.

I am therefore dismissing your appeal.

Yours truly,



L. Pineau

Inspector

Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Mr. E. Vike, Warden, KRCC



July 13, 2012

59320-20/11-118

CS# s.22

s.22

c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC) on July 6, 2012.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I reviewed the documents, listened to the audio record of the disciplinary hearing and viewed the digital video recording (DVR).

You were charged with breaching section 21(1)(k) of the CAR, which states “an inmate must not physically fight with another person.” You were accused of fighting with your roommate in your cell. You pled not guilty.

Your defence was that you were not fighting but only defending yourself. The hearing officer asked for your side of the story. You told him you were lying on your bunk and your roommate jumped on you. When you were finally able to get him off of you and stand up, the officers came through the door. You insist you did not hear anyone ask you to stand down. The hearing officer said he understood you were in a difficult situation and you may not have heard the order to stand down. He found you guilty based on the testimony of the charging officer and a witness statement submitted by an officer who said they saw you fighting. He imposed a reprimand.

In review, I found your hearing administratively correct and procedurally fair. I found the disposition imposed reflected the circumstances and was reasonable.

Pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and penalty imposed under section 27. I am therefore dismissing your appeal.

Sincerely,

L. Pineau
Inspector
Investigation & Standards Office

/gd

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. J. Hawkins, Warden, PGRCC



Mailed J16

July 13, 2012

59320-20/11-118

CS# s.22

s.22

c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing concluded at Prince George Regional Correctional Centre (PGRCC) on July 5, 2012.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I reviewed the documents, listened to the audio record of the disciplinary hearing and viewed the digital video recording (DVR).

You were charged with breaching section 21(1)(w) of the CAR, which states that “an inmate must not assault another person.” You were accused of pushing a desk towards an officer. You pled not guilty but were found guilty and received a sentence of 10 days in segregation (time served).

At the hearing the officer concerned testified that she had felt threatened by the table being pushed towards her. As it is clear from both the written allegation and subsequent testimony that no actual assault occurred, I have concluded that the decision to charge you with assault under section 21(1)(w) of the CAR was incorrect.

I have therefore concluded that this disciplinary hearing held on July 5, 2012 was fatally flawed.

Pursuant to section 29(4) (c) (i) of the CAR, I am rescinding the decision made and the penalty imposed under section 27. I will also be directing that your institutional record be amended to reflect this.

Yours sincerely,

Lyall Boswell
Inspector
Investigation and Standards Office

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. J. Hawkins, Warden, PGRCC
Mr. R. Allison, ADW, hearing officer



Mailed J19
July 18, 2012

59320-20/08-127
CS# s.22

s.22
c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing in response to your legal advocate's request for a review of a disciplinary hearing held at Ford Mountain Correctional Centre (FMCC) on July 11, 2012.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21 (1) (a) of the CAR, which states that "an inmate must not disobey a direction of a staff member or of the person in charge." You pled not guilty. After reading the circumstances, speaking with a witness and asking to hear your side of the story, the hearing officer found you guilty. He imposed a disposition of 10 days loss of earned remission (LER) and 3 hours of extra work.

Your legal counsel asked that I consider the following submissions when reviewing the hearing.

1. Hearsay evidence was submitted and your right to cross examine witnesses was breached.

The hearing officer advised you it was partially by your own admission that he found you guilty. In view of this, the hearing officer was satisfied he could rely on the written evidence provided by the investigating officer and the charging officer was not called to testify.

2. You were under the assumption that you were authorized to be outside of your assigned work area and therefore you did not possess the intent to disobey an order.

The hearing officer acknowledged you may have been under the assumption that you had permission; however, he advised you that even if you did have permission, the charge was refusing to obey a direct order given to you by a person in charge. He found the evidence supported this charge.

3. The charging officer should have taken extra steps to resolve the situation under CAR section 22 (1) (a).

The charging officer's written testimony indicated she asked you to stop what you were doing and return to your assigned work area. She wrote she asked you a second time stating "I am giving you a direct order to stop and return to back to your proper work area." You stated during the hearing that you heard her ask you if you had permission to be in an area and you just carried on. Based on this information, I have determined the charging officer attempted to resolve the matter in a reasonable manner.

4. The disposition imposed was unreasonable and will impede your ability to prepare for an immigration hearing.

The hearing officer reviewed your institutional log and noted a recent and similar charge. He also noted staff had documented that you challenged authority recently. He also noted an entry where staff wrote you were issued a warning for being out of bounds. He advised you could apply to him in writing for a review of your disposition. Based on my review, I found the disposition imposed reflected the circumstances and was reasonable.

I found your hearing administratively correct and procedurally fair. Pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours truly,



L. Pineau
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Mr. D. Tosh, Deputy Warden, FMCC
Mr. S. Dicastri, Warden, FRCC



Mailed J19
July 18, 2012

59320-20/10-032
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC) on July 14, 2012.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21 (1) (d) which states that “an inmate must not wilfully or recklessly damage or destroy property that is not the property of the inmate.” You pled guilty to s.22 in your cell while you were in custody at Surrey Pretrial Services Centre (SPSC). After reading the circumstances the hearing officer found you guilty. She reviewed your institutional record and noted a number of charges. She imposed a disposition of 12 days in segregation as opposed to the maximum because this was your first offence destroying property.


In your mailed request to this office, you asked whether it was legal for NFPC to hold you in segregation for a charge received at SPSC. Inmates are frequently transferred to other centres over the course of their time in custody and it is appropriate for any disposition imposed to be served at the receiving centre.

Following my review, I found your hearing administratively correct and procedurally fair. I found the disposition imposed reflected the circumstances and was reasonable.

Pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and penalty imposed under section 27.

I am dismissing your appeal.

Yours truly,

A handwritten signature in cursive script, appearing to read "L. Pineau".

L. Pineau

Inspector

Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. L. Anderson, Warden, NFPC
Mr. G. Davis, Warden, SPSC



Mailed J19

July 18, 2012

59320-20/10-032

CS# s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under Section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (a), CAR.

Your disciplinary hearing concluded at North Fraser Pretrial Centre (NFPC) July 14, 2012 and the Investigation and Standards Office (ISO) received your request for review via mail July 18.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR) and the audio record of the hearing.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you July 13, 2012 under s. 21 (1) (a), CAR, which states, "An inmate must not disobey a direction of a staff member or of the person in charge." The charging officer specified that you refused to follow his direction to uncover your cell light.

Assistant Deputy Warden (ADW) Bahia, presiding as hearing officer, opened your disciplinary hearing on July 14 with you and an investigating officer in attendance. He confirmed that you had received a copy of the IOR and that you had understood it. He also confirmed that you understood your right to seek legal counsel, and you advised him that you were ready to proceed.

The hearing officer read the charge and you pled not guilty to it. The investigating officer then read the charging officer's written report into the record. He also gave oral testimony regarding his interview of the charging officer. You gave your account of the circumstances and you requested digital video recording (DVR) evidence to support your assertion that you complied with the charging officer's direction within minutes of receiving it. The hearing officer however did not seek that evidence.

The hearing officer subsequently found you guilty based on the charging officer's written account and the investigating officer's testimony. He accepted that you eventually followed the officer's direction; however, he felt that you had had ample opportunity to do so in the officer's presence.

The hearing officer then moved into the penalty phase of the hearing. He reviewed your institutional records with you and he heard your submissions for consideration towards his penalty decision. The hearing officer subsequently imposed a penalty of three days segregation effective the date of the breach. He also stated his reasons for those penalties.

The hearing officer advised you of your rights under s. 27(4) & (5), CAR to request a reduction or suspension of the penalties and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed, and he confirmed that you understood those rights. He then concluded the hearing and provided you written reasons for his decisions.

Submissions

You felt that the guilty decision was unreasonable under the circumstances, and you made the following submissions to support your request for review:

1. The hearing officer did not grant your request for DVR evidence.
2. The charging officer was not present.

I considered your submissions and found grounds for allowing your appeal.

The charging officer's report did not indicate the time that lapsed between his directions to uncover the cell light, or between his final direction and leaving your cell area. His report also did not indicate whether you uncovered your light. Furthermore, the report indicated that the incident in question occurred at approximately 1:00 am and you testified that it was unreasonable for the officer to expect you to comply immediately after being woken up. DVR evidence and further evidence directly from the charging officer or through the investigating officer therefore could have answered those questions and confirmed or dismissed your account and arguments.

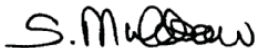
I also noted that the investigating officer testified that the charging officer gave you three directions, whereas the report only indicated that he gave you two directions, and that the hearing officer cited that specific testimony as a reason for his decision.

Review Findings and Decision

In review, I found the finding of guilt unreasonable under the circumstances. I have therefore exercised my authority under s.29 (4) (c), CAR to rescind the decision made and the penalty imposed, and under (i) to direct that the person in charge change your record to reflect the rescission.

I am holding your file open pending confirmation of the changes to your record.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

- c. Mr. P. Coulson, Acting Assistant Deputy Minister, Corrections Branch
Ms. D. Green, Acting Provincial Director Adult Custody Division
Ms. L. Anderson, Warden, NFPC
Mr. R. Bahia, Assistant Deputy Warden Hearing Officer



Mailed J19

July 18, 2012

59320-20/05-151

CS# s.22

s.22

c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22 :

I am writing in response to your request for a review of a disciplinary hearing held at Fraser Regional Correctional Centre (FRCC) on July 15, 2012.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I reviewed the documents, listened to the audio record of the disciplinary hearing and viewed the digital video recording (DVR).

You were charged with breaching section 21(1)(c) of the CAR, which states "an inmate must not enter a cell or living unit that is not assigned to the inmate without permission of a staff member." You pled guilty and received a disposition of 7 days in segregation and 7 days loss of earned remission.

In your letter to this office you made it clear that you are unhappy that a fellow inmate received a lighter disposition than you did for his involvement in the same incident.

The disposition awarded to another inmate by a different hearing officer cannot by itself be considered grounds for an appeal.

Following my review, I found the proceedings at your hearing to be administratively correct and procedurally fair. I also found the disposition imposed to be reasonable in the circumstances.

Therefore pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and penalty imposed under section 27. I am therefore dismissing your appeal.

Yours sincerely,

Lyall Boswell
Inspector
Investigation and Standards Office

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Mr. S. DiCasteri, Warden, FRCC



Mailed J20
July 19, 2012

59320-20/12-048
CS# s.22

s.22
c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing in response to your legal advocate's request on your behalf for a review of a disciplinary hearing held at Fraser Regional Correctional Centre (FRCC) on July 13 and July 17, 2012. In the request for review, your legal advocate states that although you are seeking a general review of the disciplinary hearing, you wish to draw attention to the element of intent and a right to a reasonable disposition.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1) (w) of the CAR, which states that "an inmate must not assault or threaten another person." On July 13, 2012, the hearing officer adjourned the proceedings indefinitely because you requested to seek legal counsel. On July 17, 2012, the hearing officer reconvened the hearing. You pled not guilty. After reading the circumstances, speaking with a witness and charging officer and asking to hear your side of the story, the hearing officer found you guilty. He imposed a disposition of 20 days segregation and 10 days loss of earned remission.

You wish me to consider the following submissions when reviewing the hearing.

1. Element of intent missing from the offence

You submit you did not possess the intent to threaten CO Gill and Reporting Officer Betts.

Further to your account of the event and questioning of CO Gill and CO Betts, the officers told the hearing officer they perceived your comments around throwing feces on officers to be a threat. The officers based this perception on the level of your voice and your body language. In view of this, the hearing officer accepted the evidence of both officers.

2. Right to a reasonable disposition

You submit the penalty of 20 days segregation and 10 days loss of earned remission is excessive and should be reduced.

The hearing officer reviewed your client log and noted other instances of threatening behaviour and an entry about a threat to assault staff with a weapon. He considered the nature of the threat in relation to the well-being of staff, inmates and others at FRCC. The hearing officer also took into consideration your submissions and comments. Based on his review, he imposed a disposition he felt appropriate to the circumstances.

Following my review, I found the proceedings at your hearing to be administratively correct and procedurally fair. Given the information presented at the hearing, I am satisfied there is sufficient evidence to support the finding of guilt and I found the penalty reasonable under the circumstances.

Therefore, pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and penalty imposed. I am therefore dismissing your appeal.

I wish to remind you of your right to request a reduction/suspension of your disposition from the hearing officer

Sincerely,



M. Marchenski
Deputy Director
Investigation and Standards Office

/dk

C: Mr. P. Coulson, A/Assistant Deputy Minister, Corrections Branch
Ms. D. Green, A/Provincial Director
Mr. S. Dicastri, Warden, FRCC



July 5, 2012

mailed Jul 06

59320-20/09-051

CS s.22

s.22

c/o Vancouver Island Regional Correctional Centre
PO Box 9224 Stn Prov Govt
Victoria, BC V8W 9J1

Dear s.22

I am writing in response to your request, submitted with an attached letter from s.22 for a review of a disciplinary hearing concluded at Vancouver Island Regional Correctional Centre (VIRCC) on June 26, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(g) of the CAR which states that “an inmate must not unless unreasonably provoked by that person, behave in an insulting or abusive manner toward a person.” You were represented by s.22 and pled not guilty. You were found guilty and sentenced to 8 days in segregation (time served).

At your hearing and in writing afterwards s.22 made a number of submissions. The hearing officer responded to most of these at the hearing. I have considered the submissions but, with the exception of one, I do not consider them to raise substantive issues of concern to this review.

I have concluded that this hearing was conducted in an administratively fair manner and I can see no grounds to interfere with the hearing officer’s finding of guilt. However, it is clear, as s.22 has alleged, that the disposition phase of the hearing was not correctly conducted. Specifically, the hearing officer did not review your institutional record prior to imposing his disposition.

I am therefore exercising my authority under s. 29 (4) (b), CAR to confirm the decision made and substitute another penalty under s. 27.

I have reviewed your institutional record and note that upon your transfer to VIRCC on s.22 it is stated that you were being “given a fresh start and chance to change [your] behaviour”.

Bearing this in mind, noting that this was your first disciplinary charge at the centre, and considering that the maximum segregation penalty for a violation of this nature is 15 days I have determined that a disposition of 5 days in segregation would be more appropriate in this case. This disposition has been served already.

I will be writing to the warden at VIRCC requesting that your record be changed to reflect this review decision.

Yours sincerely,



Lyall Boswell
Inspector
Investigation & Standards Office

/gd

c: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director, Adult Custody
Ms. S. Morgan, Warden, VIRCC
s.22 Barrister and Solicitor (via fax: s.22



Mailed J24
July 23, 2012

59320-20/11-093
CS# s.22

s.22

c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (c), CAR.

Your disciplinary hearing concluded at Prince George Regional Correctional Centre (PGRCC) July 17, 2012, and the Investigation and Standards Office (ISO) received your request for review dated July 20 via fax July 23.

Record of Proceedings

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR) and the audio record of the hearing.

It indicated that an officer filed a charge against you July 16, 2012 under s. 21 (1) (c), CAR, which states, "An inmate must not enter a cell of living unit that is not assigned to the inmate without permission of a staff member." The charging officer specified that you and another inmate entered a cell that did not belong to either of you, and that you did so without his permission.

Assistant Deputy Warden (ADW) Tuck, presiding as hearing officer, opened your disciplinary hearing July 17. You confirmed that you had received a copy of the IOR and that you were aware of your right to seek legal counsel. You advised that you were ready to proceed, and you entered a plea of guilty.

The charging officer read the written circumstances into the record and you advised the hearing officer that you had no questions about the report. The hearing officer provided you an opportunity to give your account of the circumstances, and you responded, "No comment." He repeated the offer and you declined it. You did however answer questions from the hearing officer about the circumstances.

The hearing officer subsequently found you guilty based on your admission of guilt and the charging officer's report and testimony. He then moved to the penalty phase of the hearing and he reviewed your institutional records with you. He noted s.22 previous convictions for breaching CAR rules since your arrival at the centre in s.22. He also noted that your behaviours had led to s.22.

The hearing officer cited the possible penalties available under CAR and he provided you an opportunity to make submissions for his consideration towards penalty. You suggested that you should receive the same penalty as the other inmate involved, and you advised him that you would accept ten days loss of earned remission over cell lockup.

The hearing officer responded to your submissions. He advised that penalty decisions are based on an individual's history and behaviour and therefore the individual may not necessarily receive the same penalty as others. He agreed that forfeiting earned remission was warranted, and he reviewed the penalty options available to him again before making his decision.

The hearing officer subsequently imposed a penalty of three days segregation plus forfeiture of 15 days earned remission. You requested to leave the hearing room when he started giving you his reasons for that penalty. He advised that the information was important however you stated that you did not want to stay.

As you left the hearing room, the hearing officer briefly cited your rights under s. 27, CAR to request a reduction or suspension of the penalty, and under s. 29, CAR to request a review of the decision made and the penalty imposed. He then concluded the hearing, and he provided you written reasons for his finding and penalty decisions.

Review Findings

You advised ISO that you wished to appeal the forfeiture of 15 days earned remission imposed as part of your total penalty. You did not make any submissions regarding that decision or raise any concerns about the hearing.

In review, I found that the hearing officer provided sufficient written reasons to support the penalties that he imposed. His reasons reflected the serious nature of the breach, your record of institutional behaviour during this term in custody and the need to apply progressive discipline. I also noted that the breach in question occurred within days of the centre allowing you to return to a regular living unit program after an extended enhanced supervision placement. Consequently, I found that the hearing officer imposed a total penalty that reflected those circumstances reasonably and fairly.

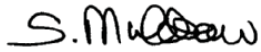
Overall, I found your hearing administratively correct and procedurally fair.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (a), CAR to confirm the decision made and the penalty imposed under s.27, and thereby dismiss your appeal.

In closing, I wish to remind you of your right under s. 27 (5), CAR to apply to the hearing officer, or the person in charge if he is not available, for a reduction or suspension of the remission forfeiture penalty. You may do so at any time during your sentence and you should make such a request, in writing, with reasons to support it.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

/dk

C: Mr. P. Coulson, A/Assistant Deputy Minister, Corrections Branch
Ms. D. Green, A/Provincial Director, Corrections Branch
Ms. J. Hawkins, Warden
Mr. M. Tuck, Assistant Deputy Warden Hearing Officer



Mailed J25
July 24, 2012

59320-20/12-049
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (a), CAR.

Your disciplinary hearing concluded at North Fraser Pretrial Centre (NFPC) July 23, 2012, and the Investigation and Standards Office (ISO) received your request for review dated July 23 via fax July 24.

Record of Proceedings

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR) and the audio record of the hearing.

It indicated that an officer filed a charge against you July 10, 2012 under s. 21 (1) (a), CAR, which states, "An inmate must not disobey a direction of a staff member or of the person in charge." The charging officer specified that you disobeyed his direction to remove coverings from your cell window.

Assistant Deputy Warden (ADW) Jonas, presiding as hearing officer, opened your disciplinary hearing July 11. You confirmed that you had received a copy of the IOR and that you were aware of your right to seek legal counsel. You advised that you needed to exercise that right further, and he adjourned the hearing indefinitely to allow you an opportunity to do so.

Acting ADW (A/ADW) Mackenzie, presiding as hearing officer, reconvened your disciplinary hearing July 23 with you and an investigating officer present. He read the charge and you confirmed that you understood it. He confirmed the circumstances surrounding the adjournment, and you advised that you had spoken with legal counsel and that you were ready to proceed. You then pled not guilty to charge.

The investigating officer read the written circumstances and his investigation notes into the record, and the hearing officer heard your account of the circumstances. The hearing officer asked you if the charging officer directed you to remove items from your cell window and you replied, "Yes." You did not provide

a clear explanation when the hearing officer asked you why you did not follow the direction. The hearing officer subsequently found you guilty based the charging officer's report and the investigating officer's testimony.

The hearing officer then moved to the penalty phase of the hearing and he reviewed your institutional records with you. He noted s.22 previous convictions for breaching CAR rules since your arrival at the centre s.22 He further noted numerous reports of non-compliance in your Client Log (CLOG). The hearing officer also heard and considered your submissions before reaching his penalty decision.

The hearing officer subsequently imposed a penalty of seven days segregation consecutive to a 15-day segregation penalty that you were currently serving. He explained that your records showed s.22 He considered his decision reasonable, noting that other hearing officers would likely have imposed a greater penalty given your record of non-compliant behaviour.

The hearing officer advised you of your rights under s. 27, CAR to request a reduction or suspension of the penalty, and under s. 29, CAR to request a review of the decision made and the penalty imposed. He then concluded the hearing, and he provided you written reasons for his finding and penalty decisions.

Review Findings

You requested a review because you felt that the penalty was unfair and unreasonable. You asked to have it removed or at least reduced.

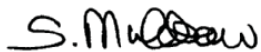
In review, I found that the hearing officer provided sufficient written reasons to support the penalty that he imposed. His reasons accurately reflected your record of institutional behaviour during this term in custody and the need to apply progressive discipline. I also agreed with the hearing officer's observation that others would have likely imposed a greater penalty under the circumstances. Consequently, I found the penalty that you received reasonable and fair.

Overall, I found your hearing administratively correct and procedurally fair.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (a), CAR to confirm the decision made and the penalty imposed under s.27, and thereby dismiss your appeal.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

C: Mr. P. Coulson, A/Assistant Deputy Minister, Corrections Branch
 Ms. D. Green, A/Provincial Director, Corrections Branch
 Ms. L. Anderson, Warden
 Mr. T. Mackenzie, A/Assistant Deputy Warden Hearing Officer



Mailed J26
July 25, 2012

59320-20/11-052
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your letter requesting a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC) which commenced June 21, 2012 and concluded on July 14, 2012. In your letter you presented the following as your grounds for the review:

- The disposition imposed is cruel and unusual punishment.
- The chairperson has a personal dislike for you and this affected his decisions.
- You never got to view the digital video recording.
- The sworn statements were inadmissible.

Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recording of the disciplinary hearing.

You were charged with violating Correction Act Regulation (CAR) Section 21(1)(a) which states that "An inmate must not disobey a direction of a staff member or of the person in charge." As you refused to enter a plea, the chairperson entered a plea of not guilty on your behalf. The record of proceedings indicated that you were found guilty based on evidence presented by the charging officer and admissions you made during the hearing. The hearing officer did not accept your defence that the charging officer should have given you a warning before charging you, and that other officers had allowed you to get water during medication periods on previous occasions and that this created confusion for you. The chairperson imposed a disposition of 70 hours intermittent confinement after reviewing your disciplinary history and behaviour on the living unit.

Upon review of the hearing, I found no evidence on the record to indicate that the hearing officer has a personal dislike for you. It is apparent however that he was becoming somewhat frustrated by your attempts to manipulate and subvert the disciplinary hearing proceedings. There is no indication that this impacted the decisions made regarding a finding of guilt or the disposition imposed.

I concur that you did not view the DVR, although you asked twice to see it. Your reason for wanting to see the DVR was only to dispute the written statement by a witness that you had waited one minute by the phones, rather than the 20 seconds you claim before disobeying the charging officer's direction. The hearing officer appears to have ignored your request and ideally should have given you a reason for not showing the DVR to you. However, I do not find this omission to be a fatal flaw in the hearing. The issue in dispute was not germane to whether or not you committed the offence as charged and I note you did not dispute any of the evidence of the charging officer. While your admissions were not conclusive, on the balance of probabilities they were sufficient to indicate that you committed the offence.

You did not give any reason why you believe the written statements of the charging officer or other witness to be "inadmissible." The charging officer was present at the hearing and the chairperson gave you two opportunities to ask any relevant questions of the charging officer. You have the right to call witnesses and therefore could have asked to call correctional officer O'Connell as a witness to test his statement; however, you did not do so.

The chairperson noted that you had s.22 previous charges since your admission and that one of these is the same as the current charge. He also concurred with you that one of the s.22 charges was withdrawn pursuant to CAR, Section 22 after you apologized to the charging officer. Your claim that other officers allow you to get water during medication rounds does not mitigate the act.

Upon review of your disciplinary history, I found that s.22 charge under CAR, Section 21(1)(a) and this should not have been included in the chairperson's determination of an appropriate disposition.

The chairperson however considered your submissions regarding segregation versus activity restriction and intermittent confinement and as a result did restrict some of your exercise time and imposed intermittent confinement as you had suggested. Under the circumstances, the hearing officer appears to have imposed a fair and reasonable disposition with respect to the gravity of the offence.

With regard to your belief the charging officer should have warned you before charging you pursuant to CAR, Section 22, her statement and testimony indicate that she did in fact warn you and you continued with disobeying her direction in a disrespectful manner.

In reviewing the proceedings, I have determined that the disciplinary hearing was conducted in an administratively and procedurally fair manner. I am therefore confirming the decision made and the penalty imposed by the chairperson pursuant to CAR, Section 29(4)(a).

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, B.C. Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. J. Hawkins, Warden, PGRCC



Mailed J27
July 25, 2012

59320-20/10-032
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at North Fraser Pretrial Centre on July 18, 2012.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21 (1) (a) of the CAR, which states “an inmate must not disobey the direction of a staff member or person in charge.” You were accused of covering your cell camera and cell light. You waived your right to legal counsel and pled guilty. After hearing the circumstances and by your own admission, the hearing officer found you guilty. He imposed a disposition of 10 days segregation.

In your mailed request to this office, you wrote you feel the charge was inappropriate because according to you, the time on the Inmate Offence Report (IOR) indicating when you were served the papers is incorrect. I am unable to determine the exact time you were provided with the IOR; however, I am satisfied after listening to the hearing that you had reviewed the IOR and understood the charge against you.

You also wrote you believe your disposition should have started on the day of your hearing (July 18) and not on July 23. When listening to the hearing, I noted the officer reviewed your institutional records prior to imposing the disposition. Based on his review, he imposed a disposition of 10 days segregation to be served consecutively to an existing disposition. He advised you that the disposition you were currently serving was complete on July 22, 2012 and you would serve the 10 days he imposed starting on July 23, 2012. He reminded you that you could write to him to request a review of the disposition.

Following my review, I found your hearing administratively correct and procedurally fair. I found the disposition imposed reflected the circumstances and was reasonable.

Pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and penalty imposed under section 27.

I am dismissing your appeal.

Yours truly,

A handwritten signature in black ink, appearing to read "L. Pineau".

L. Pineau

Inspector

Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. L. Anderson, Warden, NFPC



Mailed J31

July 30, 2012

59320-20/12-051

CS# s.22

s.22

c/o Surrey Pretrial Services Centre
14323 57th Avenue
Surrey, BC V3X 1B1

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that your legal advocate, s.22 requested on your behalf under section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (b), CAR.

Your disciplinary hearing concluded at Surrey Pretrial Services Centre (SPSC) July 26, 2012, and the Investigation and Standards Office (ISO) received s.22 letter dated July 27 via fax that date.

Record of Proceedings

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR), the audio record of the hearing and digital video recording (DVR) evidence.

It indicated that an officer filed a charge against you July 19, 2012 under s. 21 (1) (b), CAR, which states, "An inmate must not enter an area of the correctional centre in which an inmate is not authorized to be without the permission of a staff member." The charging officer specified that you entered a cell that did not belong to you.

Acting Assistant Deputy Warden (A/ADW) Street, presiding as hearing officer, opened your disciplinary hearing July 20. You confirmed that you had received a copy of the IOR and that you were aware of your right to seek legal counsel. You advised that you needed to exercise that right further, and he adjourned the hearing indefinitely to allow you an opportunity to do so.

ADW Ross, presiding as hearing officer, reconvened your disciplinary hearing July 26 with you and your legal advocate present. The charging officer read the charge and you pled not guilty to it. The charging officer presented DVR evidence that you and your legal advocate viewed with the hearing officer. The hearing officer then provided you an opportunity to speak to the charge.

Your legal advocate submitted that the charging officer's report and the DVR evidence did not support charging you under s. 21 (1) (b), CAR and that the appropriate charge under the circumstances would be s. 21 (1) (c), CAR, which states, "An inmate must not enter a cell or living unit that is not assigned to the inmate without the permission of a staff member." She submitted that charging you under s. 21 (1) (b), CAR breached

procedural fairness, and she presented case law to support her argument. She subsequently requested that the hearing officer dismiss the charge.

The hearing officer did not agree with your legal advocate. She felt that the evidence satisfied charging you under s. 21 (1) (b), CAR and she found you guilty of breaching that rule.

The hearing officer then moved to the penalty phase of the hearing. She reviewed your institutional records and heard submissions from your legal advocate. She subsequently imposed a penalty of three days segregation and she explained her decision.

The hearing officer advised you of your rights under s. 27, CAR to request a reduction or suspension of the penalty, and under s. 29, CAR to request a review of the decision made and the penalty imposed. She concluded the hearing, and provided you written reasons for her finding and penalty decisions.

Review Findings

You requested a review because you felt that the guilty determination was unfair, and your legal advocate reiterated the submissions that she raised at the hearing.

In review, I agreed with your legal advocate that legislature intentionally created two separate charges of s. 21 (1) (b) and s. 21 (1) (c), CAR. I further agreed that as s. 21 (1) (c) specifically refers to a cell or living unit not assigned to the inmate, s. 21 (1) (b) therefore concerns all other areas of the correctional centre.

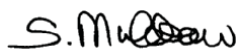
The charging officer clearly specified on the IOR that you entered a cell that did not belong to you. He reported the same in the written circumstances and that you did so without staff permission. He ended the written report, "...charged with cell visitation." I therefore found your disciplinary hearing procedurally unfair because you were not charged with the appropriate offence, which breaches your right to know the case against you in order to prepare a full defense.

Your legal advocate also made a submission regarding a comment about administrative case law that the hearing officer made after the hearing concluded. I could not consider that submission because the comment did not form part of the record of the proceedings.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (c) (i), CAR to rescind the decision made and the penalty imposed under s.27, and direct that the person in charge change your record to reflect the rescission. I am holding your file open pending confirmation that the person in charge has completed that action.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director, Corrections Branch
 Mr. G. Davis, A/Warden
 Ms. J. Ross, Assistant Deputy Warden Hearing Officer
 s.22 Legal Advocate, Prisoners' Legal Services



Mailed A2
August 1, 2012

59320-20/12-052
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your letter requesting a review of a disciplinary hearing held at Prince George Regional Correctional Centre which concluded on July 17, 2012. In your letter you disagreed with the finding of guilt as your grounds for the review.

Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recording of the disciplinary hearing.

You were charged and plead not guilty to violating CAR, Section 21(1)(k) which states that "An inmate must not physically fight with another person." The record of proceedings indicated that you were found guilty based on evidence presented by the charging officer, witness statements and digital video recording of the incident. The chairperson imposed a disposition of 7 days segregation, and gave you credit for time served under CAR section 27(3)(b) after reviewing your recent disciplinary history and behaviour on the living unit.

In reviewing the proceedings, I have determined that the disciplinary hearing was conducted in an administratively and procedurally fair manner.

Digital video recording (DVR) is objective evidence which is considered to be the most reliable evidence. I concur with the chairperson that the DVR clearly proves the case against you and is sufficient evidence for a finding of guilt on the balance of probability.

The disposition is reasonable given the seriousness of the charge, and your failure to respond appropriately to the officer's directions to stop. I concur that such behaviour creates risk for staff and inmates. A code yellow alert disrupts programming in the centre and inconveniences all of the other inmates. In reviewing your disciplinary record since admission I noted s.22 charges s.22

Given your previous charges, the chairperson could have imposed a more substantial sentence than seven days based on the principle of progressive discipline.

I am confirming the decision made and the penalty imposed by the chairperson pursuant to CAR, Section 29(4)(a).

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Parkin', with a long horizontal stroke extending to the right.

J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, B.C. Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. J. Hawkins, Warden, PGRCC



Mailed A8

August 8, 2012

59320-20/10-161

CS# s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to the request, written on your behalf by s.22 Legal Advocate, Prisoners' Legal Services, for a review of a disciplinary hearing concluded at North Fraser Pretrial Centre on July 24, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents listened to the audio record of the disciplinary hearing.

You were charged with breaching section 29(1)(Z.2)(i) of the CAR, which states that "an inmate must not engage in an activity that jeopardizes or is likely to jeopardize the safety of another person." You were accused of threatening to break a sprinkler and threatening a correctional supervisor.

You pled not guilty. After reviewing the evidence the hearing officer found you guilty and sentenced you to seven days in segregation (time served).

At the hearing it was made clear by the hearing officer that he did not find the evidence regarding the threat to a staff member convincing and that he was discounting it. You were found guilty in respect of the threat to damage the sprinkler. The evidence for this was direct and came from the charging officer.

Following my review, I can see no grounds to interfere with the hearing officer's decision in this matter. I have concluded that your disciplinary hearing concluded on July 24, 2012 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Ms. L. Anderson, Warden, NFPC
s.22 Legal Advocate, Prisoners' Legal Services



Mailed Aug 8
August 7, 2012

59320-20/11-118
CS# s.22

s.22

c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (s), CAR.

Your disciplinary hearing concluded at Prince George Regional Correctional Centre (PGRCC) August 2, 2012, and the Investigation and Standards Office (ISO) received your request for review dated August 4 via fax August 7.

Record of Proceedings

Under s. 29 (2), CAR, I obtained the record of proceedings that included the Inmate Offence Report (IOR), the audio record of the hearing and a digital video recording (DVR) provided as evidence. I examined the IOR and listened to the audio record. I did not consider the DVR evidence during the course of my review because it was not viewed at the hearing.

The record of the proceedings indicated that an officer filed a charge against you August 1 under s. 21 (1) (s), CAR, which states, "An inmate must not give to or accept from another inmate property without permission." The charging officer specified that you accepted a white Styrofoam bowl from an inmate and dropped it into another inmate's cell via the hatch on the cell door.

Assistant Deputy Warden (ADW) Peters, presiding as hearing officer, opened your disciplinary hearing August 2. You confirmed that you had received a copy of the IOR and that you were aware of your right to seek legal counsel. You advised that you were ready to proceed and you pled not guilty to charge.

The charging officer read the written circumstances into the record and the hearing officer heard your account of the circumstances. Your account confirmed the allegation and the hearing officer subsequently found you guilty.

The hearing officer moved to the penalty phase of the hearing. He reviewed your institutional records with you and he heard your submissions regarding past behaviours and current goals. The hearing officer explained his concerns about the nature of the breach and he subsequently imposed a penalty of five days forfeiture of earned remission.

The hearing officer advised you of your rights under s. 27, CAR to request a reduction or suspension of the penalty, and under s. 29, CAR to request a review of the decision made and the penalty imposed. He then concluded the hearing and he provided you written reasons for his finding and penalty decisions.

Review Findings

You requested a review because “it is an unfair sentence as well as a bogus charge.”

You submitted that it was your first day serving meals and that you didn’t think that you were doing anything wrong because “this happens every meal time between IM’s on the unit” and “I thought I was just doing my job and nothing else.” You further submitted that “5 days remission is a lot for this when I could just do seg time instead.”

In review, I found that you and the charging officer gave similar accounts of the incident and that both supported the charge and the finding of guilt. You had the opportunity to ask the charging officer for permission to accept the bowl and to give it to another inmate. Alternatively, you could have refused the inmate’s request. However, you chose to return to that inmate’s cell and carried through his request while the officer checked the meal cart rather than wait in the servery for the officer. Lastly, I do not accept that one would reasonably believe that serving meals includes moving property between inmates without the knowledge and/or permission of staff.

I also found the penalty that you received reasonable and fair and that the hearing officer provided sufficient reasons to support it. In my opinion, the penalty reflected your overall record of institutional behaviour during this term in custody as well as your recent improvement in behaviour and stated desire to maintain the same.

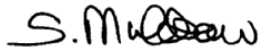
Lastly, upon reviewing your records, I found the decision to impose a forfeiture of earned remission rather than a period of segregation reasonable and appropriate. Prior to this matter, you had received s.22 during this term in custody. You were also subject to a long-term separate confinement order that centre management had reviewed s.22 and extended to s.22 and that significantly reduced time out of your cell. Consequently, in my opinion, forfeiting earned remission addressed this breach more effectively than serving a period of segregation. It also has more potential to deter you from further breaches because it remains in effect for the remainder of your custody sentence and decisions to grant a reduction or suspension upon application under s. 27 (5), CAR largely consider past and current behaviours.

Overall, I found your hearing administratively correct and procedurally fair.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (a), CAR to confirm the decision made and the penalty imposed under s.27, and thereby dismiss your appeal.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Ms. J. Hawkins, Warden, PGRCC
Mr. J. Peters, Assistant Deputy Warden Hearing Officer



Mailed Aug 8
August 8, 2012

59320-20/12-055

CS# s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (k), CAR.

Your disciplinary hearing concluded at North Fraser Pretrial Centre (NFPC) August 3, 2012, and the Investigation and Standards Office (ISO) received your request for review dated August 3 via fax August 7.

Record of Proceedings

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR), the audio record of the hearing and a digital video recording (DVR) provided as evidence.

The record of the proceedings indicated that an officer filed a charge against you August 2 under s. 21 (1) (k), CAR, which states, "An inmate must not physically fight with another person." The charging officer specified that you got in to a physical fight with another inmate.

Assistant Deputy Warden (ADW) Penner, presiding as hearing officer, opened your disciplinary hearing August 3. You confirmed that you had received a copy of the IOR and that you were aware of your right to seek legal counsel. You advised that you were ready to proceed, and you pled guilty to charge.

The hearing officer read the written circumstances into the record and he asked if you had anything else to add or to speak to the charge. You responded, "No". The hearing officer then viewed the DVR evidence with you and you answered his questions about compliance with staff direction. Based on your admission and the evidence presented, he subsequently found you guilty of the breach.

The hearing officer moved to the penalty phase of the hearing. He reviewed your institutional records with you and he heard your submissions before making his penalty decision. The hearing officer subsequently imposed a penalty of 12 days segregation. He advised that it was more days than he would usually give; however, he believed that the DVR evidence showed you initiated physical contact and he further noted that the other inmate was sitting down when you initiated that contact. He also felt that the alleged verbal disagreement between you and the other inmate should not have escalated into a physical altercation.

You felt that the penalty was too harsh because you had not been in trouble before this incident. The hearing officer explained his concerns about the serious nature of the breach. He noted injuries to your face and advised that he saw “a pretty good slugging match and it was initiated by you.”

The hearing officer advised you of your right under s. 27, CAR to request a reduction or suspension of the penalty, and you advised him that you wished to exercise that right. The hearing officer denied your request because he felt that the penalty was appropriate at that time given the circumstances. He advised that you could make a written request to him for a reduction at any time while serving the penalty.

You repeated your concerns about the penalty. The hearing officer further explained his decision and he advised you of your right under s. 29, CAR to request a review of the decision made and the penalty imposed. He then concluded the hearing and he provided you written reasons for his finding and penalty decisions.

Review Findings

You advised ISO that you “would like to appeal my segregation sentence.” You made no submissions for our consideration in this matter.

In review, I agree that you received a segregation penalty at the higher end of the scale than usually imposed on an inmate that has a satisfactory record of behaviour. However, I found that the hearing officer provided sufficient reasons to support his penalty decision. I found that the penalty that he imposed reflected the seriousness of the incident, the significant risk that it caused to the safety of all persons, including you, the disruption that it caused to centre operations, and your degree of responsibility for this matter. I also found that while you pled guilty to the charge, you provided no explanation for your actions that one could consider as circumstances for reducing the penalty.

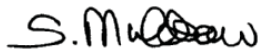
Overall, I found your hearing administratively correct and procedurally fair.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (a), CAR to confirm the decision made and the penalty imposed under s.27, and thereby dismiss your appeal.

I remind you that you may exercise your right under s. 27 (5), CAR at any time while serving your segregation penalty. You should apply in writing to the hearing officer, or the person in charge if he is not available, for a reduction or suspension of all or part of the penalty, and you should also make submissions for consideration towards granting the request.

Sincerely yours,



S. Muldrew
Inspector
Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Ms. L. Anderson, Warden, NFPC
Mr. B. Penner, Assistant Deputy Warden Hearing Officer



Mailed Aug 9
August 8, 2012

59320-20/05-005
CS# s.22

s.22
c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing further regarding the review that you requested under Section 29 (1), Correction Act Regulation (CAR), for your disciplinary hearing that concluded July 28, 2012 at Kamloops Regional Correctional Centre (KRCC).

As previously reported, I obtained and examined the record of proceedings for a charge filed against you under s. 21 (1) (y), CAR and found two significant errors:

- The hearing officer did not provide you an opportunity to make submissions before he made his penalty decision.
- When recalculating your sentence, records staff applied the full penalty imposed; however, you did not have ten days of earned remission credited to the date of the breach.

In light of those findings, I advised that I would exercise my authority under s. 29 (4) (b), CAR to confirm the decision made and substitute another penalty under s. 27. To maintain procedural fairness, I provided you an opportunity to make submissions for my consideration in reaching a penalty decision.

I received your written submissions dated August 4 via fax August 7, and I considered them and other decisive factors to substitute another penalty that I believe addresses all circumstances of the breach appropriately.

I am substituting a penalty of seven days forfeiture of earned remission credited to the date of the breach. My reasons for this penalty are:

- the serious nature of the charge contraband and the activities associated with it jeopardize the safety and security of persons and correctional centres
- serious nature of the incident intermittent sentences extend a greater level of trust and you broke that trust

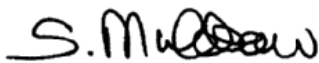
- the serious nature of the contraband syringes are commonly associated with substance abuse and the covert use of controlled substances has caused deaths within correctional settings
- degree of responsibility you knowingly concealed the contraband items on your person and brought them into the centre, you did not surrender them to staff at the earliest opportunity and you attempted to deceive staff to prevent the discovery of those items
- admission of guilt you admitted to breaching the rule; however, you have repeatedly attempted to play down the syringes by claiming that you were not trying to bring them into the centre and that they didn't work
- record of behaviour your Client Log (CLOG) indicated that you reported to the centre late for your intermittent sentence
when you reported to the centre s.22 and, you advised an officer s.15, s.22
- submissions the centre housed you in the segregation unit for two weekends as a safety and security measure, you are now housed in an admissions/discharge area cell with limited privileges and you must take your exercise periods in the segregation unit
- deterrence a penalty that affects your liberty is necessary to discourage you from breaching this rule, and to reinforce the importance of compliance to you and other inmates

Please understand that given the seriousness of this matter, I would have substituted a greater forfeiture of earned remission if you had had more days credited to you at the time of the breach. It is also important to understand that you may receive increased penalties if you breach this rule again or any other rule under s. 21, CAR.

I have notified the person in charge of my decision and directed that he have your records changed to reflect it.

In closing, I remind you that you have the right under s. 27 (4), CAR to request a reduction or suspension of all or part of the penalty imposed. You may make such a request to A/ADW Guizzo or the person in charge at KRCC if he is not available.

Sincerely yours,



S. Muldrew
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Mr. E. Vike, Warden, KRCC
Mr. J. Guizzo, Acting Assistant Deputy Warden Hearing Office



Mailed Aug 16
August 15, 2012

59320-20/12-062
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC) on August 12, 2012.

Pursuant to section 29(2) of the Correctional Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1) (g) of the CAR, which states that “an inmate must not unless unreasonably provoked by that person, behave in an insulting or abusive manner toward a person.” You pled not guilty. After hearing evidence, the hearing officer found you guilty and sentenced you to 10 days in segregation.

In your letter to this office, you stated the charging officer provoked you into swearing at him. You also said the disposition was unjust. I found that while you pled not guilty to the charge, you admitted to yelling profanities at the charging officer. I found the penalty imposed reflected the seriousness of the incident and your degree of responsibility for this matter.

Following my review, I can see no grounds to interfere with the hearing officer’s decision in this matter. I have concluded that your disciplinary hearing held on August 12, 2012 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances. Pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and the penalty imposed under section 27. I thereby dismiss your appeal.

I remind you that you may exercise your right under s.27 (5), CAR at any time while serving your segregation penalty. You should apply in writing to the hearing officer, or the person in charge if he is not available, for a reduction or suspension of all or part of the penalty.

Sincerely,



M. Marchenski
Deputy Director
Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister
Mr. P. Coulson, Provincial Director
Ms. J. Hawkins, Warden, PGRCC



Mailed Aug 20
August 17, 2012

59320-20/05-001

CS# s.22

s.22

c/o Surrey Pretrial Services Centre
14323 57th Avenue
Surrey, BC V3X 1B1

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (k), CAR.

Your disciplinary hearing concluded at Surrey Pretrial Services Centre (SPSC) August 8, 2012, and the Investigation and Standards Office (ISO) received your request for review dated August 9 via mail August 16.

Record of Proceedings

You provided ISO a copy of the original Inmate Offence Report (IOR), and under s. 29 (2), CAR, I obtained the audio record of the hearing and a digital video recording (DVR) provided as evidence.

The record of the proceedings indicated that an officer filed a charge against you August 6 under s. 21 (1) (k), CAR, which states, "An inmate must not physically fight with another person." The charging officer specified in the IOR, "At approx. 1410hr on s.22 Inmate s.22 seen fighting with [name and CS# of other inmate involved]."

Acting Assistant Deputy Warden (ADW) MacIntosh, presiding as hearing officer, opened your disciplinary hearing August 8. To confirm your identity, he read the name and correctional service number (CS#) cited at the top of Part I of the IOR, specifically: s.22 You advised him that was not you and you stated that the CS# was incorrect. You advised him that your CS# is s.22 and you raised the possibility of another s.22 at the centre.

The hearing officer noted that the charging officer cited your correct CS# in the specifics that she provided on the IOR. He also reviewed centre records and advised that you were the only s.22. He then asked, "So you're s.22 right?" You replied, "Yes, I am" and the hearing officer continued the hearing.

You confirmed that you had received a copy of the IOR and that you had read and understood it. You also confirmed that you were aware of your right to seek legal counsel. You advised the hearing officer that you were ready to proceed and you pled not guilty to the charge.

The charging officer read the written circumstances into the record and the hearing officer heard your account of the circumstances. You advised the hearing officer that you couldn't really remember anything that happened and he subsequently viewed the DVR evidence with you. You agreed that it showed you fighting with another inmate and the hearing officer subsequently found you guilty.

The hearing officer moved to the penalty phase of the hearing. He reviewed your institutional records and discussed them with you. He noted that you had no previous institutional charges during this term in custody and that your overall behaviour was satisfactory. He advised that he could impose up to 15 days of segregation as a penalty for fighting. However, he felt that your record of behaviour warranted a lighter sentence and he imposed a penalty of 7 days segregation effective the date of the breach.

The hearing officer advised you of your rights under s. 27, CAR to request a reduction or suspension of the penalty, and under s. 29, CAR to request a review of the decision made and the penalty imposed. He then concluded the hearing and he provided you written reasons for his finding and penalty decisions.

Review Findings

In your letter to ISO, you advised that you were appealing the charge on the following grounds: "specifically that it wasn't me."

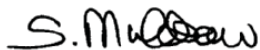
In review, I did not find the error in question sufficient grounds to allow your appeal. The charging officer cited your name and CS# correctly when she completed the specifics of the charge, and you confirmed that information was correct. The hearing officer reviewed the centre's records and confirmed that you were the only s.22 in custody at SPSC. Furthermore, the hearing officer identified you as one of the combatants when he viewed DVR evidence of the incident and you subsequently agreed that you were in a fight.

Overall, I found your hearing procedurally fair. I found sufficient evidence to support the charge against you and the finding of guilt, and that you received a reasonable and appropriate penalty under the circumstances.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (a), CAR to confirm the decision made and the penalty imposed under s.27 and thereby dismiss your appeal.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director, Corrections Branch
 Mr. G. Davis, Warden, SPSC
 Mr. K. MacIntosh, Acting Assistant Deputy Warden Hearing Officer



Mailed Aug 24
August 23, 2012

59320-20/10-060
CS# s.22

s.22

c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear. s.22

I am writing regarding the review that you requested under Section 29 (1), Correction Act Regulation (CAR), for your disciplinary hearing that concluded August 18, 2012 at Prince George Regional Correctional Centre (PGRCC).

Under section 29 (2), CAR, I obtained and examined the record of proceedings including the Inmate Offence Report (IOR) and the audio record of the hearing.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you August 8, 2012 under s. 21 (1) (y), CAR, which states, "An inmate must not attempt to obtain or possess contraband." The charging officer specified: *At approximately 18:40 on 8th August 2012, Inmate* s.15, s.22

Assistant Deputy Warden (ADW) Tuck, presiding as hearing officer, opened your hearing August 10. He confirmed that you received a copy of the IOR and that you were advised of your right to seek legal counsel. You advised him that you wished to exercise that right, and he adjourned the hearing to allow you an opportunity to do so.

ADW Peters, presiding as hearing officer, reconvened your hearing August 18. After he confirmed the reason for adjournment, you advised him that you were ready to proceed and you entered a plea of not guilty.

The charging officer read his written report and witness statements into the record, and he presented physical and documentary evidence to the hearing officer. The hearing officer provided you an opportunity to speak to the charge and you advised him that you had "nothing really to add". The hearing officer subsequently found you guilty of breaching s. 21 (1) (y), CAR based on your admission of guilt.

After reviewing your institutional records, the hearing officer imposed a penalty of seven days segregation and explained that decision to you. He also advised you of your rights under s. 27, CAR to request a reduction or suspension of the penalty, and under s. 29, CAR to request a review of the decision made and the penalty imposed. The hearing officer concluded the hearing, and he provided you written reasons for his finding and penalty decisions.

Review Findings

In review, I found the evidence and your admission of guilt supported the charge and the guilty decision. However, I found the penalty phase unfair because the hearing officer did not provide you an opportunity to make submissions for his consideration towards the penalty decision. The right to be heard includes the penalty phase of a hearing as well as its evidence phase.

Review Decision

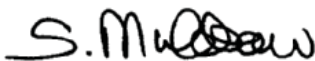
In light of my findings, I have exercised my authority under s. 29 (4) (b), CAR to confirm the decision made and substitute another penalty under s. 27. I have substituted a penalty of five days segregation, and I consider it satisfied through time served.

My reasons for this decision are:

- the serious nature of the charge contraband and the activities associated with it jeopardize the safety and security of persons and correctional centres
- the serious nature of the contraband controlled substances pose serious health and safety risks within correctional settings
- admission of guilt you admitted to breaching the rule
- record of behaviour you have no previous institutional charges; however, your behaviour appears to be declining since entering custody s.22
 - you were classified to s.22 because an investigation indicated that s.22
 - you had one negative Client Log (CLOG) entry s.22 argumentative with staff s.22 and getting others involved in the dispute s.22
- submissions you submitted to ISO that the penalty was unfair for a first offence
- deterrence a penalty that affects the inmate's liberty is necessary to discourage you from breaching this and other rules, and to reinforce the importance of compliance to you and other inmates

I have notified the person in charge of my decision and directed that he have your records changed to reflect it. I am holding your file open pending confirmation of the centre completing that action.

Sincerely yours,



S. Muldrew

Inspector

Investigation & Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director, Corrections Branch
 Ms. J. Hawkins, Warden
 Mr. J. Peters, Assistant Deputy Warden Hearing Officer



Mailed Aug 24

August 23, 2012

59320-20/12-007

CS# s.22

s.22

c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (z.2) (ii), CAR. Your hearing for that matter concluded at Prince George Regional Correctional Centre (PGRCC) August 14, 2012.

Under s. 29 (2), CAR, I obtained and examined the record of the proceedings including the Inmate Offence Report (IOR), audio record of the hearing and digital video recording (DVR) evidence.

Record of Proceedings

The record of the proceedings indicated that an officer filed a charge against you August 13 under s. 21 (1) (z.2) (ii), CAR, which states, "An inmate must not engage in an activity that jeopardizes or is likely to jeopardize the management, operation or security of the correctional centre."

The charging officer specified in the IOR, "I/M s.22 went on a destructive rampage damaging many items and breaching the staff station window in the common area of Unit 4WS on August 12, 2012 between approximately 16:50 to 18:00 hrs."

Acting Assistant Deputy Warden (A/ADW) Sandbach, presiding as hearing officer, opened your disciplinary hearing August 14. You confirmed that you had received a copy of the IOR and that you had read and understood it. You also confirmed that you were made aware of your right to seek legal counsel. You advised the hearing officer that you were ready to proceed and you pled not guilty to the charge.

The charging officer read his written report and witness statements into the record, and the hearing officer heard your account of the circumstances. You advised the hearing officer that you could only remember smashing a window; however, you recalled more details as you viewed DVR evidence with him. The

hearing officer discussed the incident further with you, and you advised him that you could see from the DVR evidence that you were guilty of the alleged breach. You advised him that you would like to change your plea, and he amended the record accordingly.

Based on your admission, DVR evidence and staff testimony, the hearing officer subsequently found you guilty, and he moved to the penalty phase of the hearing. He reviewed your institutional records and he discussed them with you. He also heard and considered your submissions before reaching his penalty decision.

The hearing officer noted that you had previous institutional charges during this term in custody and that your recent behaviour had been satisfactory before the incident. He advised that he would not impose a forfeiture of earned remission in light of your release plans. However, he felt that the extreme nature of the incident warranted a substantial sentence, and he imposed a penalty of 30 days segregation effective the date of the breach.

The hearing officer advised you of your rights under s. 27, CAR to request a reduction or suspension of the penalty, and under s. 29, CAR to request a review of the decision made and the penalty imposed. He then concluded the hearing, and he provided you written reasons for his finding and penalty decisions.

Review Findings

You requested a review of your hearing because you believed that errors were made that rendered it unfair.

- You submitted that the charging officer did not read your correct correctional service number (CS#) at the hearing.

I listened to the charging officer's testimony several times and I found that he read your CS# correctly into the record. I also found that he cited it correctly in each area of the IOR that he completed. I further noted that you did not voice any concerns about this matter during the hearing. I therefore found no grounds to allow your appeal based on this submission.

- You submitted that the correctional supervisor who approved the charge exceeded his authority because he witnessed the incident.

The record of the proceedings confirmed that the supervisor that approved the charge also witnessed the incident. I found no error or element of unfairness however as the supervisor acted within the authority of his prescribed duties and responsibilities. I also noted that the hearing officer advised you of the same when you raised this matter during the hearing. I therefore found no grounds to allow your appeal based on this submission.

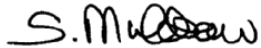
Overall, I found your hearing procedurally fair and administratively correct. I found sufficient evidence to support the charge against you and the finding of guilt. I also found that you received a reasonable and appropriate penalty under the circumstances.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (a), CAR to confirm the decision made and the penalty imposed under s.27 and thereby dismiss your appeal.

In closing, I remind you that you may exercise your right under s. 27 (5), CAR at any time while serving your segregation penalty. You should apply in writing to the hearing officer, or the person in charge if he is not available, for a reduction or suspension of all or part of the penalty, and you should also make submissions for consideration towards granting the request.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Ms. J. Hawkins, Warden, PGRCC
Mr. S. DiCatri, Warden, FRCC
Mr. W. Sandbach, Acting/Assistant Deputy Warden Hearing Officer



Mailed Aug 24
August 23, 2012

59320-20/12-007

CS# s.22

s.22

c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (w), CAR that concluded at Prince George Regional Correctional Centre (PGRCC) August 16, 2012.

Under s. 29 (2), CAR, I obtained and examined the record of the proceedings including the Inmate Offence Report (IOR), audio record of the hearing and digital video recording (DVR) evidence.

Record of Proceedings

The record of the proceedings indicated that an officer filed a charge against you August 14 under s. 21 (1) (w), CAR, which states, "An inmate must not assault or threaten another person." The charging officer specified in the IOR, "I/M s.22 did threaten CO Ellington verbally in the Segregation Unit on August 13, 2012 at approximately 1130HRS."

Assistant Deputy Warden (ADW) Tuck, presiding as hearing officer, opened your disciplinary hearing August 16. You confirmed that you had received a copy of the IOR and that you were advised of your right to seek legal counsel. You advised the hearing officer that you were ready to proceed and you pled guilty to the charge.

The charging officer read his written report and witness statements into the record. You fully agreed with the charging officer's report, and you viewed DVR evidence with the hearing officer. Based on your admission, DVR evidence and staff testimony, the hearing officer subsequently found you guilty, and he moved to the penalty phase of the hearing.

The hearing officer reviewed your institutional records and he discussed them with you. He noted that you had s.22 previous institutional charges during this term in custody and that you had just managed to return to a regular living unit program after s.22

The hearing officer also heard and considered your submissions before reaching his penalty decision. You advised him that you would appreciate not forfeiting earned remission because you had a medical appointment in the community scheduled for your release date.

The hearing officer advised that medical appointments can be rescheduled, and he expressed his concerns about the nature of the offence and the need to deter such behaviour. He felt that past segregation penalties had had no effect on you, and he noted that you had received a s.22 He advised that he would follow the principles of progressive discipline, and he imposed a penalty of 15 days forfeiture of earned remission.

You requested to leave the hearing room and then acted out when the hearing officer began to advise you of your rights under s. 27, CAR to request a reduction or suspension of the penalty, and under s. 29, CAR to request a review of the decision made and the penalty imposed. Staff removed you from the hearing room and the hearing officer concluded the hearing. He subsequently provided you written reasons for his finding and penalty decisions, and information regarding your rights.

Review Findings

You requested a review because you believed that errors were made in your previous hearing that should cause that charge to be dismissed and therefore nullify the application of progressive discipline in this matter.

As reported in a separate letter, ISO reviewed your previous hearing and found it procedurally fair and administratively correct. Consequently, the outcome of that review did not affect this matter.

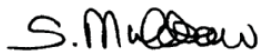
Overall, I found your hearing procedurally fair and administratively correct for the charge under s. 21 (1) (w), CAR. I found sufficient evidence to support the charge and the finding of guilt. I also found that you received a reasonable and appropriate penalty under the circumstances.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (a), CAR to confirm the decision made and the penalty imposed under s.27 and thereby dismiss your appeal.

In closing, I remind you that you may exercise your right under s. 27 (5), CAR at any time. You should apply in writing to the hearing officer, or the person in charge if he is not available, for a reduction or suspension of all or part of the remission penalty, and you should also make submissions for consideration towards granting the request.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director, Corrections Branch
 Ms. J. Hawkins, Warden, PGRCC
 Mr. S. DiCatri, Warden, FRCC
 Mr. M. Tuck, Assistant Deputy Warden Hearing Officer



Mailed Aug 31
August 30, 2012

59320-20/03-151
CS# s.22

s.22

Nanaimo Correctional Centre
Bag 4000
Nanaimo, BC V9R 5N3

Dear s.22

I am writing in response to your Appeal for Review of Determination or Disposition dated August 28, 2012, and a letter your legal counsel, s.22 Barrister and Solicitor, dated August 29, 2012 requesting a review of the finding of guilt in a disciplinary hearing held at Nanaimo Correctional Centre. The hearing commenced on August 23, 2012 and concluded on August 28, 2012. Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recording of the disciplinary hearing.

You were charged and found guilty of violating Correction Act Regulation (CAR) Section 21(1)(i) which states that "An inmate must not engage in an indecent act." The chairperson heard evidence from the investigating officer and you. He also viewed a digital video recording of the incident. Prior to finding you guilty as charged, the record indicates that he reviewed some of your corrections records and also questioned you about the events following the incident which had led to the charge. He indicates that based on that information he found you guilty.

In reviewing the proceedings, I have determined that the disciplinary hearing was not conducted in an administratively and procedurally fair manner.

Reason:

An inmate is entitled to a hearing by a neutral and unbiased adjudicator.

Prior to finding you guilty, the chair sought and obtained information from your corrections records that was not pertinent to whether or not you were guilty of a breach under CAR, s. 21(1)(i). He also asked you questions regarding the events following the incident and reviewed your corrections records, including information concerning previous disciplinary matters. He also indicated that he had not heard your name come up for a long time regarding any hearings.

Under the circumstances, the actions of the chairperson created an apprehension of bias rendering the hearing unfair.

Based on the reason noted above, I am rescinding the decision made and the penalty imposed by the chairperson pursuant to CAR, Section 29(4)(c). I am also directing that your record be amended to reflect the rescission.

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Mr. R. Hodgson, Warden, NCC
Mr. W. Orr, Hearing Officer
s.22 Barrister and Solicitor (via fax: s.22



Mailed s6
September 6, 2012

59320-20/12-074
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your letter requesting a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC), which concluded on September 3, 2012. Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recording of the disciplinary hearing.

You were charged and plead not guilty to violating Correction Act Regulation (CAR), Section 21(1)(w), which states that "An inmate must not assault another person." The record of proceedings indicated that you were found guilty based on evidence presented by the charging officer and the digital video recording of the incident. The hearing officer did not accept your defense that the other inmate assaulted you. The hearing officer imposed a disposition of 10 days segregation after reviewing your disciplinary history. The hearing officer also granted you time served for the period of time you had spent in segregation subject to CAR, Section 24(1)(b)

In reviewing the proceedings, I have determined that the disciplinary hearing was conducted in an administratively and procedurally a fair manner. The evidence presented supports the charge against you as the digital video recording captured the incident completely and clearly. It shows you getting off your top bunk and pushing the other inmate back into his bunk. You returned to your bunk only after the other inmate defended himself by pushing you away. He then got up from his bunk and pressed the cell call button for assistance. The disposition imposed by the hearing officer was reasonable as he considered your lack of remorse, the minor nature of the assault and your disciplinary history since your admission on s.22

I am therefore confirming the decision made and the penalty imposed by the Hearing Officer pursuant to CAR, Section 29(4)(a). The hearing officer advised you that you may apply to him for a suspension or reduction of the disposition imposed.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Parkin', with a long horizontal stroke extending to the right.

J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, B.C. Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. L. Anderson, Warden, NFPC



Mailed s10

September 7, 2012

59320-20/11-134

CS# s.22

s.22

c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing concluded at Prince George Regional Correctional Centre (PGRCC) on September 4, 2012. Your lawyer, s.22 has also submitted a request for a review.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and video record and listened to the audio recording of the disciplinary hearing.

You were charged with breaching section 21(1)(g) of the CAR, which states that “an inmate must not unless unreasonably provoked by that person, behave in an insulting or abusive manner toward a person.” You were represented by your lawyer, s.22 who participated by telephone from the Lower Mainland. You pled not guilty. After reviewing the evidence the hearing officer found you guilty and sentenced you to 10 days in segregation.

In your written submission to this office you complain that you were not allowed to informally resolve this matter under section 22 of the CAR. You write that you wanted to use this process to clear up ‘the misunderstanding’ that you had sworn at a staff member.

Section 22 of the CAR does allow breaches of disciplinary rules to be resolved without going to a hearing. Section 22(2) requires staff to “give the inmate an opportunity to stop the breach from occurring or give the inmate an opportunity to correct the breach if the person aggrieved by the breach consents.” In this case, I note that you actually deny swearing at the officer and staff decided to proceed with charges against you.

Your lawyer has submitted that there was an unfair delay in concluding your hearing. The officer involved in this incident, CO Lambright, was available on August 30, although the charging officer, CO Dorish, wasn't. Therefore, it was decided by the centre to wait until September 4 when both officers were available. It is s.22's contention that as it was established on September 4 that the charging officer had no material evidence to present that your hearing could and should have proceeded on August 30.

I have considered this submission but note, firstly, that it was only conclusively established that CO Dorish had no direct evidence to present when he testified on September 4. Secondly, I note that you were not detained in segregation under section 24 of the CAR pending this hearing. A review of your client log shows that your placement pending this hearing has been dictated by peer concerns and not by this charge. I do not therefore consider that this delay caused you any procedural unfairness.

Following my review, I can see no grounds to interfere with the hearing officer's decision in this matter. I have concluded that your disciplinary hearing concluded on September 4 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Ms. J. Hawkins, Warden, PGRCC

s.22

barrister and solicitor (Fax: s.22)



Sent September 21, 2012

September 21, 2012

59320-20/09-033

CS# s.22

s.22

c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Fraser Regional Correctional Centre (FRCC) on September 17, 2012. I have also considered submissions from your legal counsel.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I reviewed the documents, Digital Video Recording (DVR) and listened to the audio record of the hearing.

An officer (Ms. Shaw) charged you with breaching section 21 (1) (g) of the CAR, which states “an inmate must not unless unreasonably provoked by that person, behave in an insulting or abusive manner towards a person”. She wrote you used inappropriate language while riding with you in the elevator. You pled not guilty.

You wrote in your letter to this office that you felt the hearing officer, Mr. Davies, was bias because he heard some of the circumstances of the incident in question after the hearing was adjourned for you to seek legal advice on September 7, 2012. I could find no evidence to support this when I listened to the audio record.

s.22 submitted that in view of the ambiguity of the DVR evidence and the conflicting testimony provided by you and Ms. Shaw, the hearing officer’s refusal to call witnesses amounted to procedural unfairness. I noted when I reviewed the hearing that Mr. Davies considered the request to call witnesses. He asked what information witnesses would bring forward and you replied they would say “exactly as I say”. He declined to call witnesses based on this. He stated he accepted Ms. Shaw’s testimony as she had nothing against you and there was nothing for her to gain by charging you. After hearing the evidence, viewing the DVR and hearing your side of story, the hearing officer found you guilty.

Mr. Davies reviewed your client log before deciding on a disposition. He noted a previous similar charge where you had written an apology and were found not guilty as a result. He also noted some behavioral concerns that were managed by unit staff. He imposed a disposition of 4 days segregation and explained

that this was a lenient disposition. He advised you could ask for a reduction under CAR 27(4) by writing to him.

Following my review, I found your hearing administratively correct and procedurally fair. Pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and penalty imposed under section 27.

I am dismissing your appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Pineau". The signature is written in a cursive, flowing style.

L. Pineau
Inspector
Investigation and Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Mr. S. Dicastri, Warden, FRCC



September 21, 2012

CS# s.22

s.22

c/o Fraser Regional Correctional Centre

s.22

I am writing in response to your letter dated September 20, 2012 requesting a review of a disciplinary hearing held at Nanaimo Correctional Centre (NCC) on September 20, 2012. You were charged and found guilty of violating Correction Act Regulation (CAR) Section 21(1)(b). The hearing officer imposed a disposition of 5 days segregation.

Pursuant to Correction Act Regulation (CAR), Section 29(2), I requested the documents and audio recordings of the disciplinary hearing. NCC has advised that there will be a delay in their ability to provide the Investigation and Standards Office (ISO) with the documents necessary to review the hearing. As the delay will be prejudicial to you, I am rescinding the decision made and the penalty imposed by the hearing officer pursuant to CAR, Section 29(4)(c). I am also directing that your record be amended to reflect the rescission.

Sincerely,

J. Parkin
Inspector
Investigation & Standards Office

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Mr. R. Hodgson, Warden, NCC
Mr. S. DiCastri, Warden, FRCC
s.22 Barrister and Solicitor



September 26, 2012

59320-20/03-306

CS# s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22 :

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (y), CAR.

Your disciplinary hearing concluded at North Fraser Pretrial Centre (NFPC) September 16, 2012, and the Investigation and Standards Office (ISO) received your undated request for review via fax September 24.

We subsequently learned that you had previously submitted a request for review dated September 18 to NFPC staff for faxing and that staff returned it to you September 22 without doing so because it was written in pencil. We also learned that you submitted a written complaint to the warden regarding the delay and that that matter is under investigation at the centre.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the inmate offence report (IOR) and the audio record of the hearing.

The record of the proceedings indicated that you pled guilty to the charge and that the hearing officer found you guilty and imposed a penalty of seven days segregation consecutive to a previously imposed penalty.

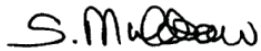
In review, I found that the timeline of the offence and processing the charge conflicted with the timeline of the disciplinary hearing. The IOR indicated in Parts I and III that the offence occurred September 17. It also indicated that the charge was filed, approved and served on you that date. The audio record and IOR however indicated that Assistant Deputy Warden (ADW) Wearing, presiding as hearing officer, opened your disciplinary hearing September 16.

As the date of the hearing preceded the date of the offence, I reviewed your institutional records available on CORNET further to determine the correct timelines. Entries in your Client Log (CLOG) indicated that the offence occurred on September 16 and that the charge was filed, approved and served on you that date.

I reviewed the remainder of the record of the proceedings. I noted that although the hearing officer reviewed and discussed your records and the circumstances surrounding the offence with you during the penalty phase, she did not provide you an opportunity to speak before she imposed a penalty. The absence of that opportunity affected your right to be heard.

In review, I found that the errors and omissions collectively undermined the credibility of the disciplinary hearing process and thereby affected the perception of fairness in this matter. Therefore, I have exercised my authority under s.29 (4) (c) (i), CAR to rescind the decision made and the penalty imposed under s.27, and direct that the person in charge change your record to reflect the rescission.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Ms. L. Anderson, Warden, NFPC
Ms. T. Wearing, Assistant Deputy Warden Hearing Officer



Mailed O2

October 2, 2012

59320-20/03-151

CS# s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your request for a review of a hearing concluded at Nanaimo Correctional Centre (NCC) on September 19, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching Section 21(1)(b) of the CAR, which states that “an inmate must not enter an area of the correctional center in which an inmate is not authorized to be without the permission of a staff member.”

You were accused of being in the school of the Guthrie house compound beyond the permitted time. You pled not guilty but were found guilty and received a disposition of 5 days loss of earned remission.

At the hearing you requested legal representation but this was denied by the hearing officer on the grounds that you were due to transfer the next morning and this matter needed to be dealt with.

I do not consider that this is sufficient grounds to deny you your right to seek legal advice. I have therefore concluded that this hearing was both procedurally flawed and administratively unfair.

In light of my findings, I am exercising my authority under s. 29 (4) (c) (i), CAR to rescind the decision made and the penalty imposed under s. 27. I have requested that your record be amended to reflect this rescission.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
- Mr. P. Coulson, Provincial Director Adult Custody Division
- Mr. R. Hodgson, Warden NCC
- Ms. L. Anderson, Warden NFPC
- Ms. C. Wilson, Hearing Officer, NCC



Mailed 04

October 3, 2012

59320-20/12-086

CS# s.22

s.22

c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing in response to a letter from s.22 Lawyer, dated October 1, 2012, requesting a review of a disciplinary hearing held at Kamloops Regional Correctional Centre (KRCC). The hearing commenced on September 14, 2012 and concluded on September 28, 2012.

Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recordings of the disciplinary hearing.

You were charged and found guilty of violating CAR, Section 21(1)(j) which states that "An inmate must not engage in horseplay or rough housing." The chairperson found you guilty of "engaging in horseplay" based on the digital video recording of the incident and testimony of the charging officer. He subsequently reviewed your current custodial history and imposed a disposition of 50 hours intermittent cell confinement.

In reviewing the proceedings, I have determined that the disciplinary hearing was not conducted in an administratively and procedurally fair manner.

Reason:

The evidence relied upon for the finding of guilt (digital video recording and charging officer testimony) did not support a charge under CAR, Section 21(1)(j).

Based on the reason noted above, I am rescinding the decision made and the penalty imposed by the chairperson pursuant to CAR, Section 29(4)(c). I have also directed that your record be amended to reflect the rescission.

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Mr. E. Vike, Warden, KRCC
Mr. J. Guizzo, Hearing Officer
s.22 Lawyer (Fax: s.22



September 21, 2012

59320-20/12-080

CS# s.22

s.22

c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC) on September 17, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(g) of the CAR which states that “an inmate must not possess contraband.” You pled not guilty. After reviewing the evidence, the hearing officer found you guilty and sentenced you to seven days in segregation.

In your letter you claim that you had no knowledge of three bottles of home brew hidden on your bed between the mattress and the wall. You feel that as your cell mate has admitted his guilt you shouldn't be found guilty. However, I found the evidence presented against you at the hearing to be very clear and convincing. You did not contest the fact that these items were found on your bed during a morning search and that you had been in that cell since 2200hrs the night before.

Following my review, I can see no grounds to interfere with the hearing officer's decision in this matter. I have concluded that your disciplinary hearing held on September 17, 2012 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR I am confirming the decision made and the penalty imposed under section 27.

Ministry
of
Justice

Investigation
&
Standards Office

Mailing Address:
PO Box 9279 Stn Prov Govt
Victoria BC V8W 9J7

Telephone: 250 387-5948
Fax: 250 356-9875

I am therefore dismissing your appeal.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lyall Boswell', with a stylized, cursive script.

Lyall Boswell
Inspector
Investigation and Standards Office

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director, Corrections Branch
 Ms. J. Hawkins, Warden, PGRCC



Mailed O12
October 11, 2012

59320-20/12-090
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (z.2) (ii), CAR.

Your disciplinary hearing concluded at Prince George Regional Correctional Centre (PGRCC) October 10, 2012, and the Investigation and Standards Office (ISO) received your request for review dated October 10 via fax October 11.

Record of Proceedings

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the inmate offence report (IOR), the audio record of the hearing, and photographic and digital video recording (DVR) evidence.

The record of the proceedings indicated that an officer filed a charge against you October 10, 2012 under s. 21 (1) (z.2) (ii), CAR, which states, "An inmate must not engage in an activity that jeopardizes or is likely to jeopardize the management, operation or security of the correctional centre." The charging officer specified that

s.22

Assistant Deputy Warden (ADW) Love, presiding as hearing officer, opened your disciplinary hearing October 10. You confirmed that you had received a copy of the IOR; however, you advised that you were not made aware of your right to seek legal counsel. You then stated that you wished to waive that right and you confirmed that you were ready to proceed. When asked for your plea, you advised the hearing officer that you could not recall the incident and consequently she entered a plea of not guilty on your behalf.

The investigating officer read the written circumstances and witness accounts into the record. He also presented photographic and DVR evidence for examination. The hearing officer viewed the DVR evidence with you while the investigating officer described the events therein.

The hearing officer provided you an opportunity to give your account of the circumstances. You testified that you could not recall the incident or your actions because you were drunk. However, you recalled that the inmate whose

You also testified that you knowingly

s.22

s.22

You did not attempt to excuse your behaviour and you accepted your reported actions upon viewing the DVR evidence.

The hearing officer subsequently found you guilty based on the investigating officer's report and the DVR evidence, and she explained her decision. She then moved to the penalty phase of the hearing and she provided you an opportunity to make submissions for her consideration towards penalty. You advised the hearing officer that you expected to be released from custody s.22 and you requested a segregation penalty that would s.22 You also apologized for your actions and you took responsibility for them.

The hearing officer considered your submissions, and she reviewed your institutional records with you. She noted previous convictions for breaching CAR rules since your arrival at the centre in s.22 She also noted numerous entries in your Client Log (CLOG) reporting unsatisfactory behaviour.

After reviewing your records, the hearing officer advised you that she was going to give a maximum penalty because she considered the incident "extremely serious." She subsequently imposed a penalty of 30 days segregation plus forfeiture of 15 days earned remission, and she explained her decision.

The hearing officer briefly cited your rights under s. 27, CAR to request a reduction or suspension of the penalty, and under s. 29, CAR to request a review of the decision made and the penalty imposed. She then concluded the hearing, and she provided you written reasons for her finding and penalty decisions.

Review Findings

You advised ISO that you wished to appeal the forfeiture of 15 days earned remission imposed as part of your total penalty because you felt that it was "too extreme."

In review, I found that the hearing officer provided sufficient written reasons to support the penalties that she imposed. Her reasons reflected the serious nature of the breach, your record of institutional behaviour during this term in custody and the need to deter you and others from engaging in serious breaches. Consequently, I found that the hearing officer imposed a total penalty that reflected those circumstances reasonably and fairly.

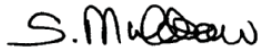
Overall, I found your hearing administratively correct and procedurally fair.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (a), CAR to confirm the decision made and the penalty imposed under s.27, and thereby dismiss your appeal.

In closing, I wish to remind you of your right under s. 27 (5), CAR to apply to the hearing officer, or the person in charge if she is not available, for a reduction or suspension of the remission forfeiture penalty. You may do so at any time during your sentence and you should make such a request, in writing, with reasons to support it.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Ms. J. Hawkins, Warden PGRCC
Ms. A. Love, Assistant Deputy Warden Hearing Office



Mailed O30
October 29, 2012

59320-20/08-097
CS# s.22

s.22
c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Fraser Regional Correctional Centre (FRCC) on October 19, 2012.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I reviewed the documents and listened to the audio record of the disciplinary hearing. I carefully viewed the Digital Video Recording (DVR) as you requested.

An officer charged you with breaching section 21 (1) (w) of the CAR, which states “an inmate must not assault another person”. You were accused of assaulting Inmate s.22 You pled not guilty. After hearing the evidence and viewing the DVR, the hearing officer found you guilty.


You told the hearing officer you never touched Inmate s.22 and that it was just a “high five.” The hearing officer considered your side of the story. He viewed the DVR evidence and pointed out to you that the DVR evidence clearly showed you make contact with Inmate s.22

The hearing officer reviewed your client log and noted s.22 charges and some negative comments about your behavior. He stated he did not find your actions to be overly aggressive in nature and his disposition would reflect this. He imposed a disposition of 5 days segregation with one day served. He advised you that you could ask for a reduction under CAR 27(4) by writing to him.

Following my review, I found your hearing administratively correct and procedurally fair. Pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours truly,

A handwritten signature in cursive script, appearing to read "L. Pineau".

L. Pineau

Inspector

Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Mr. S. Dicastri, Warden, FRCC



Mailed O30

October 29, 2012

59320-20/12-083

CS# s.22

s.22

c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing concluded at Prince George Regional Correctional Centre (PGRCC) on October 23, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and the video evidence and listened to the audio record of the disciplinary hearing.

You were charged with breaching Section 21(1)(p) of the CAR, which states that “an inmate must not provide a false or misleading statement to a staff member.” You were accused of making a false allegation that a staff member assaulted you. You received a disposition of 10 days in segregation.

At the hearing you were represented by your counsel, s.22

Following my review I determined that this charge was flawed and that there was an unnecessary delay in concluding this hearing.

In light of my findings, I am exercising my authority under s. 29 (4) (c) (i), CAR to rescind the decision made and the penalty imposed under s. 27. I have requested that your record be amended to reflect this rescission.

Yours sincerely,

Lyall Boswell
Inspector
Investigation and Standards Office

c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody Division
Ms. J. Hawkins, Warden PGRCC
Mr. J. Peters, Hearing Officer, PGRCC
s.22 Barrister and Solicitor (Fax: s.22)



Mailed N1
October 31, 2012

59320-20/12-097
CS# s.22

s.22
c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that s.22 Legal Advocate, Prisoners' Legal Services (PLS) requested under section 29 (1), Correction Act Regulation (CAR), on your behalf, for a charge under s. 21 (1) (y), CAR.

Your disciplinary hearing concluded at Nanaimo Correctional Centre (NCC) October 19, 2012, and the Investigation and Standards Office (ISO) received the request for review dated October 26 via fax that date.

Record of Proceedings

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the inmate offence report (IOR), the audio record of the hearing, and an audio recording entered as evidence.

The record of the proceedings indicated that an officer filed a charge against you October 18, 2012 under s. 21 (1) (y), CAR, which states, "An inmate must not attempt to obtain, or possess contraband." The charging officer specified that you attempted to get contraband into the centre through the inmate call control system.

Assistant Deputy Warden (ADW) Mackey, presiding as hearing officer, opened your disciplinary hearing October 19. You confirmed that you had received a copy of the IOR and that you had read and understood it. You also confirmed that you were made aware of your right to seek legal counsel. You advised the hearing officer that you were ready to proceed and he read the charge and its specifics to you. You confirmed that you understood the charge and you pled guilty to it.

The charging officer read her written report into the record and she answered questions from the hearing officer. Her report and testimony concerned a s.22

She reported that calls were monitored due to several tobacco issues on the Guthrie Treatment Community (GTC) unit and that the highlights of your call included:

-
- s.22
-

The hearing officer then provided you an opportunity to give your account of the circumstances.

You advised the hearing officer that you could not recall the details of the telephone call. However, you admitted to speaking in a manner that would make it difficult for others to understand the conversation. You also stated that you did not know how to get anything into the centre. You then read a prepared statement into the record. It included an admission to speaking about things that are not allowed in the centre and an apology for using words that may have alarmed or jeopardized anyone at the centre.

The hearing officer questioned you about inconsistencies between your plea, opening statements and prepared statement. You advised him that your telephone conversation concerned tobacco in GTC and how people bring it in. When asked about the discussion of money being paid, you advised the hearing officer that it had nothing to do with bringing contraband into the centre.

The hearing officer questioned you and the charging officer further about the telephone conversation. He then listened to the recording of it with you and the charging officer, and discussed its content with both of you.

You advised the hearing officer that you had brought into the centre. You explained that tobacco is the payment for getting things into GTC and that you were told that it would cost you \$40.00 worth of tobacco to get the s.15, s.22 into GTC for you. You advised the hearing officer that you followed through on doing that and that you knew that it was wrong.

The charging officer also reported that at the end of the conversation you made a comment about “getting bigger” and that it caused her further concerns. The hearing officer agreed and he explained that comments of that nature usually refer to using protein powder or steroids. You advised him that he did not need to listen to that part of the recorded conversation and you told him that you were exploring the possibility of bringing steroids into the centre.

The hearing officer subsequently found you guilty based on the aforementioned evidence. He then moved to the penalty phase of the hearing and he provided you an opportunity to make submissions for his consideration towards penalty. He reviewed your institutional records and discussed them with you as well as the seriousness of the charge and its specifics. The hearing officer acknowledged your apology and remorsefulness while also noting the lack of forthrightness about the circumstances in your prepared statement.

The hearing officer subsequently imposed an aggregate penalty of five days segregation plus forfeiture of eight days earned remission. He advised you of your rights under s. 27, CAR to request a reduction or suspension of the penalty, and under s. 29, CAR to request a review of the decision made and the penalty imposed. He then concluded the hearing, and he provided you written reasons for his finding and penalty decisions.

Submissions

Your legal advocate advised ISO that you were seeking a general review of the disciplinary hearing. He further advised that you were unaware of the seriousness of the disciplinary proceedings when you pled guilty to the charge and that you reconsidered when your parole was revoked as a result. In addition to your request for a general review, your legal advocate submitted that the following flaws occurred:

Breach of Fairness in Failing to Ensure Understanding of the Charge

Your legal advocate advised that you did not think that the charge was significant and that you would not have pled guilty if you had known how it would affect your parole. He submitted that the hearing officer allowed you to proceed with no conception of the charge's significance and therefore your guilty plea should be null.

In review, I found no grounds to allow your appeal based on this submission.

It is important to understand that disciplinary hearing, classification and parole decisions are three separate processes. Hearing officers' authorities under CAR do not extend to classification and parole matters.

The record of the proceedings indicated that the hearing officer asked you on two separate occasions if you understood the charge before he asked you for your plea. You advised him each time that you understood it. You also confirmed that you received notice of your right to seek legal counsel, and you chose not to exercise that right before or during the hearing.

The record of the proceedings also indicated that staff placed you in the segregation unit pending your hearing. I found it reasonable to believe that placement would have drawn your attention to the seriousness of the breach and that it gave you further reason to prepare the statement that you read at the hearing. The content of that statement clearly demonstrated that you understood that your actions had jeopardized your continued participation in the GTC-program.

Lastly, you gave a clear account of how you breached the rule and you acknowledged that you knew that attempting to have contraband brought into the GTC-program was wrong.

In light of the above, I found it reasonable to conclude that you had sufficient understanding of the significance of the charge under the circumstances.

Standard of Proof

Your legal advocate submitted that although the general practice is to use the "balance of probabilities" standard, disciplinary hearings should use the standard of "proof beyond reasonable doubt" as used in Canadian federal penitentiaries because the *Correction Act* and its CAR are silent on the standard of proof.

He further submitted, "Under either standard, however, a finding of guilt for attempting to obtain or possess contraband from the mere use of certain flagged words without further context or evidence should not be allowed, self-pled or not."

In review, I found no grounds to allow your appeal based on this submission.

The BC Corrections Branch conducts its disciplinary hearings under the principles of administrative law. The long-established standard of proof used to determine guilt or innocence in these hearings is “the balance of probabilities.” ISO is not considered a court of competent jurisdiction to hear arguments against that standard and it has no authority to change it.

In response to the second submission, the hearing officer reached his finding of guilt after closely examining the matter and learning its details from you. As reported earlier, you gave a clear account of how you breached the rule and you acknowledged that you knew that attempting to have contraband brought into the GTC-program was wrong.

Review Decision

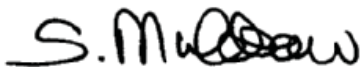
In review, I found that the hearing officer received sufficient evidence to support the charge and your guilty plea. I therefore found the finding of guilt reasonable and appropriate under the circumstances.

I also found that the hearing officer imposed an aggregate penalty that reasonably and fairly balanced all of the circumstances surrounding this matter. In general, I found it to be significantly less than penalties imposed for comparable breaches. The penalties that you received addressed the serious nature of the charge and the need to deter you and others from engaging in such behaviour, particularly in a program that extends a high level of trust to its participants. The penalties also reflected your good record of institutional behaviour during this term in custody, your eventual truthfulness and your apology.

Overall, I found your hearing administratively correct and procedurally fair. I have therefore exercised my authority under s.29 (4) (a), CAR to confirm the decision made and the penalty imposed under s.27, and thereby dismiss your appeal.

In closing, I wish to remind you of your right under s. 27 (5), CAR to apply to the hearing officer, or the person in charge if he is not available, for a reduction or suspension of the remission forfeiture and that the hearing officer encouraged you to submit a written request to him two weeks before your probable discharge date (PDD).

Sincerely yours,



S. Muldrew
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Mr. R. Hodgson, Warden, NCC
Mr. S. DiCastrì, Warden
s.22 Legal Advocate, Prisoners' Legal Services



Mailed N1
October 31, 2012

59320-20/09-023
CS# s.22

s.22
c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Fraser Regional Correctional Centre (FRCC) on October 29, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(w) of the CAR which states that “an inmate must not assault another person.” You were accused of assaulting your cell mate. You pled guilty and were sentenced to 15 days in segregation.

In your letter you claim that you s.22 You state that you “had a heated moment with a cellmate” and the “punishment is quite lengthy for what occurred.”

You pled guilty to assaulting your cellmate. The facts of the case state that you continued to assault him while he was on the ground. In your evidence you stated that an argument with your cellmate led to a fight and that you got the upper hand. You also stated that when you realized that staff were present and you were going to segregation, you went back and hit your cellmate a few more times.

The maximum segregation penalty that can be awarded is 30 days. You received a disposition of 15 days. I do not consider this to be an excessive disposition in these circumstances.

Following my review, I can see no grounds to interfere with the hearing officer’s decision in this matter. I have concluded that your disciplinary hearing held on October 29, 2012 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under section 27.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Mr. S. DiCatri, Warden, FRCC



Mailed N1
October 31, 2012

59320-20/12-098
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC) on October 26, 2012.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I reviewed the documents, viewed the Digital Video Recording (DVR) and listened to the audio record of the disciplinary hearing.

An officer charged you with breaching section 21 (1) (k) of the CAR, which states “an inmate must not physically fight with another person.” You pled not guilty. After hearing the evidence and viewing the DVR, the hearing officer found you guilty.

Your legal counsel submitted that prison disciplinary law recognizes the concept of self defence and you were simply defending yourself from an unprovoked attack. The hearing officer stated when she considers situations such as yours; she looks to see whether the person is defending himself or whether a line is crossed. In your case, she stated the DVR evidence indicated there was a time when you could have retreated but you, instead, remained and threw several punches. Based on this, she stated she was satisfied you were, for a period of time, actively engaged in a fight.

The hearing officer advised you that when deciding on a disposition, she would consider the fact there was no indication you provoked the attack and that the situation seemed to go from one of you defending yourself to you actively engaging. She imposed a disposition of five days segregation, with time already served.

Following my review, I found your hearing administratively correct and procedurally fair. Pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours truly,



L. Pineau

Inspector

Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. L. Anderson, Warden, NFPC
s.22 Barrister & Solicitor (Fax: s.22



Mailed N6
November 2, 2012

59320-20/08-106
CS# s.22

s.22
c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing in response to a letter from you received on October 19, 2012 requesting a review of a disciplinary hearing held at Fraser Regional Correctional Centre (FRCC) on October 18, 2012.

I directed that the disposition be suspended pending the review of this hearing pursuant to *Correction Act Regulation* (CAR), section 29(3). Pursuant to CAR, section 29(2), I reviewed the documents and audio recordings of the disciplinary hearing.

You were charged and found guilty of violating CAR, section 21(1)(i) which states that "An inmate must not engage in an indecent act." The hearing officer heard evidence from you and the charging officer. He also viewed a digital video recording (DVR) of the incident recorded on October 11, 2012. He found you guilty on the balance of probabilities. He subsequently reviewed your disciplinary history and imposed a disposition of five days segregation.

In reviewing the proceedings, I have determined that the disciplinary hearing was not conducted in an administratively and procedurally fair manner as insufficient evidence was presented at the hearing to support a charge under CAR, section 21(1)(i).

Based on the reason noted above, I am rescinding the decision made and the penalty imposed by the hearing officer pursuant to CAR, section 29(4)(c). I am also directing that your record be amended to reflect the rescission.

Sincerely,

J. Parkin
Inspector
Investigation & Standards Office

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Mr. S. DiCasteri, Warden, FRCC
Mr. B. Racette, Hearing Officer



Mailed N7
November 6, 2012

59320-20/12-101
CS# s.22

s.22
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (a), CAR.

Your disciplinary hearing concluded at North Fraser Pretrial Centre (NFPC) October 27, 2012, and the Investigation and Standards Office (ISO) received your request for review dated November 2 via fax November 5.

Record of Proceedings

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR) and the audio record of the hearing.

It indicated that an officer filed a charge against you October 25, 2012 under s. 21 (1) (a), CAR, which states, "An inmate must not disobey a direction of a staff member or of the person in charge." The charging officer specified that you refused to clean the light of cell #s.22

Assistant Deputy Warden (ADW) Penner, presiding as hearing officer, opened your disciplinary hearing October 27. He read the charge to you and you confirmed that you had received a copy of it. You also confirmed that you were aware of your right to seek legal counsel and you advised him that you were ready to proceed. You confirmed that you understood the charge and you pled not guilty to it.

The charging officer read his written report into the record and the hearing officer then provided you an opportunity to speak to the charge. The hearing officer questioned you and the charging officer further about the circumstances before reaching his decision. He subsequently found you guilty of breaching s. 21 (1) (a), CAR as reported.

The hearing officer then moved to the penalty phase of the hearing. He reviewed your institutional records, discussed them with you and heard your submissions before deciding on a penalty. He subsequently imposed a penalty of four days segregation with credit for time served under s. 24, CAR and he explained his decision.

The hearing officer advised you of your rights under s. 27, CAR to request a reduction or suspension of the penalty, and under s. 29, CAR to request a review of the decision made and the penalty imposed. He concluded the hearing, and provided you written reasons for his decisions.

Review Findings

While I found sufficient evidence to support the charge and finding of guilt, I found that the hearing officer unfairly characterized your conduct towards the charging officer during the incident.

During the hearing, the hearing officer stated that you were “just sloughing off” the officer and that you “defiantly” said no to the officer. In his written reasons, the hearing officer stated that you “expressed a very poor attitude towards the officer.”

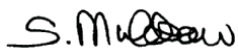
In response to his first comment, you advised the hearing officer that you were not rude; in response to the second comment, you advised him that you did not say it like that. You did not have an opportunity to speak to the third comment because the hearing officer did not include it or words to that effect in his verbal explanation for the penalty decision.

I found that the hearing officer received no evidence to support his descriptions of your conduct towards the charging officer. Furthermore, the charging officer heard your responses and he did not present any evidence to contradict them. I therefore found that the hearing officer’s unsupported characterization of your conduct created an apprehension of bias that rendered your hearing procedurally unfair.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (c) (i), CAR to rescind the decision made and the penalty imposed under s.27, and direct that the person in charge change your record to reflect the rescission. I am holding your file open pending confirmation that the person in charge has completed that action.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director, Corrections Branch
 Ms. L. Anderson, Warden
 Mr. B. Penner, Assistant Deputy Warden Hearing Officer



Mailed N9
November 8, 2012

59320-20/12-103

CS# s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing in response to your request for a review of a hearing concluded at North Fraser Pretrial Centre (NFPC) on November 3, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and DVR and listened to the audio record of the disciplinary hearing.

You were charged with breaching Section 21(1)(a) of the CAR, which states that "an inmate must not disobey a direction of staff member or the person in charge." You received a disposition of 15 days segregation.

I reviewed the record of proceedings and concluded that this hearing was not conducted in a fair manner.

In light of my findings, I am exercising my authority under s. 29 (4) (c) (i), CAR to rescind the decision made and the penalty imposed under s. 27. I have requested that your record be amended to reflect this rescission.

Yours sincerely,

Lyall Boswell
Inspector
Investigation and Standards Office

/dk

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody Division
Ms. L. Anderson, Warden NFPC
Mr. R. Nash, Hearing Officer, NFPC



Mailed N16

November 15, 2012

59320-20/12-109

CS# s.22

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, BC V3C 1S2

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (a), CAR.

Your disciplinary hearing concluded at North Fraser Pretrial Centre (NFPC) November 10, 2012, and the Investigation and Standards Office (ISO) received your request for review dated November 10 via fax November 13.

Record of Proceedings

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR) and the audio record of the hearing.

The record of the proceedings indicated that an officer filed a charge against you November 9 under s. 21 (1) (a), CAR, which states, "An inmate must not disobey a direction of a staff member or of the person in charge." The charging officer specified in the IOR, "*Covered cell light in cell #s.22*"

Assistant Deputy Warden (ADW) Lacroix, presiding as hearing officer, opened your disciplinary hearing November 10. You confirmed that you had received a copy of the IOR and that you understood the charge. You also confirmed that you were aware of your right to seek legal counsel. You advised the hearing officer that you were ready to proceed and you pled not guilty to the charge.

The charging officer read the written circumstances into the record and he advised the hearing officer that his previous warnings to you about covering the cell light were logged in your records.

The hearing officer then heard your account of the circumstances. You advised him that the cell light was already covered when staff moved you into the cell late November 8. You explained that you were too tired to uncover the light that night and that you uncovered it the next morning after health care staff woke you for medications.

The hearing officer subsequently found you guilty based on the charging officer's evidence and you choosing to leave the light covered after moving into the cell.

The hearing officer moved to the penalty phase of the hearing. He reviewed your institutional records for this term in custody and discussed them with you. He noted that you had previous institutional charges that included breaching the same rule and that your Client Log (CLOG) contained several reports of you receiving warnings and disobeying staff direction. The hearing officer also heard your submissions before reaching his penalty decision. He subsequently imposed a penalty of six days segregation effective the date of the breach and he provided his reasons for that decision.

The hearing officer advised you of your rights under s. 27, CAR to request a reduction or suspension of the penalty, and under s. 29, CAR to request a review of the decision made and the penalty imposed. He then concluded the hearing and he provided you written reasons for his finding and penalty decisions.

Review Findings

Overall, I found your hearing procedurally fair. I found sufficient evidence to support the charge against you and the finding of guilt, and that you received a reasonable and appropriate penalty under the circumstances.

However, while reviewing your institutional records to confirm that the hearing officer had reflected them accurately, I noted a CLOG entry, dated November 10, reporting that he received a written request from you after the hearing seeking a reduction of the penalty and that he subsequently changed your penalty to intermittent confinement from 0800 – 2045 hours November 10 – 18. I also noted a later CLOG entry, dated November 12, wherein the hearing officer reported that his earlier entry was incorrect and that your penalty is November 10 – 17 with one hour out a day from 2045 – 2145 hours.

S. 27 (5), CAR only allows the person that presided over the hearing, or if that person is not available, to reduce or suspend all or part of the penalty imposed under subsection (1). Consequently, I found that the hearing officer exceeded his authority by substituting another penalty under s. 27. Nonetheless, I believe that he made that error in good faith so you could stay on Living Unit C-E rather than move to the segregation unit.

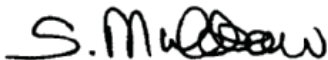
In addition, I found that the hearing officer applied the substituted penalty incorrectly. Intermittent confinement is to occur in intervals rather than a continuous period like a segregation penalty. Section 27 (1) (c), CAR also requires imposing the penalty in terms of hours, not days. Lastly, I found it unreasonable to extend the substituted penalty, albeit unauthorized, beyond the conclusion date of the original penalty.

Review Decision

Under s. 29 (4) (a), CAR, I am confirming the decision made and the penalty imposed under s. 27 at the hearing and thereby am dismissing your appeal.

In closing, your original penalty expires this date – November 15 and you have satisfied it with time served. I have notified ADW Lacroix of my findings and I have requested that he amend your records accordingly.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director, Corrections Branch
 Ms. L. Anderson, Warden, NFPC
 Mr. R. Lacroix, Assistant Deputy Warden – Hearing Officer



Mailed N19
November 15, 2012

59320-20/12-102
CS# s.22

s.22
c/o Adrian Kuznik, Probation Officer
Delta/West Surrey Community Corrections
8285 120th Street
Delta, BC V4C 6R1

Dear s.22

I am writing in response to a letter dated November 2, 2012 from your legal counsel, s.22 requesting a review of a disciplinary hearing held at Surrey Pretrial Services Centre (SPSC). The hearing commenced on September 1, 2012 and concluded on October 26, 2012. Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recordings of the disciplinary hearing.

You were charged and found guilty of violating Correction Act Regulation (CAR) Section 21(1)(w) which states; "An inmate must not threaten another person." The chairperson heard evidence from the charging officer, and witnesses called by your legal counsel. She also reviewed documentary evidence. She found you guilty on the balance of probabilities. She subsequently reviewed your disciplinary history and imposed a disposition of 5 days segregation.

In reviewing the proceedings, I have determined that the disciplinary hearing was not conducted in an administratively and procedurally fair manner.

Reason:

Your ability to prepare your defence to the charge was impeded by the chairperson's refusal to provide access to requested relevant and required information outside of the hearing.

Your legal counsel requested a copy of your client log from the date of admission to date of the offence in order to prepare your defence to the charge. The chairperson advised your legal counsel that she would have to make a request under the *Freedom of Information and Protection of Privacy Act* (FOIPPA) as your client log has to be vetted prior to it being provided. The Centre was incorrect to require your legal counsel to make a request under FOIPPA. However, FOIPPA would still apply to require that non-relevant personal information about third parties be severed.

FOIPPA does not limit the information available by law to a party to a proceeding pursuant to section 3(2). This applies to administrative proceedings such as a disciplinary hearings conducted under the Correction Act Regulation. As you had demonstrated the likelihood that the information contained in the requested document was relevant and required to allow you to answer the case against you, then you are entitled to have that information when requested. Restricting access to the information and then requiring the information to be provided to you and your legal counsel only in the disciplinary hearing impeded your ability to prepare your defence to the charge and rendered the hearing unfair.

Based on the reason noted above, I am rescinding the decision made and the penalty imposed by the chairperson pursuant to CAR, Section 29(4)(c). I am also directing that your record be amended to reflect the rescission.

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Mr. G. Davis, A/Warden
Ms. M. Zabel, Hearing Officer
s.22 Barrister and Solicitor (Fax: s.22)



Mailed N19
November 16, 2012

59320-20/12-111
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing concluded at Prince George Regional Correctional Centre (PGRCC) on November 9, 2012.

You pled guilty to breaching Section 21(1)(k) of the CAR, which states that “an inmate must not physically fight with another person.” You received a disposition of 15 days in segregation.

I have been informed by the centre that there is no audio recording of this hearing. The absence of an audio record is a fatal flaw.

In view of this, I am exercising my authority under s. 29 (4) (c) (i), CAR to rescind the decision made and the penalty imposed under s. 27. I have requested that your record be amended to reflect this rescission.

Yours sincerely,

Lyall Boswell
Inspector
Investigation and Standards Office

/dk

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody Division
Ms. J. Hawkins, Warden PGRCC
Mr. J. Crump, Hearing Officer, PGRCC



Mailed N20
November 20, 2012

59320-20/12-113
CS# s.22

s.22
c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing in response to a letter from your legal counsel, s.22 received on November 19, 2012, requesting a review of a disciplinary hearing held at Kamloops Regional Correctional Centre (KRCC). The hearing commenced on November 5, 2012 and concluded on November 16, 2012. Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recordings of the disciplinary hearing.

You were charged and found guilty of violating CAR, Section 21(1)(w), which states that "An inmate must not threaten another person." The chairperson heard evidence from the investigating officer, you and your cell mate. He found you guilty as charged. He subsequently reviewed your disciplinary history and imposed a disposition of five days segregation. You were granted four days time served pursuant to CAR, Section 27(3)(b).

In reviewing the proceedings, I have determined that the disciplinary hearing was not conducted in an administratively and procedurally fair manner.

Reasons:

There was insufficient evidence presented by the custody centre to support the charge. On the balance of probabilities the preponderance of evidence supported your evidence, not that of the charging officer. The charging officer should have been available for cross examination as his allegation was in dispute.

I also found that the chairperson created an apprehension of bias as he stated that he considered the absent charging officer as being more credible than you or the other witness, based solely on the charging officer writing the charge 30 minutes after the event occurred and putting the alleged statement of threat in quotation marks on the inmate offence report.

Based on the reasons noted above, I am rescinding the decision made and the penalty imposed by the chairperson pursuant to CAR, Section 29(4)(c). I am also directing that your record be amended to reflect the rescission.

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Mr. E. Vike, Warden, KRCC
Mr. E. Doucet, Hearing Officer
s.22 Lawyer (Fax: s.22



Mailed N22
November 21, 2012

59320-20/00-071
CS# s.22

s.22
c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (z.2) (i), CAR.

Your disciplinary hearing concluded at Fraser Regional Correctional Centre (FRCC) November 15, 2012, and the Investigation and Standards Office (ISO) received your request for review dated November 15, via fax November 19.

Record of Proceedings

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR), audio record of the hearing and digital video recording (DVR) evidence.

It indicated that an officer filed a charge against you November 12 under s. 21 (1) (z.2) (i), CAR, which states, "An inmate must not engage in an activity that jeopardizes or is likely to jeopardize the safety of a person." The charging officer specified, "Inmate s.22 attempted to spit and made threats of shit bombing this officer."

Assistant Deputy Warden (ADW) Meskas, presiding as hearing officer, opened your disciplinary hearing November 13. He read the charge to you and you advised that you did not have a copy because you had refused to accept it. You confirmed that you were aware of your right to seek legal counsel and you advised him that you wished to exercise that right. The hearing officer then adjourned the proceedings to allow you an opportunity to do so.

ADW Meskas, presiding as hearing officer, reconvened your disciplinary hearing November 15 with you and your legal representative present. He read the charge to you and you advised that you received a copy. You confirmed that you understood the charge and you pled not guilty to it.

An investigating officer read the written circumstances section of the IOR into the record and the hearing officer then heard your account of the circumstances. He also heard submissions from your legal representative, questioned the investigating officer further about the circumstances and viewed DVR evidence with all parties present before reaching his decision. He subsequently found you guilty of breaching s. 21 (1) (z.2) (i), CAR as reported.

The hearing officer then moved to the penalty phase of the hearing. He heard submissions from your legal representative for mitigating any potential penalty and then had you removed from the hearing room before reviewing your institutional records. Upon recalling you to the hearing room, he imposed a penalty of ten days segregation with credit for time served under s. 24, CAR and he explained his decision.

The hearing officer advised you that you had the right to request a reduction or suspension of the penalty and the right to request a review of the hearing. He concluded the hearing, and provided you written reasons for his decisions.

Review Findings

During my review, I found that the following affected procedural fairness in this matter:

1. Improper charge

Section 27, CAR includes a rule under (w) that expressly addresses assaulting or threatening another person. It clearly applied in this case as the charging officer specified that you “attempted to spit and made threats of shit bombing [him].” You and your legal representative raised this issue with the hearing officer, however he disagreed with you.

2. Investigating officer responsibilities not met

Contrary to Adult Custody Policy 1.20.4, the investigating officer did not complete Part III of the IOR, and it became clear during the proceedings that she did not conduct an investigation. When your legal representative raised this issue, the hearing officer indicated that the centre does not adhere to that policy and he incorrectly advised that the investigating officer did not need to conduct an investigation because she was a direct witness to the incident.

3. Charging officer not present

Your legal representative questioned the charging officer’s absence from the hearing yet the hearing officer provided no explanation and did not seek that information from the investigating officer. I also noted that no explanation was given for appointing an investigating officer.

To preserve confidence in the disciplinary hearing process, the hearing officer had a duty to ensure that you and your legal representative received a reasonable explanation for the charging officer’s absence.

4. Witness not identified on IOR

It was learned during the proceedings that the investigating officer witnessed some or all of the events in question, however the charging officer did not identify her as a witness in Part II of the IOR. Your legal representative raised this issue; however, the hearing officer did not share his concerns. Given the significant importance subsequently placed on the investigating officer’s role as a witness, I agree that not identifying her in Part II of the IOR affected your right to know the case against you.

5. Guilty decision unreasonable

The hearing officer's verbal and written reasons for his guilty decision did not reflect the stated specifics of charge, "attempted to spit and made threats of shit bombing this officer." His reasons focused on you attempting to grab a piece of paper from the correctional supervisor, as reported in written circumstances of the IOR and seen in DVR.

6. Denied right to be present throughout hearing

The hearing officer had staff remove you from the hearing room before he reviewed your file to determine an appropriate penalty. His decision contravened s. 26 (3), CAR because you did not request to leave and you were not disrupting the proceedings.

7. Insufficient information regarding rights under S. 27 (4) & (5) and 29 (1), CAR

You appeared disillusioned with the disciplinary hearing process when you returned to learn the hearing officer's penalty decision and your frustration appeared to increase as the he stated his reasons for that decision.

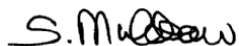
The hearing officer then advised that you had the right to request a reduction or suspension and the right to request a review. However, he did not identify the applicable sections of CAR, read those sections to you or point out their key elements. Nonetheless, he asked if you understood your rights and you responded flippantly, "Oh yah, I understand everything."

I found it reasonable to conclude that you did not understand because you addressed your request for review to the warden November 15. Your misunderstanding significantly delayed your access to a timely review and decision from ISO. Regardless of your demeanour, the hearing officer had a duty to provide you sufficient information regarding your rights under s. 27 (4) & (5) and 29 (1), CAR so that you could exercise them properly.

Review Decision

In light of my findings, I have exercised my authority under s.29 (4) (c) (i), CAR to rescind the decision made and the penalty imposed under s.27, and direct that the person in charge change your record to reflect the rescission. I have confirmed that the person in charge has completed that action.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director, Corrections Branch
 Mr. S. Dicastri, Warden, FRCC
 Mr. J. Meskas, Assistant Deputy Warden – Hearing Officer



Mailed N28
November 28, 2012

59320-20/12-116
CS# s.22

s.22
Nanaimo Correctional Centre
Bag 4000
Nanaimo, BC V9R 5N3

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Nanaimo Correctional Centre on November 21, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and video evidence and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(c) of the CAR which states that “an inmate must not enter a cell or living unit that is not assigned to the inmate without permission of a staff member.” You were identified on video evidence as being in dorms.22 You were assigned to dorms.22 at that time.

You pled guilty and were sentenced to six days loss of earned remission and eight hours of extra duty.

In your letter you state that you feel this disposition was too harsh and you deserved to be only warned for this.

I note that the hearing officer was very clear that she regarded this matter as a serious issue as it occurred in the context of a fight on the unit at the time. While you were not involved in the fight she noted that not only were you in the unit when the fight occurred, you also returned to the unit again afterwards.

The hearing officer also stated that she would consider returning some or all of your remission, subject to good behaviour on your part, upon application from you in writing prior to your release date.

Following my review, I concluded that your disciplinary hearing held on November 21, 2012 was conducted in an administratively fair manner. I also concluded that the disposition is reasonable in these circumstances.

Pursuant to section 29(4)(a) of the CAR I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody Division
Mr. R. Hodgson, Warden, NCC



Mailed N28
November 27, 2012

59320-20/12-083
CS# s.22

s.22
c/o Prince George Regional Correctional Centre
PO Box 4300
Prince George, BC V2L 5J9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Prince George Regional Correctional Centre which concluded on November 25, 2012. Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents including a digital video recording of the incident and the audio recording of the disciplinary hearing.

You were charged and plead not guilty to violating CAR, Section 21(1)(w) which states that "An inmate must not assault another person." The record of proceedings indicated that you were found guilty based on the video recording of the incident and evidence presented by the charging officer. The hearing officer did not accept your defence that you were attempting to break up a fight. The hearing officer imposed a disposition of ten days segregation, with time served from November 24, 2012 pursuant to CAR, Section 27(3)(b) after reviewing your disciplinary history and behaviour on the living unit.

In reviewing the proceedings, I have determined that the disciplinary hearing was conducted in an administratively and procedurally fair manner.

Upon review of the digital video recording, I concur with the hearing officer that the video evidence supports the charge under CAR, Section 21(1)(w).

With respect to the disposition, I found no reasons to alter the disposition imposed by the hearing officer in this hearing. The hearing officer fully considered your submissions and your disciplinary record. The disposition imposed is in accordance with the principle of progressive discipline given your three previous charges under CAR, Section 21(1)(g). I noted that one charge was resolved informally under CAR, Section 22. The other two charges resulted in dispositions of five days and seven days segregation respectively. Your custody record indicates that although you have completed five modules of the Healthy Relationships program that you continue to display demanding, rude and abusive behaviour toward many staff.

The hearing officer did, however, accept your submission that your behaviour had improved in recent weeks. Under the circumstances, the disposition of ten days segregation for a CAR, Section 21(1)(w) breach is reasonable.

I am therefore confirming the decision made and the penalty imposed by the Hearing Officer pursuant to CAR, Section 29(4)(a). The hearing officer advised you that you may apply for a suspension or reduction of the disposition imposed.

Sincerely,



J. Parkin
Inspector
Investigation and Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, B.C. Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. J. Hawkins, Warden, PGRCC



Mailed N30

November 29, 2012

59320-20/12-063

CS# s.22

s.22

c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing in response to a request made on your behalf by your legal counsel, s.22 for a review of a disciplinary hearing held at Kamloops Regional Correctional Centre (KRCC) on November 26, 2012.

Pursuant to section 29(2) of the Correction Act Regulation (CAR), I reviewed the documents and listened to the audio record of the disciplinary hearing.

An officer charged you with breaching section 21 (1) (a) of the CAR, which states “an inmate must not disobey a direction of a staff member or of the person in charge.” The officer wrote you refused to comply with her direction to clean the garbage from your cell. She wrote you responded to her request by stating “we’re not doing anything you say” and “I’m not jumping for you.” You pled not guilty. After hearing the evidence, by your own admission and based on the testimony of your witness, the hearing officer found you guilty.

Your legal counsel submitted the following:

1. The standard of proof should be defined as the criminal law standard of “beyond a reasonable doubt” and not on the “balance of probabilities.”

The standard of proof at disciplinary hearings conducted by the Provincial Corrections Branch is based on the civil standard of proof at common law which is proof on a balance of probabilities.

2. Corrections Act Regulations 22(2) (b) and (c) were not reasonable or sufficiently demonstrated in the administrative function carried out by the charging officer. CAR 22 (2) (b) requires that the written report filed by staff must set out the circumstances surrounding the alleged breach. CAR 22 (2) (c) requires staff members to set out the actions taken, if any, to stop the breach from occurring.

After reviewing the Inmate Offence Report written by the charging officer and listening to the evidence presented at the hearing, I am satisfied the written report adequately described the circumstances.

3. The hearing officer could have found in your favour and concluded the hearing early because the charging officer gave evidence near the beginning of the hearing, indicating when she told you about the garbage issue a second time, you agreed to attend to it by the end of the second tier time out.

The hearing officer acknowledged the fact that the charging officer originally gave you an open window of time to remove the garbage, however he then noted you were given a second direct order which you disobeyed.

4. It is unreasonable to make a finding of guilt because you had removed the garbage by the end of the second tier time out.

I am satisfied the hearing officer acknowledged this fact but found you guilty of disobeying a direct order when you refused to comply with the charging officer's request.

The hearing officer reviewed your client log before deciding on a disposition. He explained that compliance to direction given by officers is important in a correctional setting and he imposed a disposition of three days in segregation.

Following my review, I found your hearing administratively correct and procedurally fair. Pursuant to section 29(4) (a) of the CAR, I am confirming the decision made and penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours truly,



L. Pineau
Inspector
Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Mr. E. Vike, Warden, KRCC
s.22 Lawyer



Mailed D3
December 3, 2012

59320-20/07-031
CS# s.22

s.22

c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing in response to your Inmate Complaint Form #197496 dated November 28, 2012 which was forwarded to this office by management at Fraser Regional Correctional Centre (FRCC). In this form you complained that your disciplinary hearing opened on November 27, 2012 should not have proceeded without allowing you to resolve the matter with the centre first.

Your hearing was concluded on November 29, 2012. In view of this, the centre forwarded your complaint to this office to be pursued as an appeal.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and video evidence and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1) (d) of the CAR which states that “an inmate must not willfully or recklessly damage or destroy property that is not the property of the inmate.” You were accused of damaging a mattress cover.

You pled guilty and were sentenced to eight days in segregation.

Section 22(1) of the CAR allows for breaches of the rules to be resolved by a staff member without requiring a written report to be submitted. This section permits staff to use their discretion but does not oblige them to try and resolve every breach prior to submitting a report.

In this case you damaged centre property. An incident of this nature would require a written report to be submitted as the damage cannot be undone at the scene.

Section 22(3) of the CAR requires that the person in charge, upon receipt of a written report, determine whether to order a disciplinary hearing or not. As already noted, there is no requirement or obligation to pursue a resolution under section 22(1), before deciding to prefer a charge under section 22(3). In your case, the centre decided to pursue a charge against you. This decision to proceed cannot be challenged by reference to section 22(1) of the regulation.

Following my review, I concluded that your disciplinary hearing held on November 21, 2012 was conducted in an administratively fair manner. I also concluded that the disposition is reasonable in these circumstances.

Pursuant to section 29(4)(a) of the CAR, I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,



Lyall Boswell
Inspector
Investigation and Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody Division
Mr. S. DiCastrì, Warden, FRCC



December 7, 2010

59320-2012-118

mailed D8

s.22 CS# s.22
c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge BC V2X 7G3

Dear s.22

I am writing to advise you of the outcome of the disciplinary hearing review that you requested under section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (w), CAR.

Your disciplinary hearing concluded at Fraser Regional Correctional Centre (FRCC) December 3, 2012, and the Investigation and Standards Office (ISO) received your request for review dated December 5 via fax that date.

Record of Proceedings

Under s. 29 (2), CAR, I obtained and examined the record of proceedings that included the Inmate Offence Report (IOR) and the audio record of the hearing.

The record of the proceedings indicated that an officer filed a charge against you December 2 under s. 21 (1) (w), CAR, which states, "An inmate must not assault or threaten another person." The charging officer specified in the IOR: Inmate s.22

Assistant Deputy Warden (ADW) Rae, presiding as hearing officer, opened your disciplinary hearing December 3. You confirmed that you had received a copy of the IOR and that you were aware of your right to seek legal counsel. After a discussion about witnesses, you advised the hearing officer that you were ready to proceed. He read the charge; you confirmed that you understood it and you pled not guilty.

The charging officer read the written circumstances into the record and he described the racial remarks and threats that you allegedly made towards him. The hearing officer then heard your account of the circumstances. You acknowledged directing racial remarks at the charging officer but you denied threatening him. You claimed that the officer was lying and you believed that he should have charged you under s. 21 (1) (h), CAR for your inappropriate racial comments.

The hearing officer allowed your request for a witness and you agreed to leave the hearing room before that person attended. Although you had claimed that the inmate witness told you that he had heard the comments that you made to the charging officer, the inmate witness advised the hearing officer that he could only recall that an argument had occurred and that he could not remember any specific details about it.

The hearing officer recalled you to the hearing room and advised you that your witness had nothing to offer other than an argument occurred. He further advised that your witness could not testify to what was or was not said. He then called an officer that was named as a witness in Part II of the IOR.

While waiting for the officer witness to attend the hearing room, you told the hearing officer that you heard your witness tell him the racial comments that you made. The hearing officer advised you that he had told you the truth about the witness's testimony.

The officer witness described events that lead up to the incident. He advised that he heard you call the charging officer names and threaten him; he repeated those comments and confirmed that he had no question about what he heard. The hearing officer allowed you to cross-examine the witness before he excused him from the hearing room.

The hearing officer provided you a final opportunity to make submissions before making a decision of guilt or innocence. You disagreed with the officer's testimony and presented arguments in your defence.

The hearing officer summarized the evidence. He found it reasonable to believe that you made threatening remarks to the officer given your elevated state of emotion. He explained that your witness could not recall specifically what he heard, whereas the officer witness's testimony supported the allegation against you. You interrupted and repeated your arguments. The hearing officer advised you that he could see no reason for the charging officer to lie and that lying would gain nothing in this case, and he subsequently found you guilty.

The hearing officer moved to the penalty phase of the hearing. He heard your submissions towards potential penalty wherein you asked him not to take away earned remission days. He then considered the seriousness of the breach, your degree of responsibility and circumstances relevant to the incident. He also reviewed your institutional records for this term in custody and discussed them with you. He noted that you had s.22 and that your Client Log (CLOG) contained several reports of poor behaviour s.22

The charging officer then asked if he could speak before the penalty decision was made and the hearing officer allowed him to do so. The charging officer spoke in your favour and he asked the hearing officer to consider imposing a lighter penalty.

The hearing officer advised you that he was preparing to impose a penalty of five days segregation plus five days forfeiture of earned remission before the charging officer spoke up for you. In light of the officer's submissions, he imposed a penalty of seven days segregation effective the date of the breach instead.

The hearing officer advised you of your rights under s. 27, CAR to request a reduction or suspension of the penalty, and under s. 29, CAR to request a review of the decision made and the penalty imposed. He then concluded the hearing and he provided you written reasons for his finding and penalty decisions.

Appeal Submissions

You specifically submitted that the hearing was a “mockery” and that witnesses lied. You also submitted that you told the hearing officer that you were not ready, yet he told you to proceed anyway. Lastly, you submitted that the hearing officer “became almost violent with me.”

In review, I found your hearing procedurally fair and administratively correct. I also found no compelling reason to doubt the witnesses’ testimony on a balance of probabilities.

The record of the proceedings indicated that when asked if you were ready to proceed, you stated “No” and explained that you had witnesses that you wanted to call. The hearing officer advised you that he would give you an opportunity to call witnesses during the hearing and he asked again if you were ready to proceed. You replied, “With my witnesses, yes, if I’m allowed to call my witnesses.” Before continuing, the hearing officer advised you that if you wished to contact legal counsel at any time during the hearing, he would adjourn it to allow you an opportunity to do so.

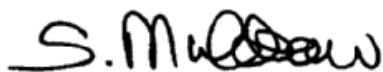
Lastly, I found no evidence to support your claim regarding the hearing officer’s conduct. I found that he exercised patience with you throughout the hearing and that he maintained his composure during your outbursts and interruptions.

Review Decision

Overall, I found sufficient evidence to support the charge against you and the finding of guilt, and that you received a reasonable and appropriate penalty under the circumstances.

Under s. 29 (4) (a), CAR, I am confirming the decision made and the penalty imposed under s. 27 at the hearing and thereby am dismissing your appeal.

Sincerely yours,



S. Muldrew

Inspector

Investigation and Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
 Mr. P. Coulson, Provincial Director, Corrections Branch
 Mr. S. DiCatri, Warden, FRCC
 Mr. S. Rae, Assistant Deputy Warden Hearing Officer



Mailed D13
December 12, 2012

59320-20/05-135

s.22 CS# s.22
c/o Fraser Regional Correctional Centre
PO Box 1500
Maple Ridge, BC V2X 7G3

Dear s.22

I am writing in response to your letter requesting a review of a disciplinary hearing held at Fraser Regional Correctional Centre, which commenced November 26, 2012 and concluded on December 4, 2012. In your letter you questioned whether your hearing was procedurally fair as you were not given full disclosure to properly prepare your defence.

Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recording of the disciplinary hearing.

You were charged and plead guilty to violating CAR, Section 21(1)(y) which states that "An inmate must not attempt to obtain contraband." The record of proceedings indicated that you were found guilty based on your admissions and the recordings of two telephone calls from the inmate phone on Sierra unit. The disciplinary chairperson heard your submissions and after reviewing your disciplinary history and behaviour on the living unit imposed a disposition of 9 days loss of earned remission.

In reviewing the proceedings, I have determined that while the disciplinary hearing was conducted in a procedurally fair manner, the disposition imposed is not in accordance with Correction Act Regulation (CAR) Section 27(1)(f).

The fact that you were not provided "full disclosure" of the evidence against you did not impair your ability to properly prepare your defence to the charge in this case. Based on my review of the audio recording and documents, I noted that you had already plead guilty to the charge on the basis of the written circumstances on the inmate offence report and agreed they were accurate. During the hearing you did not request a transcript of the phone calls nor did you advise of any request made off the record being denied by the custody centre. I also found that the circumstances as written on the inmate offence report by the charging officer were detailed enough to provide you with sufficient information to prepare a defence to the charge, particularly as the ICCS calls that were relied upon in the hearing were in fact made by you. It seems reasonable that you would already be aware of what was said on the calls.

The calls were also listened to in the hearing, although you had entered a plea of guilty at the outset of the hearing. If you felt you needed additional time to consider this evidence you could have withdrawn your plea and requested an adjournment. You did not request an adjournment nor did you change your plea to the charge.

I also reviewed the disposition imposed by the disciplinary chairperson. He considered the seriousness of the charge and the potential risks to staff and other inmates who may be involved with or use the contraband. He noted that you had no previous charges and only one previous warning regarding a suspected smoking incident. He confirmed that you have lost your open custody placement as a result of the breach. He indicated that your admission of responsibility and forthrightness was a factor in his consideration of an appropriate disposition. He also heard your submission that you would prefer losing earned remission over segregation time as a disposition. He imposed a disposition of nine days loss of earned remission for this breach.

The disposition imposed was not in accordance with CAR, Section 27(1)(f).

Your records show that you were not sentenced until s.22 This breach was committed on November 26, 2012. The disposition of loss of earned remission was therefore not available as a sentencing option. Correction Act Regulation (CAR) Section 27(1)(f) specifies that the disciplinary chairperson may only forfeit "earned remission, credited to the date of the breach." Given that you had not been credited with any remission on the date of the breach, the chairperson may not impose forfeiture of remission as a disposition.

Based on the reasons noted above, I am confirming the decision made. However, I am also substituting a new penalty of five days segregation for the penalty imposed by the hearing officer, pursuant to CAR, Section 29(4)(b).

The reasons for the imposed disposition are as follows:

Although you have requested a disposition of loss of earned remission as an alternative to a segregation disposition, that option is also unavailable to me in substitution of the penalty. I am mindful of the serious nature of a breach under CAR, Section 21(1)(y) given the potential risks such behaviour presents to correctional staff and other inmates. Your actions while in open custody betrayed the level of trust expected of an inmate placed on Sierra unit at FRCC. The disciplinary chairperson noted your lack of previous disciplinary matters and your forthrightness in dealing with this charge as mitigating factors in disposition. I also note however that you were in custody less than one month before you attempted to orchestrate a drug drop and engage another inmate in bringing the drugs to the centre. The disciplinary chairperson noted that you seemed genuinely remorseful and you apologized for your actions. The seriousness of the breach however suggests a disposition of five days segregation is reasonable for this first offence.

As you were advised in the hearing, you may request a suspension or reduction pursuant to CAR 27(4) or 27(5).

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

c: Mr. B. Merchant, Assistant Deputy Minister, B.C. Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Mr. S. DiCastri, Warden, FRCC



Mailed D20
December 19, 2012

59320-20/12-122

s.22 CS# s.22
c/o Kamloops Regional Correctional Centre
PO Box 820
Kamloops, BC V2C 5M9

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at Kamloops Regional Correctional Centre (KRCC) on December 13, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I reviewed the documents, viewed the Digital Video Record (DVR) and listened to the audio record of the disciplinary hearing.

A correctional officer charged you with breaching s. 21 (1) (w) of the CAR, which states that “an inmate must not assault another person.” The charging officer wrote you started punching another inmate and did not stop when asked to do so. You pled guilty to the charge. After hearing the evidence, viewing the DVR and by your own admission, the hearing officer found you guilty.

You wrote in your letter to this office that you thought the disposition was too harsh because you only had one prior charge since your admission to custody and you were always respectful to the officers. The hearing officer acknowledged this when he reviewed your client log. He explained to you that assaults such as this can result in serious consequences and for this reason he imposed a disposition of 25 days in segregation.


The hearing officer advised you that you could ask for a reduction in the disposition under s. 27(4), CAR by writing to him. He explained that this reduction would depend on seeing positive behaviors from you while in the segregation unit.

Following my review, I found your hearing to be administratively correct and procedurally fair. I found the disposition to be fair based on the circumstances. I remind you that you may request the hearing officer to review this disposition under s. 27(4), CAR.

Pursuant to s. 29(4) (a), CAR, I am confirming the decision made and penalty imposed under Section 27.

I am dismissing your appeal.

Yours truly,

A handwritten signature in cursive script, appearing to read "L. Pineau".

L. Pineau

Inspector

Investigation & Standards Office

/dk

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Mr. E. Vike, Warden, KRCC



December 28, 2012 [mailed Jan 02](#)

59320-20/10-087

s.22

c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam BC V3C 1S2

Dear s.22

I am writing in response to your request for a review of a disciplinary hearing held at North Fraser Pretrial Centre on December 25, 2012.

Pursuant to Section 29(2) of the Correction Act Regulation (CAR), I have obtained and reviewed the documents and listened to the audio record of the disciplinary hearing.

You were charged with breaching section 21(1)(z.2) (ii) of the CAR which states that “an inmate must not engage in an activity that jeopardizes or is likely to jeopardize the management, operation or security of the correctional centre.” You pled not guilty. After reviewing the evidence the hearing officer found you guilty and sentenced you to 15 days in segregation.

In your letter to this office you stated: “I think my sentencing was a little too harsh on me.”

I noted that the charging officer was not present at this hearing and that no evidence was presented in support of the charge beyond the reading out of the charge and the written circumstances. However, you provided detailed evidence at the hearing which substantially corroborated the written allegation.

When he was reviewing your institutional record prior to imposing a disposition, the hearing officer noted that you had s.22 prior charges, s.22 He also observed that you had previously received a lenient disposition of cellular confinement. The hearing officer noted that you took no responsibility for this incident and showed no remorse. Considering that the maximum segregation disposition allowed for this contravention was 30 days, the hearing officer determined that 15 days would be appropriate.

Following my review, I can see no grounds to interfere with the hearing officer’s decision in this matter. I have concluded that your disciplinary hearing held on December 25, 2012 was conducted in an administratively fair manner and that the disposition is reasonable in the circumstances.

Pursuant to section 29(4)(a) of the CAR I am confirming the decision made and the penalty imposed under section 27.

I am therefore dismissing your appeal.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lyall Boswell', with a stylized flourish at the end.

Lyall Boswell
Inspector
Investigation and Standards Office

/gd

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody Division
Ms. L. Anderson, Warden, NFPC