



April 10, 2014
Mailed A10

59320-20/13-064
2359

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

Dear Mr. 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). The hearing concluded on April 6, 2014. 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(2)(z.2)(i). It was alleged that you assisted another inmate in the assault of another inmate. The chairperson heard evidence from the charging officer, including a handwritten letter from the alleged victim, viewed DVMS footage and heard evidence from you. The chairperson found you guilty as charged. She subsequently reviewed your disciplinary history and imposed a disposition of 10 days segregation. You were granted time served from August 5, 2014.

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


Reason:

The charge does not exist in the Correction Act Regulation.

You were charged under CAR, section 21(2)(z.2)(i); however, that charge does not exist in the Correction Act Regulation. Given the alleged circumstances, the centre should have charged you either under CAR, section 21(2) for assisting another inmate or attempting to assist another inmate in committing a breach under CAR, section 21(1)(w), or under CAR, section 21(1)(z.2)(i) for engaging in an activity that jeopardizes or is likely to jeopardize the safety of another person.

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,

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, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Ms. J. Hawkins, Warden, PGRCC
Ms. A. Love, Chairperson, PGRCC



May 20, 2014
Mailed M22

59320-20/12-076
2378

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

AMENDED

Dear Mr. s.22 :

I am writing to advise you of the outcome of the review that your legal representative requested on your behalf under Section 29 (1), Correction Act Regulation (CAR) for your disciplinary hearing that concluded at North Fraser Pretrial Centre (NFPC) May 14, 2014.

The Investigation and Standards Office (ISO) received the written request dated May 15 from Prisoners' Legal Services (PLS) via fax May 16.

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

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you May 5 under s. 21 (1) (y), CAR, which states, "An inmate must not attempt to obtain, or possess contraband." The charging officer specified that you admitted to possessing a fermented liquid.

Assistant Deputy Warden (ADW) Bahia, presiding as hearing officer, opened your disciplinary hearing May 6. He confirmed that you had received a copy of the IOR and that you understood your right to seek legal counsel. You advised the hearing officer that you wished to have legal representation and he subsequently adjourned the hearing to allow that to occur.

ADW Lacroix, presiding as hearing officer, reconvened your disciplinary hearing May 14 with you, two legal representatives and the charging officer present. He confirmed the reason for adjournment and you advised him that you were ready to proceed. The hearing officer read the charge to you; you confirmed that you understood it and you entered a plea of not guilty.

After reading the written circumstances into the record, the charging officer gave an oral account of the circumstances. The hearing officer also heard your account of the circumstances. You and the charging officer responded to questions from the hearing officer and your legal representatives. Your legal representatives also made several submissions regarding the charge.

Based on the charging officer's testimony and on a balance of probabilities, the hearing officer subsequently found you guilty.

The hearing officer then moved into the penalty phase of the hearing. He reviewed your institutional records with you wherein he noted that you had twelve previous disciplinary charges, including two for possessing contraband, since entering custody in s.22. After hearing submissions from you and your legal representatives, the hearing officer imposed a penalty of 10 days segregation effective the date of the breach and deemed it satisfied through time served pending the hearing.

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 concluded the hearing and provided you written reasons for the guilty decision and the penalty imposed.

Review Findings

In review, I found insufficient evidence to support the charge and to argue against your account of the circumstances.

You denied admitting to the charging officer that you had made a fermenting liquid. You advised that the liquid was the remnant of food that had rotted in a container that your former cellmate left on the upper bunk. You further advised that the odour in question was not evident until you opened that container whereupon you promptly flushed its contents down your cell toilet. The charging officer attended your cell shortly thereafter and you showed him the container.

The charging officer advised that another officer attended your cell approximately ½ hour before the charging officer noted the strong odour emanating from it and that that officer was present when the charging officer questioned you about the odour. The other officer did not provide a written statement or attend the hearing to provide evidence.

Furthermore, the charging officer only presented his personal observations of the substance discovered in your cell. He did not photograph it to preserve a record of its appearance and volume. He also did not have the substance tested to determine its nature and support the implication of it being an intoxicant.

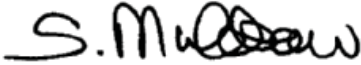
As such, I found your account of the circumstances plausible. Consequently, I found the finding of guilt reached in this matter unreasonable.

Review Decision

In review, I found your disciplinary hearing procedurally unfair. I have therefore 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 records to reflect the rescission.

I have notified the person in charge of my decision and am awaiting confirmation of changing your records 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, Corrections Branch
- Mr. S. Phillips, Warden, NFPC
- Mr. R. Lacroix, Assistant Deputy Warden – Hearing Officer
- Ms. S. Arrandale, Summer Law Student/Legal Advocate, PLS



May 21, 2014
Mailed M22

59320-20/99-160
2380

Mr. s.22 s.22
c/o Vancouver Island Regional Correctional Centre
PO Box 9224 Stn Prov Govt
Victoria, BC V8W 9J1

Dear Mr. s.22 :

I am writing in response to a request you submitted on Inmate Complaint Form (ICF) # s.22 . You requested the person in charge to declare a mistrial. However, the ICF was forwarded to the Investigation and Standards Office to review your disciplinary hearing held at Vancouver Island Regional Correctional Centre. The hearing commenced and concluded on May 18. You indicate the grounds for requesting a review are as follows:

- You were not given the opportunity to consult with legal counsel before the hearing.
- The hearing officer refused to allow you to call a witness to testify on your behalf.
- The hearing officer refused to allow you to admit physical 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, s. 21(1)(a) which states that "An inmate must not disobey a direction of a staff member." The chairperson heard evidence from the charging officer. The chairperson found you guilty based on the charging officer's testimony. He subsequently imposed a disposition of 10 days segregation.

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

Reasons:

- There were discrepancies between the circumstances written by the charging officer on the inmate offence report and his verbal testimony in the hearing which created confusion and impaired the accused person's ability to prepare a defence to the charge.

The intention of presenting the circumstances in writing on the inmate offence report is to provide an accused person with sufficient information so that he may have a reasonable opportunity to prepare his defence to the charge.

The circumstances were not provided on the inmate offence report in a clear manner as there was confusion regarding which windows were being referred to and there were some omissions regarding basic facts. Based on your presented defence, and a statement made to the hearing officer, it appears you were confused, and that you believed the charging officer was referring to the direction to uncover the cell door window. The charging officer was apparently referring to directions given to uncover another window, which he identified in this testimony as the “porthole window.” Although the discrepancies were somewhat clarified in the hearing, this did not allow you a reasonable opportunity to prepare your defence to the charge in advance of the hearing or determine whether to enter a guilty plea.

- An accused person must be accorded the opportunity to present his full defence to the charge.

You were not given the opportunity to present your full defence to the charge. You repeatedly requested an eye witness that you believed would support your version of events that you had complied with the charging officer’s direction. The hearing officer did not call the witness, did not accept the potential testimony of the witness nor did he give any plausible reason for not calling the witness.

You also requested an opportunity to cross examine the charging officer on his evidence. The hearing officer did not respond to this request. You should have been given the opportunity to ask questions of the charging officer given the discrepancies between the inmate offence report and the officer’s testimony.

- An accused person is entitled to a hearing by a neutral adjudicator. The hearing officer’s conduct of the hearing created an apprehension of bias.

A neutral adjudicator listens to both parties and determines what the facts of the case are based on the evidence he has heard.

While the hearing officer listened to the charging officer’s testimony, he appeared to obstruct your efforts to present your defence to the charge. He did not answer your procedural questions about when, or if, you could present your defence to the charge. He also did not respond to your request to cross examine the charging officer. As noted above, the hearing officer’s responses to the repeated requests for the attendance of a witness were improper. He initially indicated your witness could not be called as he was not on the inmate offence report as a witness. You have the right to request a witness regardless of whether they are noted on the inmate offence report. No plausible reason for not calling the witness was given and the hearing officer did not indicate he would accept the potential evidence of the inmate’s witness. As the potential witness observed the incident, the hearing officer had the option of calling the witness or accepting the inmate’s statements of what he would likely say if called.

Based on the reasons noted above, I am rescinding the decision made and the penalty imposed by the Hearing Officer pursuant to CAR, s. 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. S. Morgan, Warden, VIRCC
Mr. T. Leonard, Hearing Officer, VIRCC



March 19, 2013
Mailed M20

59320-20/07-008

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

Dear Mr. s.22 :

I am writing in response to a letter dated March 18, 2013, submitted on your behalf by Mr. Simon Cheung, Legal Advocate, Prisoners' Legal Services (PLS) requesting a review of a disciplinary hearing held at Fraser Regional Correctional Centre (FRCC). The hearing concluded on March 15, 2013. 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 Section 21(1)(z.2)(ii), 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." The chairperson heard evidence from the investigating officer and yourself. You requested a witness, however that witness was not called, and no reason was given by the chairperson for not calling the witness. You then requested an opportunity to consult with legal counsel. Your request was not responded to by the chairperson. The chairperson found you guilty on the balance of probabilities. You were given the opportunity to make submissions regarding disposition on this matter. The chairperson subsequently reviewed your current disciplinary history and imposed a disposition of fifteen (15) days segregation commencing on March 14, 2013 until March 28, 2013.

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

An accused inmate has the right to present a defence to the charge.

You requested your cell mate as a witness, indicating that you believed this witness would exonerate you of the charge. There was no response on the audio recording from the chairperson to the request and the inmate witness was not called. I also note that the witness's potential evidence was not accepted. As a result, you were not accorded the opportunity to present your full defence to the charge.

An accused inmate has the right to consult with legal counsel.

You asked to speak with legal counsel after requesting your witness and before a decision regarding guilt was made. There was no audible response from the chairperson on the recording and you were not given the opportunity to consult with legal counsel.

Based on the reasons noted above, I am rescinding the decision made and the penalty imposed by the chairperson pursuant to Section 29(4)(c), CAR. 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. S. DiCasteri, Warden, FRCC
Mr. J. Meskas, chairperson, FRCC
Mr. S. Cheung, Legal Advocate, PLS (Via Fax: 604-853-1038)



November 4, 2013
Mailed N5

59320-20/13-049
2300

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

Dear Mr. s.22 :

I am writing in response to a letter from you dated October 28, 2013 requesting a review of a disciplinary hearing held at Fraser Regional Correctional Centre (FRCC).

The hearing commenced on October 17 and concluded on October 25. You were charged and found guilty of violating Correction Act Regulation (CAR), Section 21(1)(z.1) which states that "An inmate must not create or participate in a disturbance."

Under CAR, Section 29(2), the person in charge of the custody centre must provide the director of the Investigation and Standards Office with a record of the disciplinary hearing and information used in the hearing. The person in charge at FRCC is unable to provide a complete record of the disciplinary hearing for review.

I am therefore 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. S. DiCasteri, Warden, FRCC
Ms. J. Denis, Hearing Officer, FRCC



April 19, 2013 [mailed Apr 19](#)

59320-20/09-126

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

Dear Mr. s.22 :

I am writing in response to the request, submitted on your behalf by your lawyer, Mr. George Leven, for a review of a disciplinary hearing concluded at Prince George Correctional Centre (PGRCC) on April 15, 2013.

You were charged with breaching section 21(1)(w) of the CAR which states that “an inmate must not threaten another person.” You contested the charge but the hearing officer found you guilty. You were sentenced to 15 days in segregation (time served).

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. The audio quality of the hearing is so poor that it is not possible to make out what is being said. Centre management agrees that the audio record is not decipherable.

In view of this, I have no option but to allow your appeal.

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
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. J. Hawkins, Warden, PGRCC
Mr. M. Tuck, Hearing Officer, PGRCC
Mr. G. Leven, Barrister and Solicitor



June 4, 2014
Mailed J5

59320-20/09-126
2389

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

Dear Mr. s.22

I am writing to advise you of the outcome of the review that your legal representative requested on your behalf under Section 29 (1), Correction Act Regulation (CAR) for your disciplinary hearing that concluded at Prince George Regional Correctional Centre (PGRCC) May 26, 2014.

The Investigation and Standards Office (ISO) received the written request dated June 1 from your legal representative via fax June 2.

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

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you May 26 under s. 21 (1) (h), CAR, which states, "An inmate must not behave in manner toward a person that shows hatred or contempt for the person based on the person's race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age." The charging officer specified that you directed racist remarks against him.

Assistant Deputy Warden (ADW) Sandbach, presiding as hearing officer, opened your disciplinary hearing May 26. He confirmed that you had received a copy of the IOR and that you understood your right to seek legal counsel. You advised the hearing officer that you wished to proceed without legal counsel. He read the charge to you and you entered a plea of guilty.

The charging officer read the written circumstances into the record and the hearing officer heard your account of the circumstances. While you disagreed with some statements in the charging officer's report, you advised that you did direct a racist remark at the officer and you apologized to him for your behaviour.

In light of your admission of guilt and the charging officer's testimony, the hearing officer subsequently found you guilty and then moved into the penalty phase of the hearing.

The hearing officer reviewed your institutional records with you. He noted that you had received numerous disciplinary charges since entering custody in s.22 and that your most recent behaviour was unsatisfactory. After considering the incident, your current record of behaviour and your submissions towards penalty, the hearing officer imposed a combined penalty of 10 days segregation effective the date of the breach and 10 days forfeiture of earned remission.

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 concluded the hearing and provided you written reasons for the guilty decision and the penalty imposed.

Review Findings

In review, I found the penalty phase of your hearing unfair. Upon announcing his penalty decision, the hearing officer acknowledged that you had asked him not to impose forfeiture of earned remission as a penalty. He advised that he did so because he did not want you "treating my staff the way you are treating them." His comment created an apprehension of bias thereby affecting your right to a neutral decision-maker, which is a fundamental element of administrative fairness.

Review Decision

In light of my findings, I have exercised my authority under s. 29 (4) (c) (b), CAR to confirm the decision made and substitute another penalty under s. 27.

I have substituted a penalty of 10 days segregation effective the date of the breach for the following reasons:

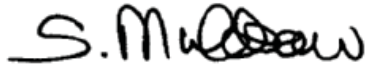
- the nature of the charge and its specific circumstances – hateful or contemptible behaviour toward a person is inexcusable
- your poor institutional record that includes several reports of abusive behaviour towards staff and disciplinary convictions
- your frankness in admitting guilt
- your sense of shame for making the remark in question and its affect on the charging officer
- your apology to the charging officer
- the need to deter you and others from engaging in such behaviour

Your segregation penalty will conclude June 4 at which time classification staff, in consultation with centre management, will review your status to determine a suitable placement.

I have notified the person in charge of my decision and I am awaiting confirmation of the centre changing your records to reflect it.

Lastly, your legal representative made several submissions regarding the application of the disciplinary process at PGRCC and its affect on your rights; however, they were outside the scope of this review under s. 29, CAR. You may redirect those submissions, in writing, to the warden of PGRCC to have them addressed through the complaint process provided under s. 37, CAR.

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, Corrections Branch
Ms. J. Hawkins, Warden, PGRCC
Mr. W. Sandbach, Assistant Deputy Warden – Hearing Officer
Mr. D. Donnelly, Barrister



March 13, 2013
Mailed M13

59320-20/09-126

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

Dear Mr s.22 :

I am writing in response to a letter from you dated March 11, 2012 requesting a review of a disciplinary hearing held at Prince George Regional Correctional Centre. The hearing concluded on March 9, 2013. 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)(g) which states; "An inmate must not unless unreasonably provoked by that person, behave in an insulting or abusive manner toward a person." The chairperson heard evidence from the charging officer, and yourself. You requested witnesses and digital video recording (DVR) of the incident however neither the witnesses nor video were produced. You also requested the attendance of another witness named on the inmate offence report however this was denied as well.

The chairperson found you guilty based on the evidence she saw and states that you haven't given her "any credible evidence that would convince her that the charging officer did not hear what you said". She subsequently reviewed your disciplinary history and imposed a disposition of five days segregation with two days time served as you were confined in segregation pursuant to CAR, section 24.

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

An accused person has the right to present a defence to the charge against him. In this hearing the chairperson denied you the right to present evidence you deemed necessary for your defence to this charge.

You requested two inmates to attend as witnesses. The hearing officer indicated that she believed that they would say the same things as you and declined to call them as witnesses. If a chairperson will not allow the witnesses to attend and offer their evidence, the chairperson must accept the potential evidence of the witnesses as the truth. However in this hearing, the chairperson appears to have determined that these witnesses would not have provided credible testimony.

You also requested DVR of the event which you believed would support your version of the event. The chairperson stated that there was no DVR on the evidence list and she did not have that potential evidence provided for you. When an inmate requests evidence that is within the ability of the custody centre to provide, and which may have probative value in the disciplinary hearing, the custody centre is obliged to provide that evidence.

You were also denied the opportunity to cross examine the custody centre's other witness as the chairperson seems to have deemed his "witness statement" as sufficient and determined without any obvious grounds that the witness would have nothing further to say regarding the event.

An accused person has the right to a hearing chaired by a neutral adjudicator.

The chairperson created the apprehension of bias when she impeded your rights to present any evidence that may have supported your testimony. After denying you the opportunity to present your full defence, she then found you guilty on the basis that your evidence did not credibly refute the allegation of the charging officer. The hearing officer also failed to acknowledge that there was no evidence presented by the custody centre that supported the charging officer's allegation as the only other witness evidence available, indicated that the witness had not actually heard the alleged insulting and abusive statement being uttered.

Based on the reasons noted above, I am rescinding the decision made and the penalty imposed by the chairperson pursuant to, Section 29(4)(c) CAR. 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



May 15, 2013
Mailed M15

59320-20/09-126

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

Dear Mr. s.22 :

I am writing in response to a request, dated May 12, 2013, from your legal counsel, Mr. David Donnelly, for a review of a disciplinary hearing concluded at Prince George Regional Correctional Centre (PGRCC) on May 8, 2013.

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

You were charged with violating CAR, Section 21(1)(z.2)(ii) 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 were accused of s.15

You denied the charge but were found guilty and received a disposition of 15 days in segregation.

Mr. Donnelly argues in his letter that it is not possible for a PGRCC staff person to be a judicially impartial chairperson at a disciplinary hearing at PGRCC. I cannot agree with this assertion. All Corrections Branch disciplinary hearing chairpersons receive disciplinary hearing training and must pass an examination before they can be approved to conduct hearings. The mere fact that an officer works at a centre does not mean that he or she cannot conduct fair and impartial disciplinary hearings at that centre.

Following my review I noted the following:

- The charging officer mentioned during the hearing that he possessed incriminating evidence from phone calls you had made. This evidence was apparently uncovered after the charges against you had been laid. The evidence was not disclosed prior to, or at the start, of the hearing and was offered as a rebuttal to the defence being presented by your lawyer during the hearing. The sudden mention of such evidence in these circumstances is clearly procedurally unfair.

- Following the mention of this evidence your lawyer requested time to consult with you and you both left the hearing room. During your absence the officers remaining in the room, which included the hearing officer, proceeded to whisper among themselves after noting that the microphone was still on. I can see no good reason why there was a need to whisper and such behaviour can only give rise to a reasonable apprehension of bias.
- The charging officer presented evidence regarding the observations of a nurse and a supervisor in respect of your injuries and your behaviour. Your lawyer challenged this evidence. While there is no prohibition against hearsay evidence per se at an administrative hearing of this nature, where such evidence is challenged corroboration should always be sought. In this case, either or both of the staff members mentioned or any other witnesses could have been called to testify. This option was not explored at the hearing.

In view of the above, I have concluded that this hearing was not conducted in a fair manner. I am therefore rescinding the decision made and the penalty imposed pursuant to CAR, Section 29(4)(c). I will also request that the centre amend your record 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, Corrections Branch
Ms. J. Hawkins, Warden, PGRCC
Mr. J. Peters, Hearing Officer
Mr. D. Donnelly, Barrister and Solicitor (by fax)



May 14, 2013
Mailed M14

59320-20/09-126

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

Dear Mr. s.22 :

I am writing in response to a letter received on May 13, 2013 from your legal counsel, Mr. David Donnelly, requesting a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC). The hearing commenced and concluded on May 10, 2013. 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 chairperson imposed a disposition of 10 days segregation, which was consecutive to another disposition currently being served. The disposition was to commence on May 14, 2013.

In reviewing the proceedings, I have determined that the disciplinary hearing did not commence within 72 hours in accordance with CAR, Section 26(1). Therefore, the custody centre lost jurisdiction to hear the charge. 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

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
Mr. D. Donnelly, Barrister and Solicitor (by fax)



May 5, 2014
Mailed M6

59320-20/14-015

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

Dear Mr. s.22 :

I am writing in response your undated letter, which we received by fax on May 2, 2014, requesting a review of a disciplinary hearing held at Fraser Regional Correctional Centre (FRCC). The hearing concluded on April 29. In the letter you submit the following grounds for requesting a review:

- You were denied the opportunity to call a witness to assist in your defence

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, s. 21(1)(z.2)(i) which states that "An inmate must not engage in an activity that jeopardizes or is likely to jeopardize the safety of a person." The chairperson heard evidence from the charging officer, and some evidence from you. The chairperson found you guilty based on the charging officer's testimony that you had admitted to s.15 . She subsequently reviewed your disciplinary history and imposed a disposition of 10 days segregation. You were granted 2 days time served under CAR, s. 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:

An accused must be given the opportunity to present his full defence to a charge before a determination regarding guilt is made.

You plead not guilty to the charge and therefore expected an opportunity to present all of your evidence regarding this charge. It was apparent on the audio recording that the chairperson interrupted your evidence before you were finished presenting your full testimony. She then found you guilty and refused to allow you to finish providing your testimony.

You immediately advised her that you had also intended to call a correctional supervisor as a witness as you believed the officer would support your version of events. The chairperson however declined to call your witness advising you that she had already found you guilty. Under the circumstances, I find that you were not given sufficient opportunity to present your full defence to this charge.

An accused is entitled to a hearing before a neutral adjudicator. An apprehension of bias was created as the chairperson made comments in the hearing that suggested she had some information regarding this matter prior to the hearing.


The chairperson indicated that there were many witnesses that heard you admit to s.15 . Although there were three additional witnesses listed on the inmate offence report, none of these witnesses were called to testify in the hearing nor was there any summary of what they would say on the inmate offence report. Only one of the potential witnesses was referred to in the circumstances as written by the charging officer. Under the circumstances, the chairperson had no means to infer what the testimony of the witnesses would have been unless provided this information prior to the hearing.

The chairperson also indicated that she was familiar with your history before consulting your corrections file in the disposition phase.

Under the circumstances, these comments suggest the chairperson may have had some information regarding this matter, and your records, prior to the hearing which created an apprehension of bias in the proceedings.

Based on the reasons noted above, I am rescinding the decision made and the penalty imposed by the chairperson pursuant to CAR, s. 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
Ms. S. MacPherson, A/Provincial Director, Adult Custody Division, Corrections Branch
Mr. S. DiCatri, Warden, FRCC
Ms. D. Jones, Chairperson, FRCC



March 4, 2013
Mailed M5

59320-20/11-034

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

Dear Mr. 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 February 26, 2013.

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 reviewed the Digital Video Recording (DVR)

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 were accused of fighting with another inmate. You pled not guilty. You claimed you were defending yourself because the other inmate (s.22) had a weapon. The hearing officer found you guilty and you were sentenced to 12 days in segregation with time already served.

During the course of the hearing it was established that the other inmate had a weapon (s.15). The hearing officer told you she found you guilty based on DVR evidence and eye witness testimony of the charging officer. I viewed the DVR and found it to be inconclusive. I also noted the charging officer was not on the tier when you claimed inmate s.22 “took a shot” at you and you pulled him into the cell. She only responded to the fight that ensued outside the cell. The officer who was at the scene was unavailable to give evidence. I found there to be insufficient evidence to support the charge.

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

/dk

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



February 3, 2014
Mailed F4

59320-20/09-051
2328

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

Dear Mr. s.22 :

I am writing in response to a request from your lawyer, Ms. Monica Fras, for a review of a disciplinary hearing concluded at Kamloops Regional Correctional Centre (KRCC) on January 24, 2014.

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

You were charged with breaching 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.” You were accused of swearing at a correctional officer.

You denied the charge, claiming you were provoked. However, you were found guilty and received a disposition of two days segregation (time served).

During the evidence phase of the hearing, the hearing officer suddenly announced that she was finding you guilty. I found this determination to be premature as it was evident that your defence to the charge had not finished. Indeed your lawyer, Ms. Fras, then stated that there was a witness that you wished to call to provide evidence and that advance notice of this request had been provided to the centre.

In view of this, I have concluded that this premature decision on the part of the hearing officer denied you the right to make a full and adequate defence to the charge.

Therefore, 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
Mr. E. Vike, Warden, KRCC
Ms. T. Haggerty, Assistant Deputy Warden – Hearing Officer, KRCC
Ms. M. Fras, Barrister & Solicitor (via fax)



November 13, 2013
Mailed N13

59320-20/09-051
2306

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

Dear Mr. s.22

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

Your disciplinary hearing concluded November 10, 2013 and the Investigation and Standards Office (ISO) received your lawyer's request for review dated November 12 via fax that date.

Under section 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 19 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: *Inmate s.22 did unnecessarily disrupt the operation of the centre and unnecessarily jeopardize the management.*

Assistant Deputy Warden (ADW) Haggerty, presiding as hearing officer, opened your disciplinary hearing October 19 with you and the charging officer present. She read the charge and confirmed that you received a copy of the IOR. She also confirmed that you understood the charge and that you were aware of your right to seek legal counsel. You advised her that you were ready to proceed. You then pointed out a discrepancy between charge filing and charge approval times. The hearing officer would not dismiss the charge and she asked for your plea. You requested to speak to legal counsel and she adjourned the hearing to allow you an opportunity to do so.

Acting ADW (A-ADW) Tiessen, presiding as hearing officer, reconvened your disciplinary hearing November 10 with you, the charging officer and your lawyer present. He confirmed the reason for the adjournment and you raised the timeline issue again. Your lawyer also advised him that ADW Haggerty had undertaken the role of hearing officer despite having direct involvement in the incident. A-ADW Tiessen felt that neither issue affected jurisdiction to hear the charge. He asked for your plea and you pled not guilty.

The charging officer read the written circumstances from the IOR into the record and the hearing officer heard your account of the circumstances. He subsequently found you guilty and explained his decision.

The hearing officer then heard your submissions regarding potential penalty and he reviewed your institutional records. He subsequently imposed a penalty of 14 days segregation, explained his decision and credited you for 6 days spent in segregation-observation.

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 then concluded the hearing and provided you written reasons for his finding and penalty decisions.

Review Findings and Decision

While reviewing your institutional records available on CORNET pursuant to the penalty decision, I noted several entries in your Client Log (CLOG) that supported your submission about ADW Haggerty presiding as hearing officer October 19. The entries indicated that she was involved in the circumstances that led to the filing of the charge and in subsequent matters directly related to the incident. Consequently, your disciplinary hearing was not formed in compliance with s. 25 (2), CAR and the centre did not maintain its jurisdiction to hear this charge in accordance with s. 26 (1), CAR.

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, CAR and direct the person in charge to change your record to reflect the rescission. I am holding your file open pending confirmation of the centre completing 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. E. Vike, Warden, KRCC
Mr. B. Tiessen, Acting-Assistant Deputy Warden – Hearing Officer, KRCC
Ms. T. Haggerty, Assistant Deputy Warden – Hearing Officer, KRCC
Mr. K. Sommerfeld, Lawyer



October 1, 2013
Mailed 02

59320-20/09-051
2288

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

Dear Mr. s.22 :

I am writing to advise you of the outcome of the disciplinary hearing review that your legal counsel requested on your behalf under section 29 (1), Correction Act Regulation (CAR) for a charge under s. 21 (1) (y), CAR.

Your disciplinary hearing concluded at Kamloops Regional Correctional Centre (KRCC) September 25, 2013, and the Investigation and Standards Office (ISO) received your request for review dated September 27 via fax September 30.

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 IOR indicated that an officer filed a charge against you August 15 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 found to have a white powdery substance s.15"

Assistant Deputy Warden (ADW) Morris, presiding as hearing officer, opened your disciplinary hearing August 15. She confirmed that you received a copy of the IOR and that you were made aware 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.

Acting/Assistant Deputy Warden (A/ADW) Carnovale, presiding as hearing officer, reconvened your disciplinary hearing September 25 with you, the charging officer and your legal counsel present. After confirming the reason for the adjournment, the hearing officer read the charge and you entered a plea of not guilty.

The charging officer read the written circumstances section of the IOR into the record and presented physical evidence that the hearing officer examined with you. The hearing officer then heard your account and submissions from your legal counsel. He subsequently found you guilty of breaching s. 21 (1) (y), CAR based on the charging officer's testimony.

The hearing officer provided you an opportunity to make submissions for his consideration in reaching a penalty decision and he also reviewed your institutional records with you. He imposed a penalty of 100-hours intermittent cellular confinement and explained 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 provided you written reasons for his finding and penalty decisions.

Review Findings & Decision

The charging officer alleged in his written report that you said that the substance found in your possession was someone else's medication. You denied making that statement and testified that you told him that the substance was sugar. You also testified that your roommate witnessed the conversation and that he had provided you a written statement confirming your account. You could not produce the written statement however the hearing officer accepted that the witness would support your account.

The record of the proceedings indicated that no one tested or attempted to identify the substance in question. Your legal counsel submitted that testing it would settle the conflicting statements about its nature. The hearing officer disagreed. He advised that the purpose of the hearing was to substantiate a charge of contraband rather than substantiate whether the substance in question was a drug or not.

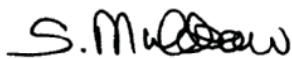
Your legal counsel questioned fairness if the case turned on whether the hearing officer could convict you based on you allegedly saying that the substance was someone else's medication. He submitted that the case could not be decided based on an opinion of the individuals' credibility and that it need to be decided based on the nature of the substance in question.

The hearing officer still disagreed. He found no reason to disbelieve the charging officer's written report and testimony regarding the alleged statement because all officers are expected to abide by a standard of conduct. He found your account of hiding sugar on your person as a prank less believable because you would have known that it could lead to an institutional charge. He subsequently found you guilty.

In review, I found the finding of guilt unreasonable. The hearing officer erred in not seeking additional evidence to determine the nature of the substance in question and then determine whose account was more credible. Determining credibility based on an individual's status rather than an analysis of facts creates an apprehension of bias.

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, CAR, and to direct the person in charge to change your record to reflect the rescission. I am holding your file open pending confirmation of the centre completing 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. E. Vike, Warden, KRCC
 Mr. D. Carnovale, Acting/Assistant Deputy Warden – Hearing Officer
 Mr. K. Sommerfeld, Barrister & Solicitor (via fax)



June 11, 2013
Mailed J12

59320-20/13-046

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

Dear Mr. s.22 :

I am writing to advise you of the outcomes of the disciplinary hearing reviews that you requested under section 29 (1), Correction Act Regulation (CAR) for two charges under s. 21 (1) (w), CAR.

Your disciplinary hearings concluded at Prince George Regional Correctional Centre (PGRCC) June 6, 2013, and the Investigation and Standards Office (ISO) received requests for review dated June 7 via fax that date from your legal counsel.

The centre was not able to provide ISO a complete audio recording for either hearing. As I am unable to review these hearings, I have exercised my authority under s. 29 (4) (c), CAR to rescind the decision made and the penalty imposed under section 27 in each matter, and (i) direct that the person in charge change your record to reflect the rescissions.

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
Ms. A. Love, Assistant Deputy Warden – Hearing Officer
Mr. R. Allison, Assistant Deputy Warden – Hearing Officer
Mr. D. Donnelly, Barrister and Solicitor (by fax)



February 26, 2013
Mailed F26

59320-20/12-149

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

Dear Mr. s.22 ,

I am writing in response to your request for review of a hearing concluded at Fraser Regional Correctional Centre (FRCC) on February 21, 2013. I also acknowledge receipt of a letter dated February 24, 2013, written on your behalf by your legal representative, Ms. P. K. McGuire.

You were found guilty of breaching Section 21(1)(z.1) of the Correction Act Regulation (CAR) which states that "an inmate must not create a disturbance."

You were accused of incessantly kicking cell doors and received a disposition of 3 days in segregation and 8 days loss of earned remission.

I reviewed the record of proceedings and concluded that this hearing was not conducted in an administratively fair manner.

During the hearing it emerged that the hearing officer had direct knowledge of this alleged disturbance. The hearing officer had been on duty at the time and stated at the hearing that he had heard the disturbance and had called segregation to find out who was making such a noise. He later attended segregation as part of his duties and spoke to you.

In these circumstances, it would have been prudent for the hearing officer to have declined to hear this case. As it stands, the fact that the hearing officer had direct knowledge of the incident and of your alleged role in it automatically raises a reasonable apprehension of bias.

Therefore, 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 the centre change your record 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. S. Dicastri, Warden FRCC
Mr. R. Juliusson, ADW, Hearing Officer
Ms. P.K. McGuire, Barrister and Solicitor



May 13, 2014
Mailed M13

59320-20/00-132
2375

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

Dear Mr. s.22 :

I am writing in response to a letter submitted on your behalf by Ms. Adi Glouberman, Barrister and Solicitor. Ms. Glouberman requested a review of a disciplinary hearing held at Fraser Regional Correctional Centre (FRCC) on May 4, 2014 into a charge under Section 21(1)(w), Correction Act Regulation (CAR).

Pursuant to s. 29(2), CAR I requested the documents and audio recording of the disciplinary hearing. The custody centre however was unable to provide a complete version of the audio recording of the hearing.

As I am unable to review a significant portion of the hearing, I am rescinding the decision made and the penalty imposed by the chairperson pursuant to s. 29(4)(c), CAR. 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, BC Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Mr. S. DiCasteri, Warden, FRCC
Mr. T. Kienas, Chairperson, FRCC
Ms. A. Glouberman, Barrister and Solicitor (via fax)



December 19, 2013
Mailed D20

59320-20/12-007
2218

Mr. s.22 CS# s.22
c/o Vancouver Island Regional Correctional Centre
PO Box 9224 Stn Prov Govt
Victoria, BC V8W 9J1

Dear Mr. s.22 :

I am writing in response to your letter dated December 13, 2013 requesting a review of a disciplinary hearing held at Vancouver Island Regional Correctional Centre (VIRCC). The hearing commenced and concluded on December 12. In the letter you indicate you should not have been found guilty as there were discrepancies between the charging officer's written circumstances on the inmate offence report (IOR) and his testimony as well as with other witnesses. You also claim that you wanted to question all of the seven possible witnesses; however, only two witnesses in addition to the charging officer were called.

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)(w), CAR, which states that "An inmate must not threaten another person." The hearing officer heard evidence from the charging officer, two witnesses and yourself. Based on the evidence of the charging officer and one of the witnesses, he found you guilty on the balance of probabilities. He subsequently reviewed your disciplinary history and imposed a disposition of 20 days segregation consecutive to the disposition you were serving on December 12.

In reviewing the proceedings, I have determined that the hearing officer did not err in finding you guilty as charged on the balance of probabilities.

The hearing officer responded to your concerns about discrepancies between the written circumstances on the IOR statement and charging officer's testimony. He found the discrepancy was due to the officer expressing an opinion in the written circumstances of what led up to the threat being made and being asked to tell the hearing officer what he actually heard. The actual threat made remained the same between the written circumstances and the officer's testimony.

The second witness did not hear the alleged utterance so his testimony was not considered in the determination of guilt.

The third witness provided credible and detailed testimony which supported the charge that you threatened the nurse by saying "I'm going to come back here and rip your throat out." His testimony supports the charging officer in his verbal testimony and the written circumstances in the Inmate Offence Report regarding the actual threatening statement that was heard by the witnesses. The hearing officer acknowledged that there was some discrepancy between the two officers regarding what led up to the threat but not regarding the threat itself. In your testimony, you stated you did not remember saying the threat.

In reviewing the hearing, I found that the verbal testimonies of the charging officer and correctional supervisor regarding the actual stated threat you made toward the nurse are consistent. As you had no recollection of the incident the preponderance of the evidence presented was sufficient to find you guilty on the balance of probabilities. I am therefore confirming the decision made by the hearing officer regarding your guilt for the offence as charged.

With regard to the number of witnesses being called; you stated at the outset of the hearing that you were agreeable to only calling the witnesses that were available at the centre on the hearing date. You were told you could have an adjournment of the hearing to facilitate other witnesses attending if it was necessary. The hearing officer later determined that based on the evidence already heard, he did not have to hear from any other witnesses as this would have required a delay in the hearing. You did not dispute the hearing officer's decision not to call further witnesses in the hearing. Had you required additional witnesses, you should have made your disagreement with the decision known at the time and requested an adjournment.

In reviewing the disposition, I noted that the hearing officer did not grant you credit for the two days you had been subject to s. 24(1)(b), CAR on this charge.

Under s. 29(4)(b), CAR, I am therefore confirming the hearing officer's decision of finding you guilty. However, I am substituting a new penalty for the one imposed by the hearing officer. Your new penalty will be 20 days segregation with credit for the two days already served pursuant to s. 27(3)(b), CAR. This disposition is to be served consecutive to the penalty imposed in another hearing conducted earlier on December 12. Therefore, you have 18 days of segregation to serve which commenced on December 16 and will conclude on January 2, 2014.

I am also directing that your record be amended to reflect the amended penalty.

Pursuant to s. 27(4) or 27(5), CAR you may apply to the person presiding over the hearing or to the person in charge for a suspension or reduction of the disposition imposed.

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. S. Morgan, Warden, VIRCC
Mr. M. Cook, ADW, Hearing Officer, VIRCC



January 30, 2014
Mailed J31

59320-20/09-118
2327

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

Dear Mr. s.22 :

I am writing in response to your request for a review of a disciplinary hearing held at Ford Mountain Correctional Centre (FMCC) on January 23, 2014.

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 s. 21 (1) (y) of the CAR, which states that "an inmate must not possess contraband." The charging officer found tobacco in s.15 during a routine search of your cell. You pled not guilty. After hearing the circumstances and asking you for your side of the story, the hearing officer found you guilty. He imposed a disposition of 10 days loss of earned remission.

Further to review, I have determined the hearing officer did not have sufficient evidence to establish that you had knowledge of the contraband.

I have therefore concluded that your disciplinary hearing held on January 23, 2014 was not conducted in an administratively 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 to direct that the person in charge change your records to reflect the rescission.

Yours truly,

L. Pineau
Inspector
Investigation & Standards Office

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



January 16, 2013
Mailed J17

59320-20/11-143

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

Dear Mr. 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 January 12, 2013.

You were found guilty of 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 were accused of damaging a cell door by kicking it. You received a disposition of 10 days in segregation.

I have reviewed the record of proceedings and concluded that this hearing was not conducted in an administratively fair manner.

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, and I have directed that your record be changed 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
Ms. S. Pendleton, Hearing Officer
Ms. L. Anderson, Warden, NFPC



September 20, 2013 [mailed Sep 20](#)

59320-20/11-057
2286

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

Dear Mr. 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) September 16, 2013, and the Investigation and Standards Office (ISO) received your request for review dated September 17 via mail September 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 a digital video recording (DVR) entered as evidence.

The IOR indicated that an officer filed a charge against you September 15 under s. 21 (1) (w), CAR, which states, "An inmate must not assault or threaten another person." The charging officer specified, "Inmate s.22 s.22 did throw what appeared to be feces into the cell of inmate s.22 s.22 ."

Assistant Deputy Warden (ADW) Vance, presiding as hearing officer, opened your disciplinary hearing September 16 with you and an investigating officer present. You confirmed that you received a copy of the IOR and that you understood your right to seek legal counsel. You advised that you were ready to proceed and the hearing officer then read the charge. You confirmed that you understood it and you entered a plea of not guilty.

The investigating officer read the written circumstances section of the IOR into the record. The hearing officer then heard your account and viewed DVR evidence with you and the investigating officer. He subsequently found you guilty of breaching s. 21 (1) (w), CAR based on that evidence.

The hearing officer provided you an opportunity to make submissions for his consideration in reaching a penalty decision and he also reviewed your institutional records. He imposed a penalty of ten days segregation effective the date of the breach but did not provide you an explanation at that time.

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 provided you written reasons for his finding and penalty decisions.

Review Findings & Decision

When answering your questions about the alleged victim, the hearing officer provided specific details concerning the incident that the charging officer had not reported in the inmate offence report and that the investigating officer had not provided in her evidence. The hearing officer's answers demonstrated prior knowledge of the incident, which created an apprehension of bias. It rendered the hearing unfair as a key principle of procedural fairness is the accused person's right to a neutral decision maker.

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, CAR, and to direct the person in charge to change your record to reflect the rescission. I am holding your file open pending confirmation of the centre completing 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
- Mr. S. DiCasteri, Warden, FRCC
- Mr. G. Vance, Assistant Deputy Warden – Hearing Officer

- bc. Mr. A. D'Argis, Policy and Program Analyst, Adult Custody Division, Corrections Branch



February 26, 2013
Mailed F26

59320-20/12-098

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

Dear Mr. 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) (I), CAR.

Your disciplinary hearing concluded at Prince George Regional Correctional Centre (PGRCC) February 17, 2013, and the Investigation and Standards Office (ISO) received your request for review from your lawyer via fax February 22.

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 IOR indicated that an officer filed a charge against you February 6, 2013 under s. 21 (1) (I), CAR, which states, "An inmate must not take an intoxicant into his or her body." It also indicated that the hearing officer found you guilty of breaching that rule and that he imposed a penalty of seven days segregation.

I could not conduct a thorough review because the quality of the audio recording rendered it inaudible. I have therefore exercised my authority under s. 29 (4) (c) (i), CAR to rescind the decision made and the penalty imposed under s. 27, CAR and direct the person in charge to change your record to reflect the rescission. I am holding your file open pending confirmation of completing 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
Ms. J. Hawkins, Warden, PGRCC
Mr. M. Tuck, Assistant Deputy Warden – Hearing Officer
Ms. P. K. McGuire, Barrister and Solicitor



January 02, 2013 [mailed Jan 03](#)

59320-20/12-126

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

Dear Mr. 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 29, 2012, and the Investigation and Standards Office (ISO) received your request for review dated December 31 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 a digital video recording (DVR) that was presented as evidence at the hearing.

The record of the proceedings indicated that an officer filed a charge against you December 15, 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 in the IOR: *When given clear direction to lock up, I/M s.22 # s.22 refused.*

Assistant Deputy Warden (ADW) Lumley, presiding as hearing officer, opened your disciplinary hearing December 15. After he read the charge, you confirmed that you had received a copy of the IOR and that you understood it. You also confirmed that you were aware of your right to seek legal counsel and advised that you were planning on retaining legal counsel. The hearing officer then adjourned the hearing to allow you a reasonable opportunity to contact legal counsel.

ADW Doucet, presiding as hearing officer, reconvened your disciplinary hearing December 29. You advised him that you were not ready to proceed. After noting the reason for adjournment December 15, the hearing officer advised that you had been afforded a reasonable opportunity to seek legal counsel. After addressing your additional arguments, the hearing officer advised that he was proceeding with hearing the charge.

You entered a plea of not guilty and the investigating officer read the written circumstances into the record. The hearing officer then heard your account of the circumstances where you denied disobeying the charging officer's direction. You also requested that the hearing officer call an officer as a witness to testify that you did not refuse to lock up. The hearing officer advised that he would view the DVR evidence before deciding on your request.

The hearing officer viewed the DVR evidence with you while the investigating officer described the events shown. The hearing officer then asked you what you expected the witness officer to have observed. You advised him that the officer would have observed you speak to the charging officer about your cell effects and that you went and sat on the bench because the officers were dealing with another incident.

The hearing officer reminded you that the charge concerned disobeying the direction of a staff member and he noted that the DVR evidence showed the charging officer giving physical direction to enter a cell. When you claimed that she was not directing you, the hearing officer confirmed with the investigating officer that you and the other inmate present were supposed to be going into that cell. The investigating officer also advised that you were both aware of that intent before arriving on the living unit.

The hearing officer noted that the DVR evidence showed you and the other inmate put your bags of effects on the floor after you arrived on the living unit and the charging officer gesturing several times with her arm towards the open cell. He further noted that it showed you walk away and sit at a dining table where the other inmate joined you shortly thereafter.

The hearing officer heard further arguments from you regarding your request to call a witness. He responded to them, and he advised that he was denying your request because the testimony would have no relevance given the DVR evidence further to the charging officer's report.

The hearing officer subsequently found you guilty and he moved to the penalty phase. After hearing your submissions about receiving extended lock up periods since November 26, he reviewed your institutional records for this term in custody and discussed them with you. He noted that you had one previous institutional charge for abusive language and that your Client Log (CLOG) contained few reports of poor behaviour.

The hearing officer considered your extended lock up periods and he imposed a penalty of five days forfeiture of earned remission after explaining his concerns regarding the incident.

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. After concluding the hearings for both charges, he provided you written reasons for his finding and penalty decisions.

Review Findings and Decision

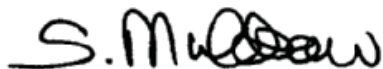
You requested "a review of the outcome and decision for a hearing held on Dec 29th 2012 at KRCC" and you made no submissions for our consideration. I reviewed the proceedings for both charges

heard that date because you did not specify which charge you wished ISO to review. I have reported the outcome of my review of the first charge in a separate letter.

In review, I found your hearing procedurally fair and administratively correct. I found it reasonable for the hearing officer to proceed and conclude the hearing December 29 after determining that the centre had provided you substantial time to consult legal counsel and you were able to exercise that right. I also found his decision regarding your request to call a witness reasonable under the circumstances. Lastly, I found sufficient evidence to support the charge against you and the finding of guilt, the penalty imposed reasonable and appropriate for this matter.

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

/gd

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Mr. E. Vike, Warden, KRCC
Mr. E. Doucet, Assistant Deputy Warden – Hearing Officer



June 26, 2013
Mailed J27

59320-20/01-012

Mr. s.22 CS# s.22
c/o Vancouver Island Regional Correctional
Centre
PO Box 9224 Stn Prov Govt
Victoria, BC V8W 9J1

Dear Mr. s.22 :

I am writing in response to a letter dated June 24, 2013, from Simon Cheung, Legal Advocate, Prisoners' Legal Services, requesting a review of a disciplinary hearing concluded at Nanaimo Correctional Centre on June 21, 2013. Our office also received your faxed request for a review dated June 22, 2013, on June 24, 2013.

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

You were charged with violating CAR, Section 21(1) (l) which states that an inmate must not take an intoxicant into his body. The charging officer alleged you ingested s.15 in Campbell House on June 12, 2013.

You pled guilty to the charge and then raised the issue of impartiality with the hearing officer. You stated you saw hearing officer, Ms. McKay, at the hospital following your ingestion of the intoxicant and she enquired into your well-being. You questioned if it was fair that she preside over your hearing.

Further to review, I determined the hearing officer had prior involvement with the incident, which resulted in a reasonable apprehension of bias. As a result, I have concluded this hearing was not conducted in a procedurally fair manner. I am therefore rescinding the decision made and the penalty imposed pursuant to CAR, Section 29(4) (c). I will also request the centre amend your record to reflect this rescission.

Sincerely,

M. Marchenski
Deputy Director
Investigation and Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Mr. R. Hodgson, Warden, NCC
Ms. S. Morgan, Warden, VIRCC
Ms. M. McKay, Hearing Officer
Mr. S. Cheung, Legal Advocate, Prisoners' Legal Services



November 20, 2013 mailed Nov 25

59320-20/13-087

2309

Mr. s.22 s.22
c/o Vancouver Island Regional Correctional Centre
PO Box 9224 Stn Prov Govt
Victoria, BC V8W 9J1

Dear Mr. 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 Vancouver Island Regional Correctional Centre (VIRCC).

Your disciplinary hearing concluded November 15, 2013 and the Investigation and Standards Office (ISO) received your undated request for review via post November 20.

Under section 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 November 15 under 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." The charging officer specified: *Inmate s.22 did use abusive and insulting language towards another person, specifically me.*

Assistant Deputy Warden (ADW) S. Davis, presiding as hearing officer, opened your disciplinary hearing November 15 with you present. He confirmed that you received a copy of the IOR, understood the charge and 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 entered a plea of guilty and advised that you had an explanation for breaching the rule.

The hearing officer read the written circumstances from the IOR into the record and heard your account of the circumstances. He summoned the charging officer to the hearing room to give testimony because your account differed from her written report. The charging officer attended and provided further details about the incident. You also spoke further in your defense. The hearing

officer subsequently found you guilty based on the charging officer's testimony, her written report and your admission of guilt.

The hearing officer provided you an opportunity to make submissions regarding potential penalty and he reviewed your institutional records. He read some of your Client Log (CLOG) entries aloud and stated that you had quite a few negative comments on your file. He also advised that you had received four previous institutional charges since entering custody s.22 however he did not cite any details. As he started to announce his penalty decision, he noted that you had accrued 47 days of remission and he subsequently imposed a penalty of 10 days segregation effective that date plus 40 days forfeiture of earned remission.

The hearing officer advised that you could ask for a reduction under s. 27(4), CAR and that you could ask for a review under s. 29 (1), CAR. He did not read those sections to you, provide any details about either or ensure that you understood them. He then concluded the hearing and provided you written reasons for his finding and penalty decisions.

Review Findings and Decision

In review, I found that the circumstances and evidence supported the charge and finding of guilt. However, I found the penalty unfair given the nature of the charge, its specific circumstances and your institutional records.

I also found other circumstances that affected fairness during the penalty phase. The hearing officer provided no reasons at the hearing for his penalty decision and his decision to impose 40 days forfeiture of earned remission appeared spontaneous. His comment, "This is my staff member who's doing a job", made earlier in the hearing subsequently brought his neutrality into question.

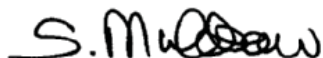
In light of those findings, I have exercised my authority under s. 29 (4) (b), CAR to confirm the decision made and substitute another penalty under s. 27. I have substituted a penalty of 7 days segregation effective the date of the breach. My reasons for this penalty are:

- The officer did not tell you why she was making you wait 20 minutes until her next rounds to have your cell door unlocked and she had no grounds to believe that you had shut your door intentionally. However, while those circumstances tended to mitigate the penalty, they did not warrant you directing insulting and abusive language toward the officer.
- You admitted to breaching the rule and you took responsibility for your actions. You did not attempt to deflect blame or to minimize the incident. You also apologized directly to the officer and appeared to do so with sincerity.
- Your disciplinary record since entering custody s.22 :
 - July 14 – s. 21 (1) (a), CAR: pled not guilty, found guilty and received 7 days segregation time served.
 - July 14 – s. 21 (1) (z.1), CAR: pled not guilty, found guilty and received 10 days segregation suspended for 30 days.

- August 9 – s. 21 (1) (y), CAR: pled guilty, found guilty and received 20 days segregation.
- August 13 – s. 21 (1) (g), CAR: pled guilty, found guilty and received 15 days segregation consecutive to the previous penalty.
- The improvement in your behaviour after your first month in custody and its apparent deterioration over the past few weeks. Your records showed:
 - No further charges filed against you under CAR from August 14 to November 15.
 - You only received two negative file entries during a period of restricted programming from August 9 to October 21.
 - You received five file entries citing specific negative behaviours since you returned to a regular living unit program October 21, which appeared to indicate that you were having difficulties managing your behaviour in a less restrictive environment.
- 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.

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 & Standards Office

/gd

- c. Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Ms. S. Morgan, Warden, VIRCC
Mr. S. Davis, Assistant Deputy Warden – Hearing Officer



September 9, 2013
Mailed Sept 10

59320-20/13-068 2279
CS# s.22

Ms. s.22
c/o s.22, Probation Office
Prince George Community Corrections
101 - 250 George Street
Prince George, BC V2L 5S2

Dear Ms. s.22

I am writing to advise you of the outcome of the disciplinary hearing review that your legal counsel, Mr. D. Donnelly, requested on your behalf 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) September 4, 2013, and the Investigation and Standards Office (ISO) received your request for review from your lawyer via fax September 6.

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 IOR indicated that an officer filed a charge against you August 21 under s. 21 (1) (w), CAR, which states, "An inmate must not assault or threaten another person." It also indicated that the hearing officer found you guilty of breaching that rule and that she imposed a penalty of 15 days segregation (time served) and forfeiture of 3 days earned remission.

I could not conduct a thorough review because the audio record was incomplete. I have therefore exercised my authority under s. 29 (4) (c) (i), CAR to rescind the decision made and the penalty imposed under s. 27, CAR and direct the person in charge to change your record to reflect the rescission. I am holding your file open pending confirmation of completing 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
Ms. J. Hawkins, Warden, PGRCC
Ms. A. Love, Assistant Deputy Warden – Hearing Officer
Mr. D. Donnelly, Barrister and Solicitor



July 22, 2013
Mailed J22

59320-20/07-031

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

Dear Mr. s.22 ,

You have requested a review of a disciplinary hearing concluded at Kamloops Regional Correctional Centre (KRCC) on July 16, 2013.

You were charged with violating Section 21(1)(w) of the Correction Act Regulation, which states that an inmate must not assault another person. You were accused of throwing a liquid on an officer.

You denied the charge but were found guilty and received a disposition of 15 days in segregation (time served).

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

Following my review I concluded that this hearing was not conducted in a fair manner. In reaching this conclusion I noted the following:

- When reaching her determination of guilt the hearing officer stated that she was finding you guilty based on your poor behaviour over the past few months.

A hearing officer can only consider the evidence presented at a hearing and to do otherwise raises a reasonable apprehension of bias.

- There was an excessive delay in concluding this hearing. This hearing began on June 5 and was not restarted again until July 16, 2013. It was made clear at the hearing that this matter was adjourned at your request to seek legal advice.

An excessive delay of this nature prejudices a fair hearing. Proceedings must be conducted in a timely manner. Once you have been given adequate opportunity to contact legal counsel the centre may restart proceedings and inquire why the hearing should not proceed.

In view of the above, it is clear to me that this hearing was not conducted in an administratively fair manner. Therefore, pursuant to CAR, Section 29(4)(c), I am rescinding the decision made and the penalty imposed.

I have also 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, BC Corrections Branch
Mr. P. Coulson, Provincial Director Adult Custody, BC Corrections Branch
Mr. E. Vike, Warden, KRCC
Ms. T. Haggerty, Hearing Officer



March 3, 2014
Mailed M4

59320-20/07-031
2345

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

Dear Mr. 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 February 26, 2014.

You were charged with breaching section 21(1)(i) of the Corrections Act Regulations (CAR) which states that "an inmate must not engage in an indecent act." You contested the charge but the hearing officer found you guilty. You were sentenced to 7 days in segregation (time served).

Pursuant to section 29(2) of the CAR, I obtained and reviewed the documents and listened to the audio record of the disciplinary hearing. The audio portion of your hearing held on February 26 was incomplete. In view of this, I have no option but to allow your appeal.

Pursuant to Section 29(4)(c)(ii) 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 truly,

L. Pineau
Inspector
Investigation & Standards Office

C: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Corrections Branch
Mr. E. Vike, Warden, KRCC
Mr. J. Guizzo, Hearing Officer, KRCC



May 31, 2013 mailed Jun 04

59320-20/07-031

Mr. 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 the letter submitted on your behalf by your lawyer, Kenneth Sommerfeld, requesting a review of a disciplinary hearing concluded at Kamloops Regional Correctional Centre (KRCC) on May 29, 2013.

You were charged with breaching section 21(1)(z.2) (i) of the Correction Act Regulation which states that "an inmate must not engage in an activity that jeopardizes or is likely to jeopardize the safety of another person."

I have been informed that due to a technical error the audio recording from your hearing on May 29, 2013 was not saved.

As I am unable to review this hearing I have no option but to allow your appeal.

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, Corrections Branch
Mr. E. Vike, Warden, KRCC
Mr. D. Allison, Hearing Officer
Mr. K. Sommerfeld, lawyer (Fax: 250-374-7826)
bc. Ms. M. Luknowsky



November 21, 2013
Mailed N22

59320-20/07-031
2308

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

Dear Mr. 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 concluded November 13, 2013 and the Investigation and Standards Office (ISO) received your request for review dated November 16 via post November 19.

Under section 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) (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: *I/M s.22 had to be extracted from his cell by the ERT.*

Assistant Deputy Warden (ADW) Haggerty, presiding as hearing officer, opened your disciplinary hearing October 28 and she attended your cell because you refused to come to the hearing room. You advised her that you had not received a copy of the IOR and she advised that she would have another copy delivered to you. You also requested to speak to a lawyer and she adjourned the hearing to allow you an opportunity to do so.

ADW Haggerty, presiding as hearing officer, reconvened your disciplinary hearing November 13 with you, the charging officer and your lawyer present. She confirmed the reason for the adjournment and you raised the notification issue again. She reconsidered that issue and concluded that the hearing could proceed. She asked for your plea and you pled not guilty.

The charging officer read the written circumstances from the IOR into the record and the hearing officer heard your account of the circumstances. She subsequently found you guilty and explained her decision.

The hearing officer provided you an opportunity to make submissions for her consideration towards penalty. You did not wish to participate any further in the hearing and asked to return to your cell. The hearing officer granted your request and then 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. Before leaving the hearing room, you reiterated concerns about receiving a copy of the IOR, deployment of the cell extraction team and an alleged conversation with the hearing officer.

The hearing officer reviewed your institutional records with your lawyer and heard her submissions towards penalty. The hearing officer subsequently imposed a penalty of 15 days segregation and deemed it satisfied through time served pending the hearing. She then concluded the hearing and provided you written reasons for her finding and penalty decisions.

Review Findings and Decision

The evidence supporting the charge asserted that you jeopardized the safety, security and operation of the centre because you refused to comply with direction surrounding the application of restraints and that led to the deployment of a cell extraction team.

In your defence, you submitted that the centre had applied the wrong charge against you because you did not know that it was deploying a cell extraction team. You explained that you had no reason to believe that the centre was going to deploy that team because it had only cancelled your exercise periods when you refused to comply with similar direction the previous weekend.

You further submitted that policy required that the person-in-charge come and inform you that a cell extraction team will be deployed if you do not stop the behaviour in question. You advised the hearing officer that you received no such warning. You asked her to view that policy and submitted that the centre could not hold you at fault for any risk associated with deploying the team when you did not know it was taking that action.

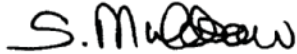
The hearing officer reviewed the adult custody policy manual and confirmed that policy required warning an inmate before deploying a cell extraction team. She also acknowledged that the evidence indicated that you received no such warning.

You and your lawyer submitted that the hearing officer should dismiss the charge. The hearing officer declined to do so and found you guilty of breaching s. 21 (1) (z.2) (ii), CAR.

In review, I found that your evidence demonstrated that the circumstances did not support the charge under s. 21 (1) (z.2) (ii), CAR. I therefore found the decision to uphold the charge and subsequent finding of guilt unreasonable.

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, CAR and direct the person in charge to change your record to reflect the rescission. I am holding your file open pending confirmation of the centre completing 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. E. Vike, Warden, KRCC
Ms. T. Haggerty, Assistant Deputy Warden – Hearing Officer, KRCC



May 23, 2014
Mailed m23

59320-20/14-021
2381

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

Dear Mr. s.22 :

I am writing in response to a letter written on your behalf from Ms. A. Glouberman, Barrister and Solicitor, requesting a review of a disciplinary hearing held at Fraser Regional Correctional Centre (FRCC) which concluded on May 18, 2014. The following grounds for the review were submitted:

- That you did not refuse to comply with the direction of a correctional officer.
- Your safety concerns qualify as a reasonable and lawful excuse for not complying with a direction to move to another cell on the living unit.

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, s. 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 the statement and testimony of the charging officer and evidence presented on your behalf by your legal counsel. The chairperson imposed a disposition of 9 days segregation after reviewing your disciplinary history and behaviour on the living unit. You received time served for your placement in segregation under CAR, s. 27(3)(b).

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

I concur with the hearing officer that based on the evidence presented by the charging officer and information provided by your legal counsel, there is sufficient evidence on the balance of probabilities to find you guilty of the charge noted above. The evidence presented shows that you initially refused the direction of the charging officer to move to cell^{s.22}. You also refused to move to another cell on the unit and stated you would go to segregation.

You indicated in your defence that your unwillingness to comply with the direction to move to another cell was due to safety concerns. There was some evidence presented by your legal counsel that suggested your concerns regarding the occupant of cells²² had a reasonable basis. The hearing officer accepted that you had these concerns about moving to cell s.²² With respect to the offer of moving you to another cell on the unit, I disagree that your safety concerns excused your refusal to move. You provided no evidence to suggest that you had shared information with staff identifying other inmates that you had concerns about, either prior to this incident or during your discussion with the charging officer or correctional supervisor.

Regarding the disposition imposed, I have reviewed your disciplinary history and client log. I note since your admission in s.²² you have experienced a few relatively minor issues which have generally been resolved with warnings. You have had no previous breaches under CAR, s. 21(1) since your admission, which given your documented mental health challenges is laudable. As I noted above, your safety concerns are a mitigating factor, however you should have made some efforts prior to this charge to share information with staff about inmates you were specifically concerned about housing with.

You had already served nine days in segregation at the conclusion of the hearing. The hearing officer appears to have tailored his disposition to the amount of time you had served. Based on your relative lack of previous disciplinary issues over the past year; a disposition of nine days segregation for this particular charge is onerous. As the principle of progressive discipline applies to any subsequent breaches, I am reluctant to confirm such a substantial penalty. Therefore, I am substituting a penalty of three days segregation and granting you time served for this breach pursuant to CAR, s. 27(3)(b).

I am therefore confirming the decision made and substituting the penalty imposed by the chairperson pursuant to CAR, s. 29(4)(a). I have also directed that your record be amended to reflect the substituted penalty.

Sincerely,



J. Parkin
Inspector
Investigation & Standards Office

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, BC Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Mr. S. DiCatri, Warden, FRCC
Mr. I. Lashbrook, Chairperson, FRCC
Ms. A. Glouberman (by fax)



Dec 27, 2013 mailed Jan 02/14

59320-20/13-043

2319

Mr. s.22 s.22
c/o Surrey Pretrial Services Centre
14343 – 57th Avenue
Surrey, BC V3X 1B1

Dear Mr. s.22 :

I am writing in response to your letter, received on December 24, 2013, requesting a review of a disciplinary hearing concluded at Surrey Pretrial Services Centre (SPSC) on December 20, 2013.

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

You were charged with breaching CAR section 21(1) (w) which states that “an inmate must not assault another person.” You were accused of assaulting three correctional officers. This incident occurred when officers came to remove you from your cell.

You denied the charge but were found guilty and received a maximum disposition of 30 days segregation.

During my review I noted the following:

- **Delay in concluding hearing:** Your hearing was opened on December 7, 2013 and adjourned. The Inmate Offence Report records that this was at your request to allow “time to consult legal counsel.” However the audio recording shows clearly that you requested an adjournment as you wished to cross examine three officers who were not present at that time.

Centre staff acted on the belief that your hearing had been adjourned to allow you time to seek legal advice and asked you on December 10, 14 and 16, 2013 if you were prepared to proceed. You appeared to be content to delay the proceedings as long as possible. When the matter was restarted on December 20, 2013 you asked for another 15 day adjournment “for supreme court reasons” related to a bail application.

All hearings, and especially ones of a serious nature such as this, need to be concluded in a timely manner. When you asked for an adjournment to allow you to cross examine staff

witnesses, those witnesses should either have been made available at once or as soon as possible thereafter.

- **Insufficient Evidence:** The evidence presented at the hearing was inconclusive. The charging officer testified by reading out the written circumstances from your charge sheet and testified that you had refused to follow repeated directions. Only one of the officers named on the charge sheet as having been assaulted testified. The centre's assertion was that you assaulted staff. You insisted that you had been attacked. Both sides agreed that s.15 had been deployed on you prior to the violence occurring.

The video evidence is not conclusive. As staff are at your door the video pans away to a default position and when it is directed back to your cell the physical encounter between you and the staff has already started. It shows you being physically restrained by a number of officers. It does not show how this altercation began.

- **Policy not followed:** Adult Custody Policy provides a standardized approach for the removal of inmates who are violent or potentially violent from cells. Policy does not appear to have been followed in this case.

Following my review I have concluded that:

- There was an unnecessary delay in concluding this hearing
- The evidence presented at the hearing was insufficient to support the determination of guilt
- Centre staff failed to follow Adult Custody Policy in dealing with this incident

Therefore, 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

/gd

- c. Mr. B. Merchant, Assistant Deputy Minister, B.C. Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Mr. G. Davis, Warden, SPSC
Mr. B. Penner, hearing officer, SPSC



February 28, 2013 [mailed Mar 3](#)

59320-20/95-173
2342

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

Dear Mr. s.22 :

I am writing in response to a letter written on your behalf from Francois Lepine, Barrister and Solicitor, requesting a review of a disciplinary hearing held at North Fraser Pretrial Centre (NFPC). The hearing commenced on February 15, 2014 and concluded on February 20. In the letter your legal counsel submitted a number of reasons for requesting a review including apprehended and actual bias of the hearing officer, lack of full disclosure prior to the hearing, and other issues regarding the conduct of 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)(w), CAR which states that "An inmate must not assault another person." The chairperson heard evidence from you and the charging officer. She also viewed a video recording of the incident. The chairperson found you guilty of assaulting the charging officer. She subsequently reviewed your corrections history, including submissions regarding your mental health, 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.

Reasons:

Upon review, I found that the video recording does not support the allegation that you assaulted the charging officer.

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

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, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Mr. S. Phillips, Warden, NFPC
Ms. T. Wearing, Hearing Officer
Ms. F. Lepine, Barrister and Solicitor (Fax: 604-984-2284)



June 23, 2014
(mailed to FRCC June 23, [resent to NFPC Jul 3](#))

59320-20/14-027
2398

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

Dear Mr. s.22 :

I am writing in response to your request for a review of a disciplinary hearing concluded at Fraser Regional Correctional Centre on June 18, 2014.

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 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.” You were accused of swearing at and insulting an officer.

You were found guilty and received a disposition of five days in segregation.

During my review I noted the following:

- The officer you allegedly insulted was not the charging officer and did not attend the hearing.
- You requested a witness but this was denied.
- The hearing officer stated that he would accept that the evidence from the denied witness would support your account of events. However, he proceeded to find you guilty.
- You were charged with specifically swearing at and insulting an officer. However, the written circumstances, the centre evidence and the hearing officer’s determination all relied upon evidence that you had also mocked the officer by repeating his instructions to you.
- You were not asked for a plea at the start of the hearing, but only upon the conclusion of the evidence phase.
- The times of the hearing on June 18 appear to be confused. The inmate offence report states 1320hrs. The audio states that the hearing was opened at 2031hrs. Following an adjournment to locate some video evidence, the audio stated that the hearing had been adjourned at 2031hrs and was now restarting at 1900hrs.

The denial of a witness undermines an inmate's right to a full defence. It is also not acceptable to say that purported witness evidence would be accepted and then to discount it.

I found the evidence presented against you was confused in respect of the actual charge. You were charged with being insulting and abusive and not with mocking and undermining the officer.

The confusion regarding the plea and the hearing times further undermines confidence in this hearing.

I have therefore determined that this hearing was administratively unfair and procedurally flawed. In view of this, pursuant to section 29(4) (c) (i) of the CAR, I am rescinding the decision made and the penalty imposed under s. 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, BC Corrections Branch
- Mr. P. Coulson, Provincial Director, Adult Custody Division
- Mr. S. DiCasteri, Warden, FRCC
- Mr. I. Deak, Hearing Officer



January 10, 2013 mailed Jan 11

59320-20/10-036

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

Dear Mr. 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) January 6, 2013 and the Investigation and Standards Office (ISO) received your request for review dated January 6 via fax January 8. We have addressed the timeliness of faxing your request with centre management.

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 5, 2013 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:

On 5 January 2013 in s.22 Inmate s.22 CS# s.22 kept yelling and insulting an inmate despite being told to stop. This caused doors to be kicked and disruption to the unit encouraging non-compliance from other inmates.

Assistant Deputy Warden (ADW) Love, presiding as hearing officer, opened your disciplinary hearing on January 6. You confirmed that you had received a copy of the IOR, understood the charge and were made aware of your right to seek legal counsel. You advised the hearing officer that you did not wish to exercise that right and that you were ready to proceed. You then entered a plea of guilty to the charge.



June 10, 2013
Mailed J11

59320-20/12-054

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

Dear Mr. s.22 :

I am writing in response to the letter submitted on your behalf by your lawyer, Kenneth Sommerfeld, requesting a review of a disciplinary hearing concluded at Kamloops Regional Correctional Centre (KRCC) on May 31, 2013.

You were charged with breaching Section 21(1)(y) of the Correction Act Regulation which states that "an inmate must not possess contraband."

I have been informed that due to a technical error the complete audio recording from your hearing on May 31, 2013 was not saved.

As I am unable to review this hearing I have no option but to allow your appeal.

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, Corrections Branch
Mr. E. Vike, Warden, KRCC
Mr. B. Tiessen, Hearing Officer
Mr. K. Sommerfeld, Lawyer

The charging officer read his written reports into the record and you gave your account of the circumstances wherein you confirmed that you were being disruptive while staff dealt with another inmate.

After discussing the matter further with you and the charging officer, the hearing officer asked if you understood the meaning of 'engaging in an activity that jeopardizes'. You replied, "No", and she explained how your behaviour made it difficult for staff to do their job and incited other inmates to join in. You advised her that you now understood that you had engaged in an activity that had done that and you apologized for your behaviour.

The hearing officer subsequently found you guilty based on your admission of guilt, the charging officer's evidence and your testimony. She then moved into the penalty phase of the hearing.

The hearing officer advised that she had taken your apology into consideration and asked if you had anything else to say in your behalf. You asked if you could return to your living unit and "do a couple days of lock-up or something". She advised that she would take that into consideration and that the behaviour reported in your institutional records would determine her penalty decision.

The hearing officer noted that you had no previous institutional charges during this term in custody. She then reviewed your Client Log (CLOG) entries and discussed them with you. She considered your CLOG "less than stellar" and consequently imposed a penalty of 12 days segregation effective the date of the breach. You argued that the penalty was "ridiculous" and she explained her reasons for imposing it.

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 she confirmed that you understood those rights. She provided you written reasons for her decisions after concluding the hearing.

Review Findings and Decision

You requested a review of the penalty because you believed that 12 days segregation "for jeopardizing management by laughing real loud at the incident on s.15 " showed that the hearing was not conducted properly.

In review, I found your disciplinary hearing procedurally unfair.

A key principle of procedural fairness is the right to a neutral decision maker. During the hearing, the hearing officer made statements that included details of the incident that were not provided in the IOR or testimony from you or the charging officer. While it is understandable that the hearing officer would learn the details of a significant incident in her role as a manager, she can only consider evidence presented at the disciplinary hearing to make decisions.

I found that the hearing officer's personal knowledge of the incident did not affect the determination of guilt in this matter. However, she used her personal knowledge of the incident to link its unnamed victim to an inmate named in your CLOG. Based on that link, she drew conclusions about your

behaviour on the date in question that created a reasonable apprehension of bias surrounding her penalty decision. Consequently, I found the penalty imposed unreasonable.

In light of the above, 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 seven (7) days segregation effective the date of the breach the following reasons:

Mitigating factors, i.e. circumstances that tend to reduce a penalty

- admission of guilt
- degree of responsibility

You acknowledged that your behaviour created unnecessary difficulties for staff. You apologized for your behaviour and advised that you would remain quiet during future incidents.

- disciplinary record

Prior to this matter, you had not received any institutional charges since entering custody
s.22

Aggravating factors, i.e. circumstances that tend to increase a penalty

- nature of the charge

The maximum segregation penalties allowed under s. 27 (2), CAR clearly distinguish the seriousness of breaching of a rule referred to in s. 21 (1) (w) to (z.2), CAR over breaching a rule referred to in s. 21 (1) (a) to (v).

- seriousness of the breach

Your loud behaviour and disregard of staff direction incited other inmates to become disruptive and the disruption encouraged an inmate to refuse staff direction when they were trying to gain his compliance. Incidents such as this have significant potential to escalate out of control.

- record of behaviour

You have received numerous negative reports about your behaviour since entering custody
s.22 The behaviours cited in eleven CLOG entries included: disrespectful to staff; argumentative with staff; peer abuse; displaying a poor attitude towards staff; confrontational and rude towards staff; and, not compliant with staff request to lock up.

The last event occurred the evening of January 4, 2013; the unit staff on duty told you “firmly that enough is enough when directed by staff” yet you failed to heed that warning when staff directed you to be quiet during the incident January 5.

- classification

You were classified to enhanced supervision placement (ESP) on or about December 31, 2012 and you received an ESP case plan that date. The reasons cited for that placement included “disruptive” and the goals to achieve in order to return to a standard living unit and included “full compliance with all direction of staff and the rules and regulations of the centre”. You had ample warning, opportunity and incentive to avoid engaging in disruptive behaviour and to comply with staff direction during the incident January 5.

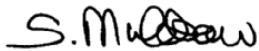
- the need for a deterrence

A penalty that significantly 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) (z.2) (ii), CAR.

I also considered your submission to the hearing officer for consideration as a penalty and found that the aggravating factors in this matter did not support it.

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

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. J. Hawkins, Warden, PGRCC
Ms. A. Love, Assistant Deputy Warden – Hearing Officer



July 30, 2013
Mailed J31

59320-20/02-246
CS# s.22

Ms. s.22
c/o Chelsea Hall, Probation Officer
Vancouver South Community Corrections
1308 S.E. Marine Drive
Vancouver, BC V5X 4K4

Dear Ms. 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) (g), CAR.

Your disciplinary hearing concluded at Alouette Correctional Centre for Women (ACCW) July 23, 2013, and the Investigation and Standards Office (ISO) received your request for review dated July 23 via mail July 29.

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 IOR indicated that an officer filed a charge against you July 20 under 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." The charging officer specified, "At approximately 1615 I/M s.22 (s.22) was yelling at s.22 in an abusive manner at the staff desk."

Acting Assistant Deputy Warden (A/ADW) Gemmill, presiding as hearing officer, opened your disciplinary hearing July 22 with you and a correctional officer present. The record of the proceedings did not indicate the role of that officer in this matter and the charging officer was not in attendance.

You confirmed that you received a copy of the charge and that you read and understood it. You confirmed that you were aware of your right to seek legal counsel and you indicated that you were ready to proceed. The hearing officer read the charge to you and you entered a plea of not guilty.

The officer present read the written circumstances section of the IOR into the record and the hearing officer then heard your account.

You requested to have two inmates called as witnesses. The hearing officer gave no decision however she felt it important to have the charging officer attend the proceedings to give direct testimony. The officer present did not know the charging officer's work schedule. She subsequently made enquiries and advised the hearing officer that the charging officer was on call.

You requested to have one of the inmates that you named earlier called as a witness. Again, the hearing officer gave no decision. She advised that a supervisor attended your living unit because your words had drawn his attention. You advised that your volume drew his attention and that you wanted to hear about the incident from another point of view. The hearing officer responded that the charging officer needed to attend in that case and she prepared to adjourn the hearing. You accepted that decision and advised again that you would like other witnesses.

The hearing officer advised that she could call the whole unit to give evidence however she still wanted to hear the charging officer's account of the incident. The hearing officer advised that hearing testimony from your witnesses without having the charging officer present to give testimony and answer questions would be unfair to that officer. You responded that the charging officer could have given a full account in her report. The hearing officer did not respond to your argument and she adjourned the hearing indefinitely to have the charging officer attend.

A/ADW Gemmill, presiding as the hearing officer, reconvened your hearing July 23 with you and the charging officer present. In response to your questions about the incident, the officer advised that you made comments about her job performance that she found insulting and that you were yelling at her. You disagreed with her testimony and advised the hearing officer that you wanted to call your witnesses. The hearing officer questioned the charging officer further and you repeated your request for witnesses.

When asked what your witnesses would say, you advised the hearing officer that you did not know and that those persons were present. The hearing officer commented that it sounded like you were saying things to the officer and you stated again that you wanted your witnesses. The hearing officer asked if they would say anything different and you advised that you did not know.

The hearing officer found you guilty of breaching s. 21 (1) (g), CAR without further comment about your request to call witnesses. She also provided no explanation for the guilty decision before she moved to the penalty phase of the hearing.

The hearing officer provided you an opportunity to make submissions for her consideration in reaching a penalty decision. She then reviewed your institutional records. She noted that you had no previous institutional charges and that your record of performance only contained a few negative comments. She imposed a penalty of four days segregation effective the date of segregation under s. 24, CAR but provided no explanation 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. She then concluded the hearing and provided you written reasons for her finding and penalty decisions.

Review Findings & Decision

During my review, I found that the following administrative and procedural errors affected fairness in this matter:

1. Inmate Offence Report

The circumstances, as written, did not provided sufficient detail to support the charge or to allow you to adequately prepare your response to it. The charging officer did not clearly describe the circumstances of the breach in her written report. It should have identified the specific behaviour(s) considered insulting and abusive. The absence of those details affected your right to know the case to be met.

2. Adjournment

The charging officer was not present when the hearing officer convened your disciplinary hearing July 22. An officer, whose role as a participant in the hearing was not identified, read the charging officer's report into the record after you pled not guilty to the charge. The record of the proceedings did not indicate that that officer was appointed as an investigating officer and the investigation section of the IOR was blank.

BC Corrections Branch – Adult Custody policy clearly requires the charging officer or the appointed investigating officer to give evidence at the hearing when an inmate enters a not guilty plea or refuses to plea.

The officer present at the hearing July 22 provided no other evidence or information related to the charge and it appeared that she was unable to do so when you challenged the charging officer's written report. Consequently, the hearing officer adjourned the hearing to have the charging officer attend.

I found that adjournment prejudicial and unfair to you because it needlessly delayed the conduct of the hearing under the circumstances. The charging officer had had an opportunity to clearly describe the circumstances of the breach in her written report and the centre had had ample opportunity to appoint an investigating officer to collect and give oral evidence in her absence.

3. Witnesses


You made requests throughout the hearing to call witnesses in your own defence. The hearing officer acknowledged your requests however she continued the hearing and found you guilty without advising that she would not call any of your witnesses or providing an explanation for not granting your requests. As such, her decision appeared arbitrary and it affected your right to reply to the charge.

4. Reasons for Decisions of Guilt and Penalty Imposed

The hearing officer provided you no explanation when she announced finding you guilty or announced her penalty decision. She did provide you written reasons after the hearing concluded. However, the hearing officer needed to state those reasons during the course of the hearing to justify her decisions and to demonstrate that they were not arbitrarily reached. Written reasons following the hearing serve to ensure that the inmate understands how the hearing officer came to his/her conclusions and to confirm the explanations given during the course of the hearing.

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, CAR and direct the person in charge to change your record to reflect the rescission. I am holding your file open pending confirmation of the centre completing 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. D. Hawboldt, Warden, ACCW
 Ms. S. Gemmill, Acting Assistant Deputy Warden – Hearing Officer



January 03, 2014 [mailed Jan 06](#)

59320-20/13-106

2320

s.22

s.22

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

Dear Ms. 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) (v), CAR.

Your disciplinary hearing concluded at Alouette Correctional Centre for Women (ACCW) December 28, 2013, and the Investigation and Standards Office (ISO) received your request for review dated December 30 via fax December 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 a digital video recording (DVR) entered as evidence. I did not view the DVR evidence as it was not viewed at your hearing because you confirmed that it would show you smoking.

The IOR indicated that an officer filed a charge against you December 25 under s. 21 (1) (v), CAR, which states, "An inmate must not use a tobacco product without permission." The charging officer specified, "*Inmate s.22 was observed via camera exiting s.15 smoking a cigarette.*"

Acting Assistant Deputy Warden (A/ADW) Giesbrecht, presiding as hearing officer, opened your disciplinary hearing December 28 with you and a security officer present. The record of the proceedings did not indicate the role of that officer in this matter; the charging officer was not in attendance.

You confirmed that you received a copy of the charge and that you read and understood it. You confirmed that you were aware of your right to seek legal counsel and you indicated that you were ready to proceed. The hearing officer read the charge to you and you entered a plea of not guilty.

The officer present read the written circumstances section of the IOR into the record. The report advised, "The actual cigarette was found and included as evidence." However, that evidence was not recorded under 'Physical Evidence (Description and Location)' in Part II of the IOR. The hearing

officer sent the officer to enquire about that evidence upon learning that another officer had it. The officer returned with the evidence, which the hearing officer described as a homemade cigarette.

You advised the hearing officer that the item contained s.15 . You also advised her that you did not make it however you knew what it contained because you told another inmate how to make it. You candidly admitted to smoking and acknowledged that it was unacceptable yet reaffirmed that you were not guilty of using a tobacco product. You suggested that if the hearing officer physically examined the item, she would see that it consisted s.15 s.15 .

The hearing officer adjourned the hearing to consult the officer that had had the evidence. Upon reconvening the hearing, she advised that she asked the officer whether the item was scanned and learned that the scanner s.15 She advised that she therefore had to make a determination based on a balance of probabilities.

The hearing officer subsequently concluded on a balance of probabilities that it was tobacco because the item looked like a burnt cigarette. You suggested again that she examine the item more closely but she did not do so. She found you guilty and explained that she reached that decision for the reasons discussed.

The hearing officer provided you an opportunity to make submissions for her consideration in reaching a penalty decision. She also reviewed your institutional records with you. She noted that you had one disciplinary conviction and that your Client Log (CLOG) contained very few negative reports. She subsequently imposed a penalty of 56 hours intermittent cellular confinement and 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 then concluded the hearing and provided you written reasons for her finding and penalty decisions.

Review Findings & Decision

1. Jurisdiction to Proceed

The charging officer was not present when the hearing officer convened your disciplinary hearing December 28. An officer, whose role as a participant in the hearing was not identified, read the charging officer's report into the record after you pled not guilty to the charge and then retrieved physical evidence at the hearing officer's request. She provided no other information related to the charge during the hearing.

BC Corrections Branch – Adult Custody policy clearly requires the charging officer or the appointed investigating officer to give evidence at the hearing when an inmate enters a not guilty plea or refuses to plea. It also outlines the responsibilities of an investigating officer, which include completing the investigation section of the IOR.

The record of the proceedings did not indicate that that officer was appointed as an investigating officer and the investigation section of the IOR was blank. I also found no indication at any time during the hearing that the officer had investigated the matter. I further found that the hearing officer assumed the role of investigating officer when she adjourned the hearing to consult another officer about the homemade cigarette.

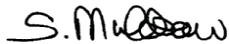
In light of the above, I found that the centre had no jurisdiction to proceed with your disciplinary hearing because the aforementioned essential precondition to do so was not appropriately fulfilled.

2. Decision

The charge specified using '*tobacco*' and therefore required actual evidence of tobacco. I therefore found it unreasonable for the hearing officer to conclude, on a balance of probabilities, that the homemade cigarette contained tobacco simply because it had the appearance of a cigarette and the appearance of black ash would be consistent with a cigarette. I agreed with your submission that the hearing officer should have taken the item out of the evidence bag and unrolled it or even just smelled it to determine if it contained tobacco. Consequently, I found the guilty decision unreasonable.

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, CAR and direct the person in charge to change your record to reflect the rescission. I am holding your file open pending confirmation of the centre completing 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. D. Hawboldt, Warden, ACCW
- Ms. J. Giesbrecht, Acting Assistant Deputy Warden – Hearing Officer



April 25, 2014

59320-20/13-090

2367

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

Dear Mr. s.22

I am writing in response to a letter dated April 24, 2014 submitted on your behalf by Mr. D. Donnelly, Barrister. The letter from your legal counsel requests a review of a disciplinary hearing into a charge under Correction Act Regulation, section 21(1)(o) held at Prince George Regional Correctional Centre (PGRCC) which concluded on April 16, 2014.

Pursuant to Correction Act Regulation, (CAR), section 29(1) a request for a review of a disciplinary hearing must be made in writing within 7 days of a decision being made. In this case, the request for review was written and submitted eight days after the conclusion of the hearing. A review of this hearing will not be conducted.

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
Ms. J. Hawkins, Warden, PGRCC
Ms. A. Love, Chairperson, PGRCC
Mr. D. Donnelly, Barrister



February 21, 2014 mailed Feb 24

59320-20/13-089
2335-9

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

Dear Mr. s.22 :

I am writing in response to your letter received on February 17, 2014 requesting a review of the dispositions imposed in five disciplinary hearings held at Prince George Regional Correctional Centre (PGRCC). Four of the hearings concluded on February 12 and a fifth hearing which concluded on February 17. Pursuant to Correction Act Regulation (CAR), Section 29(2), I reviewed the documents and audio recordings of the disposition sections of the five disciplinary hearings.

You were charged and found guilty of violating **CAR, Section 21(1)(w)**, on February 12. The hearing officer subsequently reviewed your disciplinary history and imposed a disposition of 30 days segregation commencing January 24 and expiring on February 22.

Upon review of the disposition for the charge under CAR, Section 21(1)(w), I noted that the hearing officer imposed the maximum segregation disposition available for a charge of this nature. He cited the seriousness of the charge, your nine previous charges under CAR, section 21(1), as well as your recent behaviour being sometimes acceptable and other times not acceptable. He also noted the substantial impact a code yellow has on the inmates and staff of a custody centre and indicated the risk of injury to yourself and staff was a consideration as well. The disposition was made in accordance with CAR, section 27(1)(d) and 27(2)(b) which allows a maximum penalty of 30 days segregation for this breach. The hearing officer also credited you with time served in accordance with CAR, section 27(3)(b).

I also reviewed your disciplinary history previous charges. On July 27, 2013 you plead guilty to a charge under CAR, section 21(1)(z.2)(ii) for which you received a disposition of 15 days segregation. On August 31 you plead guilty to a charge under CAR, section 21(1)(a) and received 7 days segregation. On September 2, you received a disposition of 21 hours intermittent cell confinement after being found guilty of a charge under CAR, section 21(1)(g). You were found guilty of CAR, section 21(1)(w) for assaulting an inmate on October 18 and received a disposition of 15 days segregation. The following day you received another disposition of 15 days segregation for fighting under CAR, section 21(1)(k). On October 30 you were found guilty of possessing contraband contrary to CAR, section 21(1)(y) and served 7 days segregation. Again on November 23 you were found guilty of a charge under CAR 21(1)(z.2)(ii) and received a disposition of 16 days segregation. On December 18 you were found guilty under CAR, section 21(1)(o) and received a disposition of 7 days

segregation. For a second time, you were found guilty of a charge under CAR, section 21(1)(y) for possession of contraband and received a 12 days segregation disposition.

*In light of your poor record of behavior at PGRCC, including a previous charge of assaulting a person, and the serious nature of this charge, the disposition of 30 days segregation is reasonable. Under the circumstances, I found no reason to alter the penalty imposed for the charge under CAR, section 21(1)(w) . **I am therefore confirming the decision and penalty pursuant to CAR, section 29(4)(a).***

You were charged and found guilty of violating **CAR, Section 21(1)(a)**, on February 12. The hearing officer subsequently reviewed your disciplinary history and imposed a disposition of 5 days consecutive to the CAR, Section 21(1)(w) charge noted above. Your disposition was to commence on February 23 and expire on February 27.

*Pursuant to CAR, section 27(3)(b) persons subject to segregation pending a hearing must be given credit for time served under CAR, section 24. As your violation report indicates you were in segregation under CAR 24(1)(b) on this charge since January 24 the hearing officer cannot make your disposition on this matter consecutive to the charge noted above. **Pursuant to CAR, section 29(4)(b) I am substituting a penalty to reflect your time served. Your new penalty of 5 days segregation commences on January 24 and expire on January 28.***

You were charged and found guilty of violating **CAR, Section 21(1)(z.2)(ii)**, on February 12. The hearing officer subsequently reviewed your disciplinary history and imposed a disposition of 20 days segregation concurrent to the CAR, section 21(1)(a) noted above. The disposition commences on February 23 and expires on March 14.

*Pursuant to CAR, section 27(3)(b) persons subject to segregation pending a hearing must be given credit for time served under CAR, section 24(1). As your violation report indicates you were in segregation under CAR 24(1)(b) on this charge since January 25, the hearing officer must consider this in making his disposition. **Pursuant to CAR, section 29(4)(b) I am therefore substituting a new penalty to reflect your time served.** A disposition of up to 30 days is allowable under CAR, section 27(2)(b). Based on the review of your poor corrections disciplinary record and the seriousness of the offence, the original disposition of 20 days segregation is not unreasonable. **I am therefore maintaining the penalty of 20 days segregation; however the disposition will now commence on January 25 and expire on February 13 to reflect your time served under CAR 24(1)(b) .***

You were charged and found guilty of a second charge under **CAR, Section 21(1)(a)**, on February 12. The hearing officer subsequently reviewed your disciplinary history and imposed a disposition of 5 days concurrent to the CAR, Section 21(1)(a) charge noted above. Your disposition was expected to commence on February 23 and expire on February 27.

*Pursuant to CAR, section 27(3)(b) persons subject to segregation pending a hearing must be given credit for time served under CAR, section 24. As your violation report indicates you were in segregation under CAR 24(1)(b) on this charge since February 11, the hearing officer may not make your disposition on this matter concurrent to the other charge. **Pursuant to CAR, section 29(4)(b) I***

am therefore substituting a new penalty to reflect your time served. Your new penalty of 5 days segregation will commence on February 11 and expire on February 15.

You were charged and found guilty of a charge under **CAR, Section 21(1)(y)**, on February 17. The hearing officer subsequently reviewed your disciplinary history. The hearing officer noted that you had fourteen previous CAR violations. You were confined to segregation on CAR, section 24(1)(a) and (b) pending hearing for this charge on February 16. The hearing officer subsequently made the disposition of 10 days segregation time concurrent to dispositions currently being served commencing on the date this breach occurred. Your disposition in this matter commenced on February 15 and expires on February 24.

Upon review of the hearing, the disposition imposed is reasonable as the principle of progressive discipline applies in this case. As noted by the hearing officer this is your third breach for a contraband offence and your fourteenth disciplinary matter. As the disposition was made in accordance with 27(2)(b) and CAR 27(3)(b) I found no reason to alter the disposition imposed in this hearing. I am therefore confirming the decision and penalty pursuant to CAR, section 29(4)(a).

I am directing that your record be amended to reflect the substituted penalties for the two charges under **CAR, Section 21(1)(a) and the charge under CAR, Section 21(1)(z.2)(ii).**

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
Ms. S. Pendleton, Hearing Officer, PGRCC



March 19, 2014
Mailed M20

59320-20/13-089
2348

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

Dear Mr. s.22 :

I am writing in response to a letter from your legal counsel, Mr. D. Donnelly, dated March 12, 2014 and March 16, requesting a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC). The hearing commenced on February 22 and concluded on March 10. In the second letter, your legal counsel indicated the grounds for requesting a review as follows:

- Lack of evidence
- Apprehension of bias
- Disposition imposed is disproportionate to the gravity of the offence

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 chairperson heard evidence from the charging officer and you. He also viewed a photograph of a damaged window. The chairperson found you guilty and imposed a disposition of 6 days segregation and forfeiture of 29 days of earned remission.

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

Reasons:


The evidence presented was not sufficient to establish on a balance of probabilities that you actually damaged the window.

The charging officer presented testimony that the window in a cell occupied by you and another inmate was damaged a short time after it was replaced. He indicated at the time you “took responsibility for doing the damage to the window.” The charging officer did not see who was responsible and indicated there was no other evidence either from the other inmate or from video evidence which would support the allegation. At the hearing you recanted this admission indicating you were “taking the rap for the other inmate” and indicated you therefore had not told the truth when interviewed by the charging officer. The charging officer indicated you did not give him the impression that you were dishonest when interviewed by him, however this is an opinion only and not a fact. The other inmate was not called to provide testimony.

Under the circumstances, the only evidence in this matter is that a window in a cell occupied by two inmates was damaged within an hour of it being installed. Without the admission of guilt there is insufficient evidence to determine which inmate caused the damage to the window or what caused the damage.

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
Ms. J. Hawkins, Warden, PGRCC
Mr. M. Tuck, Hearing Officer, PGRCC
Mr. D. Donnelly, Barrister
Prisoners' Legal Services



March 27, 2014
Mailed M28

59320-20/13-089
2353, 2354

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

Dear Mr. s.22 :

I am writing in response to a letter dated March 25, 2014 from Mr. D. Donnelly, Barrister, requesting a review of two disciplinary hearings held at Prince George Regional Correctional Centre (PGRCC).

The hearing into a charge under Correction Act Regulation, (CAR) section 21(1)(g) commenced on March 5 and concluded on March 18. The hearing into a charge under CAR, section 21(1)(z.2)(ii) commenced on March 6 and also concluded on March 18.

Your counsel submitted the following issues as grounds for requesting a review:

- A breach of natural justice in the panel process: Bias
- Abuse of process: The hearings were unduly delayed by the institution and the delay was prejudicial.
- The chairperson erred in law and fact regarding sentencing: The dispositions imposed exceeded the limits of CAR, section 27(3)(a) as you had been housed in the segregation unit from March 5.

Pursuant to CAR, section 29(2), I reviewed the documents and audio recordings of the disciplinary hearing. In reviewing the proceedings, I have determined that the disciplinary hearings were not conducted in an administratively and procedurally fair manner.

Summary:

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 chairperson heard evidence from the charging officer, and accepted your admission of guilt. The chairperson found you guilty and subsequently reviewed your disciplinary history and imposed a disposition of 10 days segregation commencing March 5 in accordance with CAR, section 27((2) (a) and CAR, section 27(3)(b).

You were charged and found guilty of violating CAR, section 21(1)(z.2)(ii) 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.” The chairperson heard the circumstances of the incident and a witness statement presented by an officer not involved in the incident, viewed a video recording of the incident and a photograph of broken sprinkler heads. She also accepted your admission of guilt.

The chairperson found you guilty and subsequently reviewed your disciplinary history and imposed a disposition of 30 days segregation to run consecutive to the disposition imposed in the hearing into the CAR, section 21(1)(g) charge. This disposition, which commenced on March 14, was made in accordance with CAR, section 27(2) (b). However, the disposition was not made in accordance with CAR, section 27(3)(b) as the chairperson did not consider the fact that since March 5 you had been subject to CAR, section 24(1)(b) on this charge. As a result, the disposition could not have been made consecutive to the other disposition and had to commence on the date of your placement on CAR, section 24(1)(b).

Disposition:

With respect to your legal counsel’s submission that the dispositions exceeded the 45 day limit under CAR, section 27(3)(a), I do not find that the chairperson imposed a dispositions contrary to CAR, section 27(3)(a) in these matters.

You have been continuously housed in segregation since January 23. You were subject to CAR, section 24 and serving dispositions from January 24 to February 24 on multiple breaches. Based on your client log it is unclear what your status was following the expiry of your dispositions until February 27 when you were placed on short term separate confinement under CAR, section 17. On March 2 you were placed on CAR, section 18 long term separate confinement status until you were placed on CAR, section 24 for the current breaches on March 5. While subject to separate confinement you were housed in the segregation unit, albeit with increased privileges not available to inmates serving dispositions.

CAR, section 27(3)(a) prescribes a 45 day limit for segregation for breaches pursuant to CAR, section 27(1)(d). The section is silent on time spent in a segregation unit for any other reason. As you were subject to separate confinement under CAR, section 18 at the time of the breaches and although you were being housed in the segregation unit, the dispositions imposed in these hearings were in accordance with CAR, section 27(3)(a).

As noted above, however, the disposition imposed for the CAR, section 21(1)(z.2)(ii) charge was not made in accordance with CAR, section 27(3)(b) as the chairperson did not consider the fact you had been subject to CAR, section 24(1)(b) since March 5 on this charge. As a result, the disposition should not have been made consecutive to the other disposition and had to commence on the date of your placement on CAR, section 24(1)(b).

Abuse of process:

Substantial delays occurred between the commencement and the conclusion of both hearings without reasonable cause. The audio record indicates these delays were caused solely and unnecessarily by the custody centre and were prejudicial to you as you were subject to segregation confinement under CAR, section 24(1)(b) on both charges. There were no reasons given on the record for the substantial delays caused by the custody centre nor were any witnesses called that could provide a reasonable explanation for the delays.

Both hearings were commenced within the limits defined under CAR, section 26(1). You requested and were granted adjournments in both cases to consult with legal counsel. The hearing into the CAR, section 21(1)(g) charge was adjourned on March 5 until a time between March 10 to 12 which was acceptable to you. The other hearing was adjourned on March 6 to a date before March 13 with your agreement.

On the record it was stated that you had engaged legal counsel by March 7 and the custody centre was notified in writing and verbally on March 8, and again on March 10, that you intended to plead guilty on both charges and that you wished to proceed to disposition on both matters by March 10. However, the custody centre unnecessarily delayed the resumption of both hearings. It was also stated on the record that your legal counsel repeatedly attempted to schedule dates to conclude these hearings as soon as possible. However, dates were not accommodated or were cancelled. It was also noted on the record that the custody centre failed to confirm alternative dates and times at the request of your legal counsel. Ultimately, it was noted on the record that although the March 18 date had not actually been confirmed by the custody centre, that your legal counsel took a chance and attended the custody centre on March 18 and that the custody centre concluded these hearings on that date.

Apprehension of Bias:

An inmate has a right to a hearing conducted by a neutral decision maker. A number of issues arose that created the apprehension of bias in both hearings.

During the disposition phase of the two hearings, the chairperson stated that your health issues don't give you reason for a free for all to abuse "our staff members that come here every day to perform a task." This reference aligns the chairperson with custody centre staff and creates the apprehension of bias that she is not a neutral decision maker.

Although the chairperson admitted having no expertise regarding your medical condition or the potential effects of this condition on s.22 she disregarded evidence of your medical condition as a mitigating factor in sentencing. There was no evidence presented by a qualified medical practitioner that may have refuted your claims of s.22 due to your medical condition. In the absence of qualified medical evidence to the contrary, the chairperson should have accepted your evidence in this regard.

The chairperson allowed a correctional officer to interrupt the sentencing proceedings with the presentation of hearsay evidence. This hearsay evidence was not previously disclosed to you or your legal counsel prior to the hearing and was therefore unexpected and prejudicial.

The chairperson also appeared to prefer the hearsay evidence from a correctional officer regarding observations made to her by sheriffs regarding your behaviour later in the day over your direct evidence regarding your medical condition and its impact on your behaviour. The correctional officer is not qualified medically to comment on this issue. The hearsay evidence was untested and therefore the chairperson should have accepted your evidence concerning your medical condition.

Due to the abuse of process and the apprehension of bias, I am rescinding the decisions made and the penalties imposed by the chairperson pursuant to CAR, section 29(4)(c). I am also directing that your records 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
Ms. S. Pendleton, Chairperson, PGRCC
Mr. D. Donnelly, Barrister (via fax)



October 3, 2013
Mailed 04

59320-20/13-063
2289

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

Dear Mr. s.22 :

I am writing in response to a letter from your legal counsel requesting a review of a disciplinary hearing held at Kamloops Regional Correctional Centre (KRCC). The hearing commenced on August 15, 2013 and concluded on September 25, 2013.

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 Section 21(1)(y), CAR which states that "An inmate must not attempt to obtain or possess contraband." The chairperson heard evidence from the charging officer and yourself. He also reviewed a document identified as an s.15 conducted by a correctional supervisor on August 14, 2013 s.15 that was found in your possession during a s.15 .

The chairperson found you guilty of the charge as you admitted to possessing and s.15 and the s.15 document indicated s.15 had tested positive for LSD. He found that on a balance of probabilities, it is likely that you s.15 this item because you knew you were in possession of contraband. He subsequently reviewed your current disciplinary history and imposed a disposition of 100 hours of intermittent cellular confinement based on the principle of progressive discipline.

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

Reasons:

Inmates have a right to have charges under Section 21(1), CAR heard by a neutral decision maker.

The chairperson elicited testimony from the inmate regarding his custodial and disciplinary history prior to making a determination regarding the inmate's guilt or innocence of the charge. The hearing officer then used this information to make an inference regarding what he believed the inmate should or would know of the potential consequences for the actions described on the inmate offence report.

An individual's prior custodial history may be useful as a factor in arriving at a fair disposition; however, it is not a factor in whether or not an inmate has or has not committed a specific offence under Section 21(1), CAR. Under the circumstances, an apprehension of bias was created by the chairperson having knowledge of the inmate's prior custodial history and using this as evidence in support of a finding of guilt in the hearing.

An inmate is entitled to present a full defence to the charge.

The inmate and the inmate's legal counsel raised issues regarding the admissibility and accuracy of the ion scanner report used as evidence against the inmate. A witness to address the issues was requested. The chairperson indicated the person who had conducted the ion scan and prepared the ion scan document was available to provide evidence; however, the chairperson did not call the potential witness to testify in the hearing.

Based on the reasons noted above, I am rescinding the decision made and the penalty imposed by the Hearing Officer pursuant to Section 29(4)(c), CAR. 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. D. Carnovale, Hearing Officer
Mr. K. Sommerfeld, Barrister & Solicitor (via fax)



September 4, 2013
Mailed S5

59320-20/13-074
2277

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

Dear Mr. 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) (b), CAR.

Your disciplinary hearing concluded at Ford Mountain Correctional Centre (FMCC) August 30, 2013, and the Investigation and Standards Office (ISO) received your undated request for review via fax September 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.

The IOR indicated that an officer filed a charge against you August 29 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, " s.22 left his worksite without permission and entered an out of bounds area in building 3 and CS Robertson's office."

Assistant Deputy Warden (ADW) Unger, presiding as hearing officer, opened your disciplinary hearing August 30 with you and an investigating officer present. You confirmed that you received a copy of the IOR and that you had had an opportunity to exercise your right to seek legal counsel. You advised that you were ready to proceed and the hearing officer then read the charge. You confirmed that you understood it and you entered a plea of not guilty.

The investigating officer read the written circumstances section of the IOR into the record and the hearing officer then heard your account. He subsequently found you guilty of breaching s. 21 (1) (b), CAR after outlining the evidence that lead him to reach that decision.

The hearing officer provided you an opportunity to make submissions for his consideration in reaching a penalty decision and he also reviewed your institutional records. He imposed a penalty of ten days segregation and forfeiture of five days earned remission. However, he did not provide you any explanation for his penalty 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 denied your request for a suspension of the penalty and he reminded you of your rights under s. 29, CAR. He then concluded the hearing and provided you written reasons for his finding and penalty decisions.

Review Findings & Decision

BC Corrections Branch – Adult Custody policy requires the charging officer or the appointed investigating officer to give evidence at the hearing when an inmate enters a not guilty plea or refuses to plea.

The investigating officer read the charging officer's written report into the record and advised that he spoke to the charging officer about the charge. When asked later if he asked the charging officer about explaining your work area to you, he advised the hearing officer that he did and that the charging officer specifically said that she told you where your work area was and not to leave it. The investigating officer provided no other evidence or information regarding the incident in question.

Contrary to Adult Custody policy, the investigating officer also did not complete the investigation section of the IOR or provide any indication of recording/collecting accounts of witnesses, staff and inmates who could give direct evidence; a synopsis of the incident; and other information or evidence directly related to the charge.

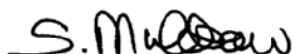
In review, the hearing officer heard no evidence or testimony to support the written allegation and rebut your account of the incident. While you acknowledged entering the building in question without staff permission, you provided a reasonable explanation for doing so. You also testified that, contrary to the written report, you had staff permission to leave your work area to use a washroom. Lastly, you testified that the officer that subsequently filed the charge advised you at the time of the alleged breach that you were not going to be charged.

Consequently, I found the decision of guilt reached in this matter unreasonable under the circumstances

I also found the penalty imposed in this matter unreasonable. The hearing officer provided you no explanation when he imposed it and he did not explain his decision when you asked him for an explanation. I also found that his written reason did not justify such a significant penalty.

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, CAR, and to direct the person in charge to change your record to reflect the rescission. I am holding your file open pending confirmation of the centre completing 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. DiCasteri, Warden, FRCC – FMCC
 Mr. D. Tosh, Deputy Warden, FMCC
 Mr. S. Unger, Assistant Deputy Warden – Hearing Officer



November 8, 2013
Mailed N12

59320-20/10-012
2296

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

Dear Mr. s.22 :

I am writing in response to your letter dated October 3, 2013 requesting a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC). The hearing commenced and concluded on October 3, 2013. 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 chairperson found you guilty as charged based on the testimony of the charging officer and comments you made during the hearing on the balance of probabilities. She subsequently reviewed your disciplinary history and client log and imposed a disposition of five days segregation. You were granted time served although you had not been in segregation subject to CAR, section 24(1).

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

Reasons:

Inadequate reasons were given by the chairperson in denying you a requested witness and access to potential video evidence. As a consequence, your ability to present your full defence was impeded.

During the hearing, you requested a potential witness. You believed there was an inmate in the health care area at the time of the incident who likely would have heard the verbal exchange between you and the charging officer. You were unable to provide the name of the potential witness and the chairperson advised you that "if you don't know the name I can't call him."

You also disputed the subsequent testimony of the charging officer when he said there were no other inmates in the vicinity. However, the charging officer's report and some of his testimony suggest there may have been other inmates in the vicinity at the time of the incident. Although you asked to look at the video of the area to verify there was a potential witness at the time of the incident; the chairperson did not view the video, nor did she offer any explanation for not viewing the video to clarify this matter of dispute.

Under the circumstances, the reason for denying the witness is inadequate as inmates cannot reasonably be expected to know the names of all inmates in a custody centre that may attend a common area such as the health care unit. The presence and identity of potential witnesses may have been determined by viewing the video and checking other records.

The chairperson improperly considered charges for which you had been found not guilty during previous disciplinary hearings in the determination of the disposition for this current charge.

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
Ms. J. Hawkins, Warden, PGRCC
Ms. S. Pendleton, Chairperson, PGRCC
Mr. D. Donnelly, Barrister and Solicitor



January 13, 2014 mailed Jan 13

59320-20/13-110

2323

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

Ms. s.22 ,

I am writing in response to your letter and a letter from Ms. S. Brown, legal advocate, Prisoners Legal Services requesting a review of the disposition imposed during a disciplinary hearing held at Alouette Correctional Centre for Women (ACCW). The hearing concluded on January 7, 2014. In the correspondence you and Ms. Brown submitted the following grounds for the review:

- The severity of the disposition is not proportional to the severity of the offence and degree of responsibility of the offender.
- The plea of guilty indicates you took full responsibility for your behaviour and acknowledged the severity of your actions.
- You provided background information as an explanation for your actions and expressed remorse and concern about the welfare of the officer.
- The disposition is punitive as it constitutes an excessive loss of liberty based on the original release date being January 23, 2014.
- There may be an apprehension of bias based on a correctional officer chairing the hearing and the victim of the offence also being a correctional officer.

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)(w) which states; "An inmate must not assault another person". The record of proceedings indicated that you were found guilty of assaulting a correctional supervisor (CS) at ACCW based on the charging officer's report, your admissions, and digital video evidence supporting the allegation. The hearing officer imposed a disposition of 30 days segregation and loss of 12 days of earned remission after reviewing your disciplinary history and behaviour since your admission in September 2013.

In reviewing the proceedings, I have determined that the hearing officer erred in imposing the disposition in this matter.

- Contrary to CAR, section 27(3)(b), the hearing officer did not grant you time served for the time you have already spent in segregation under CAR, section 24(1)(b) pending the conclusion of the hearing.
- The hearing officer did not give consideration to some potentially mitigating factors in determining disposition, namely that you took responsibility for the offence by pleading guilty and clearly understand the seriousness of the behaviour.
- The hearing officer only considered previous negative behaviour in determining disposition. Consideration should also be given to positive programming and activities you have engaged in since your admission.

With regard to the submissions made by you and your legal advocate, I have reviewed your disciplinary record and behaviour at the custody centre since your admission on remand s.22
s.22

The seriousness of this breach is substantial as it is an offence that can also result in charges for a criminal offence of assault. There was no evidence presented that the assault against the officer was provoked by her in any manner. The CS had only attended the unit to explain to you why you would not be attending an appointment. She was attempting to close your cell door as you were angry about the appointment cancellation, were being argumentative and escalating in your agitation. The CS was engaging in her duties appropriately in trying to confine you in your cell as this was necessary to ensure your safety as well as that of the officers attending your cell.

A code yellow resulted from your assault on the officer. This situation had a significant impact on the custody centre by disrupting the programming for other inmates and imperiling the safety of all staff that had to restrain you. Your explanations in the hearing do not justify your actions or mitigate your responsibility for causing harm to the CS. There was no evidence of remorse for your actions on the record nor was concern for the welfare of the staff you assaulted expressed. I note you did not offer to make an apology to the officer. You do however appear to understand the seriousness of your actions and your plea of guilty clearly indicates you are taking responsibility for the harm caused.

In reviewing your corrections records, I noted that you were admitted on remand on s.22
You were sentenced on November 28, 2013 to 81 days in custody with a warrant expiry date of February 16, 2014. You had earned 12 days remission at the time of the breach.

Your living unit behaviour for the first two months appears to have been excellent with the exception of an incident where you climbed on the roof of a building. The records show you voluntarily assisted on the living unit with cleaning and laundry duties. You were noted by many officers as being polite and respectful with staff and your peers. In October, although you were hired as a maintenance cleaner, you continued to engage in voluntary work on the unit for the benefit of the other residents. You were noted as being motivated and doing excellent work. You attended counseling and programming and successfully completed the Substance Abuse Management (SAM) program in November. Entries in your client log indicate you were cooperative with correctional staff and medical professionals during hospital escorts.

While there were notations in your file indicating some continuing positive behaviour in November and December, there are also reports of you receiving several warnings for engaging in unacceptable behaviours such as cell visiting, inappropriate physical contact with other inmates, and being on the wrong tier. As you apparently did not heed the warnings by repeating these behaviours and, also engaged in

verbally abusive behaviour toward correctional and nursing staff, you faced a number of charges in the past two months. You also were charged after an outburst in which you smashed living unit equipment. Entries also indicate you have engaged in kicking doors and chairs, and had conflicts with inmates on your unit.

Prior to this current breach, you had five previous breaches of the rules governing the conduct of inmates as follows:

- | | | | |
|----------------|----------|--------------|--|
| 1. November 18 | 21(1)(a) | plea: guilty | 16 hours intermittent cell confinement |
| 2. November 25 | 21(1)(g) | plea: guilty | 4 days segregation |
| 3. December 2 | 21(1)(g) | plea: guilty | 5 days segregation |
| 4. December 2 | 21(1)(d) | plea: guilty | 7 days segregation consecutive |
| 5. December 15 | 21(1)(a) | plea: guilty | 28 hours intermittent cell confinement |

To your credit, you have taken responsibility for your breaches in the previous charges as you did in the current hearing by pleading guilty. The circumstances of these breaches do however indicate a substantial pattern of disrespectful and abusive behaviour toward others that has escalated to the point that you assaulted the CS on January 6, 2014.

Your previous efforts in custody centre programming, pleading guilty to the current breach, and your apparent understanding of the seriousness of your actions are mitigating factors in determining your disposition on this offence. The circumstances and the seriousness of the assault and your pattern of very poor behaviour in the past two months however are severely aggravating factors. The seriousness of this unprovoked assault on an officer engaged in her lawful duty and the impact on the custody centre requires a substantial penalty as a deterrent to others and to you to avoid future incidents of this nature.

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 CAR, Section 29(4)(b). Your new penalty is 30 days segregation and 7 days loss of earned remission. I am also granting you two days time served pursuant to CAR, section 27(3)(b). Your segregation period therefore expires on February 3, 2014 rather than February 5, 2014. I am also directing that your record be amended to reflect the substituted penalty.

The hearing officer advised you that you may apply to her for a suspension or reduction of the disposition imposed CAR Section 27(4) and (5).

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
Ms. D. Hawboldt, Warden, ACCW
Ms. B. Mahoney, Hearing Officer, ACCW
Ms. S. Brown, Legal Advocate, Prisoners' Legal Services



April 09, 2014 mailed April 10

59320-20/13-064

2360

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

Dear Mr. 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 that concluded at Prince George Regional Correctional Centre (PGRCC) April 5, 2014.

Under section 29 (2), CAR, I obtained and examined the record of proceedings. It included a copy of the Inmate Offence Report (IOR), a digital video recording (DVR) entered as evidence and the audio recording of the hearing.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you at PGRCC April 4, 2014 under s. 21 (1) (w), CAR, which states, "An inmate must not assault or threaten another person." The charging officer specified: "*On April 2, 2014 at approximately 19:57 hours inmate s.22 (CS#s.22) assaulted inmate [name] in s.22 outside of cell s.22 by punching him in the jaw.*"

Assistant Deputy Warden (ADW) Pendleton, presiding as hearing officer, opened your disciplinary hearing April 5 with you and the charging officer present. She read the charge to you and you confirmed that you had received a copy of it and that you understood your right to seek legal counsel. You advised the hearing officer that you were ready to proceed and you entered a plea of guilty.

The charging officer read the written circumstances and an officer's witness statement from the IOR into the record. You advised the hearing officer that the witness could not have seen the incident because he did not know what had occurred until the inmate stated that you punched him.

The hearing officer viewed DVR evidence with you and the charging officer. She saw that it clearly showed you punch the other inmate in the jaw. She discussed the incident with you and you explained your actions to her. She did not however make any comment regarding your concerns about the witness statement. She subsequently found you guilty based on your admission of guilt and the DVR evidence.

The hearing officer then moved into the penalty phase of the hearing. She reviewed your institutional records with you and heard submissions from you and the charging officer before making her penalty decision. She explained the factors that she considered and imposed a penalty of 15 days segregation. She credited you for time served under s. 24, CAR pending the disciplinary hearing as well as time served in segregation under s. 17, CAR pending the outcome of an investigation of the incident that led to the charge.

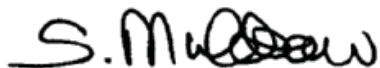
The hearing officer briefly advised you of your rights under s. 27(4) & (5), CAR to request a reduction or suspension of the penalty and under s. 29 (1), CAR to request a review of the decision made and the penalty imposed before she concluded the hearing. She provided you written reasons afterward for the guilty decision and the penalty imposed.

Review Findings and Decision

In review, I found your disciplinary hearing procedurally unfair because the hearing officer was involved in circumstances leading to the filing of the charge and therefore, as per s. 25 (2), CAR, could not be appointed to preside over your disciplinary hearing.

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 direct that the person in charge change your record to reflect the rescission. I am holding your file open pending confirmation of the centre completing 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, Adult Custody Division, Corrections Branch
- Ms. J. Hawkins, Warden, PGRCC
- Ms. S. Pendleton, Assistant Deputy Warden – Hearing Officer



August 28, 2013
Mailed A29

59320-20/12-148
2276

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

Dear Mr. s.22 :

I am writing to advise you of the outcome of the disciplinary hearing review that Prisoners' Legal Services (PLS) requested, on your behalf, 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) August 26, 2013, and the Investigation and Standards Office (ISO) received your request for review dated August 27 via fax that date.

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 IOR indicated that an officer filed a charge against you August 24 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, "Inmate s.22 disobeyed a direct order from SO Williams to remove the paper covering his lights."

Assistant Deputy Warden (ADW) Haggerty, presiding as hearing officer, opened your disciplinary hearing August 26 with you and an investigating officer present.

The hearing officer read the charge and you confirmed that you received a copy and that you read and understood it. You also confirmed that you were made aware of your right to seek legal counsel and that you had had an opportunity to exercise that right. You advised that you were ready to proceed and you entered a plea of not guilty.

The investigating officer read the written circumstances section of the IOR into the record and the hearing officer then heard your account. She subsequently found you guilty of breaching s. 21 (1) (a), CAR and she explained her decision before entering the penalty phase of the hearing.

The hearing officer provided you an opportunity to make submissions for her consideration in reaching a penalty decision. She then reviewed your institutional records and discussed them with you. She imposed a penalty of five days segregation effective the date of segregation under s. 24, CAR 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 then concluded the hearing and provided you written reasons for her finding and penalty decisions.

Review Findings & Decision

BC Corrections Branch – Adult Custody policy requires the charging officer or the appointed investigating officer to give evidence at the hearing when an inmate enters a not guilty plea or refuses to plea.

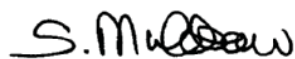
The investigating officer at your hearing provided no evidence or information related to the charge after he read the charging officer's written report. When the hearing officer asked him if he talked to the charging officer about the charge, he responded, "No."

Furthermore, contrary to Adult Custody policy, the investigating officer also did not complete the investigation section of the IOR or provide any indication of recording/collecting accounts of witnesses, staff and inmates who could give direct evidence; a synopsis of the incident; and other information or evidence directly related to the charge.

In review, the hearing officer heard no evidence or testimony to support the written allegation and rebut your account of the incident. Consequently, I found the decision of guilt reached in this matter unreasonable under the circumstances

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, CAR, and to direct the person in charge to change your record to reflect the rescission. I am holding your file open pending confirmation of the centre completing 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. E. Vike, Warden, KRCC
 Ms. T. Haggerty, Assistant Deputy Warden – Hearing Officer
 Mr. S. Cheung, Legal Advocate – PLS



March 20, 2014
Mailed M21

59320-20/13-128
2349

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

Dear Mr. 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 that concluded at Prince George Regional Correctional Centre (PGRCC) March 10, 2014.

The Investigation and Standards Office (ISO) received your letter dated March 17 via fax March 18. I asked centre management to have you call me because the intent of your letter was unclear, and you did so that afternoon.

We discussed the content of your letter and determined that you were not satisfied with the outcome of your hearing as well as the conduct of the officer named in your letter. I explained the local complaint process and our practice surrounding it to you, and I advised that ISO would review your disciplinary hearing.

Under section 29 (2), CAR, I obtained and examined the record of proceedings. It included a copy of the Inmate Offence Report (IOR) and the audio recordings of the hearing.

Record of Proceedings

The record of proceedings indicated that an officer filed a charge against you at PGRCC March 4 under 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." The charging officer specified: *"On Mar 4 2014 at 15:45 Inmate s.22 (CS s.22) behaved in an insulting and abusive manner by calling myself, Mr. s.22 a "goof" and a "faggot."*

Assistant Deputy Warden (ADW) Pendleton, presiding as hearing officer, opened your disciplinary hearing March 4 and subsequently adjourned it so you could seek legal counsel. She did so indefinitely with the expectation to proceed on March 9.

ADW Tuck, presiding as hearing officer, reconvened the hearing March 10 with you and the charging officer present. He confirmed the reason for adjournment March 4 and read the charge to you. You confirmed that you had received a copy of the charge and that you understood your right to seek legal counsel. You advised the hearing officer that you were ready to proceed and you entered a plea of guilty.

The charging officer read the written circumstances and a witness statement from the IOR into the record, and the hearing officer asked if you had any questions for the officer. You asked the officer why he called you "*a piece of* [expletive deleted]", and you advised that you had a witness that heard him say that. The charging officer denied your allegation.

The hearing officer questioned you about the witness and you advised that he would support your statement. You provided the witness's name and location, and the hearing officer summoned him to give evidence at the hearing. The hearing officer advised that you would not be able to ask your witness any questions and he then had staff place you in a holding cell before the inmate witness arrived.

The hearing officer heard your witness's testimony and questioned him with the charging officer present. While giving his account of the incident, your witness advised that he heard the officer call you "*a piece of* [expletive deleted]".

The hearing officer recalled you to the hearing room after excusing your witness, and advised you that your witness had given an account similar to your own but different as well. The hearing officer did not respond when you asked how it differed; he questioned you about the incident instead. He also questioned the charging officer and then asked him to recount the incident again.

The hearing officer provided you a final opportunity to make submissions before he reached his decision. You described several matters that you believed exacerbated the incident yet you took full responsibility for your actions. The hearing officer acknowledged your submissions and advised that he needed to determine what most likely happened based on a balance of probabilities. He advised you that he did not believe your version of events because your testimony seemed very pat and your witness's version was completely the same as your own until you changed it, 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, explained the seriousness of breaching s. 21 (1) (g), CAR and heard your submissions before making his penalty decision. The hearing officer advised that he would impose a penalty of 7 days segregation effective the date of the breach on the condition that you made a sincere apology to the charging officer. You did so and the officer accepted your apology, and the hearing officer subsequently confirmed your penalty.

The hearing officer advised you of your right under s. 29 (1), CAR to request a review of the decision made and the penalty imposed before he concluded the hearing.

Review Findings and Decision

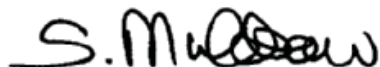
In review, I found your disciplinary hearing procedurally unfair for the following reasons:

- The hearing officer had you removed from the hearing room without explanation before your witness arrived, which contravened your right to be present throughout the entire hearing subject to s. 26 (2) & (3), CAR.
- The hearing officer did not allow you to question your witness directly or indirectly, thus denying you a full opportunity to present your defence.
- The hearing officer allowed the charging officer to remain in the hearing room while your witness gave his testimony in your absence, which created a reasonable apprehension of bias favouring the officer.
- The hearing officer did not summarize your witness's testimony or provide you its gist when he recalled you to the hearing room. The absence of disclosing that information prejudiced your defence and it placed you at a distinct disadvantage when the hearing officer questioned you and the charging officer following that testimony.
- Lastly, upon recalling you to the hearing room after excusing your witness, the hearing officer advised that your witness had given an account similar to your own but different as well. I found that statement misleading and unfair because you had not yet given an account of the event or been provided an opportunity to do so.

You had only alleged that the charging officer called you "*a piece of [expletive deleted]*" and stated that you had a witness to support that allegation. Your witness's testimony corroborated the allegation and, thereby, your defence of provocation. The remainder of his testimony could not and did not differ from your account because you had not provided one at that time.

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 of the centre completing 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, Corrections Branch
 Ms. J. Hawkins, Warden, PGRCC
 Mr. M. Tuck, Assistant Deputy Warden – Hearing Officer



June 6, 2014
Mailed J9

59320-20/13-112
2386

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

Dear Mr. s.22 :

I am writing in response to a letter dated May 23, 2014, written on your behalf from Mr. D. Donnelly, Barrister, requesting a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC). The hearing commenced on April 29 in your absence as you chose not to attend. The hearing was reopened on April 30 with your attendance and adjourned for you to consult with legal counsel. The hearing concluded on May 21.

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

You were charged and plead not guilty to violating 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." The record of proceedings indicated that you were found guilty. The hearing officer imposed a disposition of 15 days segregation consecutive to a previous disposition ending on May 1. You were granted time served.

The following three grounds were submitted for review:

1. There is a reasonable suspicion of systemic bias due to the fact that the chairperson is a correctional officer employed at the correctional centre and is not independent of the process.

A correctional officer chairing a disciplinary hearing does not automatically constitute a bias. Correctional officers attend training in order to conduct disciplinary hearings and, as with any administrative proceeding, there is a duty for the person chairing the proceeding to be fair and reasonable in their decision making. When I reviewed your hearing, I did not find the hearing officer to be involved in the investigative or charging process in this matter. Although I found that the hearing officer made some errors in the proceedings, I did not find there to be a bias on the part of the hearing officer in his conduct of the hearing.

2. The finding of guilt was based on the speculative evidence of the charging officer that the accused knocked the light down. The only eyewitness was the accused.

The charging officer speculated that you “ripped” the light fixture from the ceiling and believed that was the cause of the banging he heard coming from the cell. Alone, this would have been insufficient to prove the charge. Although not fully articulated by the hearing officer, there was sufficient evidence presented in the hearing that supported a finding of guilt on the balance of probabilities for recklessly damaging property that is not the inmate’s property. The following evidence was presented in the hearing in support of the charge.

- The inmate was the sole occupant of the cell during the reported events.
- The inmate testified he told the charging officer there was smoking and burning coming from the light.
- The charging officer attended the cell and stated the inmate “may have mentioned smoke” and that there was an unidentified “faint odor.”
- He also testified that he saw “no flames in the cell.”
- The charging officer stated that the supervisor of records attended the cell.
- The charging officer provided hearsay evidence that the supervisor advised him that “everything appeared fine” after inspecting the area.
- The charging officer saw the light before the inmate was returned to the cell after the supervisor’s inspection. He saw it was attached to the ceiling.
- The inmate and charging officer both stated the inmate was put back into the cell.
- The inmate testified he was on the bench and leaning on the light with his arms when it popped out of the ceiling.
- The inmate says he then banged to get someone to attend.
- The inmate’s evidence that after the light fell, he was banging to get the officer’s attention is supported by the written statement of another correctional officer who wrote a witness statement saying: “At 1200 hours the inmate was banging on the door because of a smell of smoke in his cell (s.22) – he was the lone occupant. On inspection the light was hanging by its wires out of the ceiling.”
- The charging officer and the other officer both attended the cell and observed the light dangling from the ceiling.
- Photographs show:
 - A screw still in the ceiling and one still in the light fixture.
 - An empty hole in the ceiling.
 - The light fixture dangling from the ceiling by a length of electrical conduit.

The preponderance of the evidence presented in the hearing, which includes your admission, supports the charge that you recklessly damaged the property of the custody centre.

3. The work report for the light repair was requested and not disclosed to the defence.

The photographs show the obvious damage to the light fixture which resulted in the charge. Testimony confirmed that a light fixture previously affixed to the ceiling was observed dangling by an electrical conduit into the cell. A repair report would also likely confirm the light fixture was dislodged from the ceiling. The repair report may or may not also reveal there was some other kind of issue such as electrical damage. It would be unlikely, however, to offer an alternative explanation on why the light fixture was dangling and therefore is unnecessary to this proceeding.

Upon review of the disposition and your current custodial history, I noted you have had nine previous charges for various breaches since your admission in s.22 . The hearing officer failed to fully review your disciplinary history before imposing a disposition.

Since March 20, 2014 you have served the following segregation dispositions totalling 50 days segregation consecutively:

- March 20, 2014 - 21(1)(c) - 10 days segregation from Mar 20 - 29, 2014
- March 27, 2014 - 21(1)(g) - 15 days segregation from March 26 - Apr 9
- April 17, 2014 - 21(1)(a) - 5 days segregation from April 9 - 13
- April 17, 2014 - 21(1)(a) - 10 days April 13 – 22
- April 17, 2014 - 21(1)(a) - 10 days April 22 – May 1

Under the circumstances, although you have been subject to s. 24(1)(b), CAR on this charge since April 28, a hearing officer may not impose a further segregation disposition on you. Pursuant to s. 27(3)(a), CAR, consecutive terms of segregation must not exceed 45 days. The hearing officer however imposed a 15 day segregation disposition commencing on May 1 and expiring on May 16, which in effect resulted in a 65 day consecutive disposition which contravenes, s. 27(3)(a), CAR.

The hearing officer clearly advised you of the operational impact on the custody centre due to your reckless actions. Your ongoing negative behaviour has also resulted in your spending a considerable amount of time segregated from other inmates and not being able to access available programming. Taking some time to think about the potential consequences of your actions might deter you from making such poor decisions in the future.

As there was sufficient evidence to find you guilty of the charge, I am confirming the decision made. However, I am substituting the penalty imposed by the hearing officer pursuant to s. 29(4)(c), CAR. As you are a remand inmate and I am mindful that you have already served a significant time in segregation pending this charge, I am substituting a reprimand for the disposition imposed by the hearing officer.

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
Mr. M. Tuck, Hearing Officer, PGRCC
Mr. D. Donnelly, Barrister henrydavidlaw@live.ca



June 10, 2014
Mailed J11

59320-20/13-112
2391

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

Dear Mr. s.22 :

I am writing in response to a letter dated June 9, 2014, written on your behalf by Mr. D. Donnelly, Barrister requesting a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC). The hearing commenced on April 30 and concluded on June 3.

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)(d), CAR which states that "An inmate must not wilfully or recklessly damage or destroy property that is not the property of the inmate." The chairperson heard evidence from the charging officer and yourself. The chairperson found you guilty. He subsequently imposed a disposition of three days segregation (time served) as you had been subject to segregation pending under, s. 24(1)(b), CAR.

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

Insufficient evidence was presented by the centre to support a finding of guilt:

The evidence of the charging officer was insufficient to prove a charge that the inmate had either wilfully or recklessly damaged custody centre property. He testified only that a smoke detector cover was found by another officer on the exercise run. After inspection of "each cell" it was determined that the cover was missing in the inmate's cell. The inmate was the sole occupant of the cell at the time the cover was found. It was also confirmed that the inmate had a roommate the previous day, suggesting there was an alternative explanation for the cover being removed. He also testified that a cell frisk was done at 8:30 a.m. and it was not noticed if the smoke detector cover was missing.

In order to prove a charge under, s. 21(1)(d), CAR there must be reliable evidence that the inmate either intended to damage centre property or had engaged in reckless behaviour that caused damage to the centre's property. The inmate was not seen removing the cover, nor was there any evidence presented of the inmate putting the cover in the exercise run or whether that occurred before or after the cell inspection. Under the circumstances, there is no evidence which supports a charge under s. 21(1)(d), CAR.

The hearing officer misinterpreted the inmate's testimony:

He stated in his reasons for finding the inmate guilty that the inmate had testified that both he and his roommate had not removed the smoke detector cover. In his written reasons he noted he found the inmate guilty based on the charging officer's evidence and the inmates "self incriminating statements." The inmate had in fact said he did not remove the cover and he did not know if his roommate had removed the cover.

Apprehension of bias:

The hearing officer did not review the available evidence in a neutral manner as he provided additional testimony which presumed facts not in evidence. The hearing officer then relied on his own testimony and a misinterpretation of the inmate's testimony to find the inmate guilty.

The hearing officer provided testimony that smoke detector covers are "substantial" and he "knows the cell is inspected every day." He stated that he "is quite certain" it would have been noticed if it was gone in the morning inspection. As noted above, the charging officer had only indicated it was not noticed as missing during a cell frisk.

The hearing officer did not adequately review the inmate's disciplinary history before imposing the disposition:

The hearing officer only reviewed the inmate's recent behaviour. He did not adequately review the inmate's previous disciplinary matters, although he refers to the inmate having "a multitude of prior charges."

Pursuant to s. 27(3)(a), CAR, consecutive terms of segregation must not exceed 45 days. The hearing officer however imposed a three day segregation disposition commencing on April 30 and expiring on May 1 after the inmate had already been subject to segregation dispositions totalling 47 days. The imposed disposition contravenes s. 27(3)(a), CAR.

Based on the reasons noted above, I am rescinding the decision made and the penalty imposed by the hearing officer pursuant to s. 29(4)(c), CAR. 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, B.C. Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division
Ms. J. Hawkins, Warden, PGRCC
Mr. J. Peters, Hearing Officer, PGRCC
Mr. D. Donnelly, Barrister henrydavidlaw@live.ca



May 27, 2014
Mailed M28

59320-20/13-112
2385

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

Dear Mr. s.22 :

I am writing in response to a letter written on your behalf by Mr. D. Donnelly, Barrister, dated May 23, 2014 requesting a review of a disciplinary hearing held at Prince George Regional Correctional Centre (PGRCC). The hearing commenced on April 21 and concluded on May 21.

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, s. 21(1)(p) which states that "An inmate must not provide a false or misleading statement to a staff member." The charging officer provided hearsay evidence concerning an alleged "false or misleading statement." However, he admitted he was unable to answer any questions regarding this event, as he was not present during the event. The chairperson accepted your evidence that you had made the statement; however, he did not accept your denial that the statement was made to a staff member or that it was not intended to be made to a staff member. He based his finding of guilt on the untested written statement of a witness. He subsequently imposed a disposition of five days segregation (time served).

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 provide sufficient evidence to prove the charge under CAR, section 21(1)(p).
- The absence of a required witness impaired your ability to make a full defence to the charge.

To prove a charge under CAR, s. 21(1)(p) requires evidence that an inmate has made a statement to a staff member with the intention of providing false or misleading information to that staff member.

In this case, your evidence was the only direct evidence presented concerning the alleged “false or misleading statement.” You testified that although you had made the alleged statement, it was said in a joking manner to another inmate and was not said to a staff member of the institution. You also testified you did not intend to make a “misleading or false statement” to a staff member.

As noted above, the custody centre presented only hearsay evidence regarding what was said to an officer and a written statement from the officer who alleged the statement was made to him. The custody centre was unable to provide the correctional officer that made the written statement as a witness when requested by yourself and your counsel. This officer was the only potential witness that could provide additional direct evidence of the event and respond to any questions concerning the alleged “false or misleading statement.” The chairperson therefore had no basis upon which to prefer the written statement of the witness over your direct testimony, as the credibility of the written statement could not be tested.

Under the circumstances, the absence of the requested witness impaired your ability to make a full defence to the charge. As the potential witness was not available to address the disputed issue there is also no direct evidence that refutes your version of events. Therefore, there is insufficient evidence to support the charge.

Based on the reasons noted above, I am rescinding the decision made and the penalty imposed by the chairperson pursuant to CAR, s.(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. Richard, Chairperson, PGRCC
Mr. D. Donnelly, Barrister henrydavidlaw@live.ca



March 26, 2014
Mailed M27

59320-20/13-134
2356

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

Dear Mr. s.22 :

I am writing to advise you of the outcome of the review that your lawyer, Mr. K. Sommerfeld, requested on your behalf under Section 29 (1), Correction Act Regulation (CAR), for your disciplinary hearing that concluded at Kamloops Regional Correctional Centre (KRCC) March 18, 2014.

The Investigation and Standards Office (ISO) received the request for review dated March 25 via fax March 26.

Under s. 29 (2), CAR, I obtained and examined the record of proceedings. It included the Inmate Offence Report (IOR), the audio recording of the hearing and a photograph presented as evidence at the hearing.


The record of the proceedings indicated that an officer filed a charge against you February 24 under s. 21 (1) (d), CAR, which states, "An inmate must not willfully or recklessly damage property or destroy property that is not property of the inmate."

It further indicated that the centre opened your hearing February 27 and subsequently adjourned it that date to allow you an opportunity to seek legal counsel. It reconvened the hearing March 18 and you entered a plea of not guilty. You were subsequently found guilty and received a penalty of two days segregation.

Upon reviewing the proceedings, I found that the audio recording for the continuation of your hearing March 18 was incomplete.

Consequently, I have exercised my authority under s. 29 (4) (c) (i), CAR, to rescind the decision made and the penalty imposed under Section 27, and direct that that the person in charge change your record to reflect the rescission. I am holding your file open pending confirmation of the centre completing 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, Adult Custody Division, Corrections Branch
Mr. E. Vike, Warden, KRCC
Mr. J. Lumley, Assistant Deputy Warden – Hearing Officer
Mr. K. Sommerfeld – Lawyer (via fax)



November 5, 2013
Mailed N6

59320-20/13-082
2302

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

Dear Ms. 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 Alouette Correctional Centre for Women (ACCW) October 26, 2013, and the Investigation and Standards Office (ISO) received your request for review dated October 31 via post November 4.

I noted that ACCW had originally faxed your request October 31 however it directed it to 250-387-6411, which is not ISO's fax number. Our fax number is 250-356-9875. I made further enquiries and learned that the fax number in question belongs to the office of the Minister of Justice and Attorney General. Unfortunately, the error delayed your disciplinary hearing review. I have notified the warden, by copy of this letter, to ensure that the error does not reoccur.

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) entered as evidence.

The IOR indicated that an officer filed a charge against you October 25 under s. 21 (1) (k), CAR, which states, "An inmate must not physically fight with another person." The charging officer specified, "*I/M s.22 was seen engaged in a physical fight with [another inmate].*"

Assistant Deputy Warden (ADW) Draaisma, presiding as hearing officer, opened your disciplinary hearing October 26 with you and a security officer present. The record of the proceedings did not indicate the role of that officer in this matter; the charging officer was not in attendance.

You confirmed that you received a copy of the charge and that you read and understood it. You confirmed that you were aware of your right to seek legal counsel and you indicated that you were ready to proceed. The hearing officer read the charge to you and you entered a plea of not guilty.

The officer present read the written circumstances section of the IOR into the record. You disagreed with the written report, which alleged that you exchanged punches with the other inmate, and you gave your account of the incident.

You explained that you spoke with an officer earlier that day about your recent verbal outbursts directed at other persons and received some guidance to help you avoid conflicts with people. When the other inmate involved approached you, you told her that you did not want to talk to her. You had had ongoing issues with each other and you wanted to avoid another verbal confrontation with her. The inmate then attacked you.

The hearing officer viewed DVR evidence with you and felt that it showed you throwing punches at the other inmate. You disagreed. You pointed out that you had nowhere to go when the inmate attacked you. You advised that you were just trying to grab her and that you repeatedly told her to stop. You also advised that you did not remember much as it happened so fast.

The hearing officer still felt that the DVR showed you exchanging blows with the other inmate. She watched it with you again and your respective views remained unchanged. She agreed that mitigating factors existed however she felt that evidence supported the charge of fighting and she therefore found you guilty.

The hearing officer provided you an opportunity to make submissions for her consideration in reaching a penalty decision. She also reviewed your institutional records with you. She noted that you had three previous disciplinary convictions and that your Client Log (CLOG) contained several recent reports concerning negative interactions with your peers.

The hearing officer subsequently imposed a penalty of eight days segregation effective the date of the breach under s. 24, CAR. She explained that although she took into consideration that you did not start the fight, you were involved in it and you were punching the other inmate.

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. You asked the hearing officer to consider five or six days in segregation and she reduced the penalty to six days. She then concluded the hearing and provided you written reasons for her finding and penalty decisions.

Review Findings & Decision

1. Jurisdiction to Proceed

The charging officer was not present when the hearing officer convened your disciplinary hearing October 26. An officer, whose role as a participant in the hearing was not identified, read the charging officer's report into the record after you pled not guilty to the charge. She provided no other evidence or information related to the charge, and she did not speak again during the hearing.

BC Corrections Branch – Adult Custody policy clearly requires the charging officer or the appointed investigating officer to give evidence at the hearing when an inmate enters a not guilty plea or refuses to plea. It also outlines the responsibilities of an investigating officer, which include completing the investigation section of the IOR.

The record of the proceedings did not indicate that that officer was appointed as an investigating officer and the investigation section of the IOR was blank.

I also noted that the charging officer was not directly involved in the incident. He reported in the written circumstances of the IOR that he “conducted an investigation after the incident.”

Consequently, the officer that attended the hearing would have had to reinvestigate the incident if she had in fact been appointed as an investigating officer to participate in the hearing.

In light of the above, I found that the centre had no jurisdiction to proceed with your disciplinary hearing October 26 because the aforementioned essential precondition to do so was not appropriately fulfilled.

2. Decision

I found that the DVR evidence supported your account. It showed you sitting alone at a table when the other inmate approached you. You remained in your chair and you did not shift it or your body while speaking with the inmate. She attacked you and it appeared unexpected. The direction of her attack forced you into a confined space and your arms flailed as you grappled with her. While I found it difficult to interpret any of those movements as punches, I found it reasonable to conclude, on a balance of probabilities, that your actions were defensive given that the other inmate was assaulting you. I therefore found the guilty decision unreasonable.

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, CAR and direct the person in charge to change your record to reflect the rescission. I am holding your file open pending confirmation of the centre completing 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. D. Hawboldt, Warden, ACCW
 Ms. M. Draaisma, Assistant Deputy Warden – Hearing Officer



September 9, 2013
Mailed S9

59320-20/13-075
2278

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

Dear Mr. s.22 :

I am writing in response to a letter received on September 5, 2013 requesting a review of a disciplinary hearing held at Fraser Regional Correctional Centre (FRCC) on August 22. 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; "An inmate must not unless unreasonably provoked by that person, behave in an insulting or abusive manner." You plead not guilty to the charge. As the charging officer was absent the investigating officer read the allegation into the record. The chairperson heard evidence from you alone due to the absence of the charging officer. The investigating officer indicated he had no evidence to provide at the hearing. The chairperson found you guilty and imposed a disposition of 15 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:

The custody centre must present sufficient evidence to support the charge in order to find an inmate guilty.

In this hearing there was insufficient evidence presented by the custody centre as you were refuting the allegation made by the charging officer. The custody centre provided no evidence in the hearing in support of the allegation written on the inmate offence report. The charging officer was not present to present his testimony and the investigating officer had no evidence to present at the hearing.

An inmate must have an opportunity to present his defence to the charge.

You requested the opportunity to question the charging officer as you refuted his allegation. The charging officer was not produced nor was the hearing adjourned for the charging officer to attend and answer questions. You also requested the presence of inmate witnesses that you believed would support your testimony. The chairperson did not produce the witnesses nor did he indicate he was accepting of the potential evidence you believed they would present.

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. S. DiCasteri, Warden, FRCC
Mr. T. Kienas, Chairperson, FRCC



January 6, 2014
Mailed J7

59320-20/13-107
2321

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

Dear Ms. s.22 :

I am writing in response to your letter dated January 3, 2014 requesting a review of a disciplinary hearing held at Alouette Correctional Centre for Women (ACCW). The hearing concluded on December 28, 2013. In your letter you indicate the grounds for requesting a review are as follows:

- There was no evidence that the substance being smoked was tobacco and the charge under 21(1)(v) states specifically that "An inmate must not use a tobacco product without permission."
- The alleged "cigarette" was confiscated but not produced in evidence as requested.

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)(v) which states that "An inmate must not use a tobacco product without permission." The hearing officer saw digital video recording evidence which showed you smoking "what appears to be a lit cigarette" and heard evidence from you. You denied the substance was a "tobacco product" and asked for the hearing officer to examine the evidence which was stated as being confiscated by the attending officer. The hearing officer said the evidence was not available for your hearing.

The finding of guilt was based on an assumption made by the hearing officer that tobacco products are normally smoked and that you did not prepare the "cigarette" so cannot know what the substance was.

She subsequently reviewed your disciplinary history and imposed a disposition of 56 hours of intermittent cell confinement.

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

Reasons:

Insufficient evidence was presented to prove a charge under CAR, Section 21(1)(v). Evidence requested by the accused was not produced thereby limiting the accused person's ability to present her full defence.

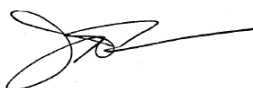
The charge specifically states that an inmate must not use "a tobacco product." It is therefore required that the custody centre must provide evidence that a "tobacco product" was being used pursuant to CAR, Section 21(1)(v).

The circumstances on the violation report state you were seen puffing on "what appears to be a lit cigarette" with other inmates. The inmate offence report also states that this item was confiscated by the officer that intervened in the incident but does not identify the substance being smoked. The custody centre presented no evidence that the cigarette was a tobacco product. The digital video recording evidence presented was insufficient to prove that the substance being smoked was a tobacco product.

You also requested the confiscated evidence for examination as you believed it would prove the substance being smoked was not "a tobacco product." This evidence was not provided for your hearing, which limited your ability to present your full defence to this 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

/dk

c: Mr. B. Merchant, Assistant Deputy Minister, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Ms. D. Hawboldt, Warden, ACCW
Ms. J. Giesbrecht, Hearing Officer, ACCW



November 21, 2013
Mailed N22

59320-20/13-086
2307

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

Dear Mr. s.22 :

I am writing in response to your request for a review of a disciplinary hearing held at Kamloops Regional Correctional Centre (KRCC). The hearing concluded on November 18, 2013. You indicate the grounds for requesting a review are as follows:

- The location of the alleged breach was incorrect on the inmate offence report.

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)(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.” The hearing officer heard evidence from the charging officer and yourself. He found you guilty as charged. He subsequently reviewed your disciplinary history from November 1 and imposed a disposition of 25 hours of intermittent cell confinement to commence when you are placed on a regular living unit.

You indicated that you feel you should not have been found guilty as charged by the hearing officer as the location of the breach was noted as cell s.22 on the inmate offence report. You testified that your cell number is #s.22 not #s.22 You also denied calling the charging officer a name as alleged in the report.

Clearly the charging officer wrote the wrong cell number on the inmate offence report. However, the hearing officer questioned both you and the charging officer and determined that you and the officer were face to face at your cell door. You agreed with the officer’s testimony that you spoke with the charging officer at your door and asked to speak to a correctional supervisor. The charging officer testified that she denied your request and that as she turned to walk away from your cell door she heard you call her an insulting name.

Based on the testimony presented during the hearing by both you and the charging officer, the actual cell number being stated as incorrect on the inmate offence report does not appear to significantly alter the circumstances of the breach. It was also determined that another inmate was in your cell and therefore could have been a witness to the incident. Although you claimed the insulting statement could have come from someone else, you did not request the potential witness that may have supported your claim.

In determining the guilt or innocence of an accused in an administrative proceeding such as a disciplinary hearing, a hearing officer must weigh the evidence heard to determine if it was more probable that the breach occurred as alleged or less probable that the breach occurred. In this case, as the evidence that you committed the breach is marginally greater, the hearing officer determined you were guilty as charged.

I am therefore confirming the finding of guilt in this case.

However, in reviewing the proceedings, I have determined that the disposition was not conducted in accordance with s. 27(1)(c), CAR. The hearing officer noted you were currently subject to an enhanced supervision program and so indicated the disposition of 25 hours intermittent cellular confinement was to be satisfied upon your return to a regular living unit. The hearing officer does not have the option of deferring a penalty until an inmate's classification changes under this section. I also found that the hearing officer did not provide written reasons for the disposition he imposed upon you as required in adult custody policy.

Based on the reasons noted above, pursuant to s. 29(4)(c), CAR, I am confirming the decision made and substituting a new penalty for the penalty imposed by the hearing officer.

I have therefore reviewed your disciplinary history and behaviour during your current custody period, which commenced on September 10. During this time period you have been subject to enhanced supervision programming and were also found guilty of a charge under s. 21(1)(w), CAR. You received a disposition of 10 days segregation for entering another inmate's cell and assaulting him. Your client log also indicates other incidents of you entering other inmates' cells and for being on the wrong tier. There are multiple incidents of you receiving warnings for not complying with the lock up times required on the enhanced supervision. I also noted a number of incidents where you have engaged in disrespectful behaviour toward several staff members.

To your credit, you have recently on two occasions managed to control yourself and not engage in negative behaviour during some difficult circumstances. I also note you have repeatedly made requests for core programming to assist you with your behavioural issues. Many living unit officers have noted satisfactory behaviour on your client logs as well.

Calling an officer an insulting name after she denies a request is unacceptable as it is highly disrespectful. You have the alternatives of submitting a written request or an inmate complaint form rather than engaging in unacceptable behaviour such as this. As you have been warned previously for engaging in similar negative behaviour, the disposition imposed should act as a deterrent to you in the future.

Pursuant to s. 27(1)(d), CAR, I am imposing a penalty of two days segregation to commence today. I am also directing that your record be amended to reflect the substituted penalty.

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, Corrections Branch
Mr. P. Coulson, Provincial Director, Adult Custody Division, Corrections Branch
Mr. E. Vike, Warden, KRCC
Mr. J. Guizzo, Hearing Officer, KRCC



October 15, 2013 mailed Oct 18

59320-20/FILE
2293

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

Dear Mr. 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 September 30, 2013.

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 CAR section 21 (1) (w) which states that “an inmate must not assault another person.”

You pled guilty to assaulting a staff member by throwing water on him and received a disposition of 30 days segregation to be served consecutively to any other current disposition. At the time of this hearing you were serving a disposition of 10 days that ended on October 6, 2013 and the 30 day segregation sentence was to start from that date and run until November 4, 2013

During my review I noted the following:

- You pled guilty. You were very frank in your testimony about what you had done and why. You did not however express any remorse or acknowledge that your actions were in any way wrong.
- You threw water and testified that you would not like feces to be thrown at you and therefore you wouldn't throw them at anyone else. However, the act of throwing any liquid on another person is unsettling precisely because the victim cannot be sure what the liquid contains. You accompanied your actions with the remark “you are lucky it's not piss.”
- You claim that you s.22 . The hearing officer did not address your claim s.22
- The charging officer was not present at the hearing. While this was not an issue regarding the determination as you pled guilty, it did mean that it was not possible to hear the officer's views of this incident.

- The hearing officer did not provide any detailed reasons why this case merited a maximum segregation disposition, only noting that it was a serious assault and that your history and the evidence in this matter support a maximum penalty.
- This is your first institutional charge for assault. You had one previous charge for fighting (for which you were acquitted) and four others for insulting and abusive behaviour. Your CLOG lists many verbal outbursts from you.

I have determined that the disposition awarded in this case was excessive considering the circumstances presented at the hearing.

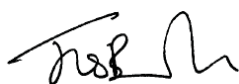
Therefore, I am exercising my authority under CAR s. 29 (4) (b) to confirm the decision made but substitute the penalty imposed under s. 27. The new disposition is to be 20 days segregation, to commence on October 6, 2013 upon the expiry of a previous disposition that was being served at the time of this hearing. By my calculation this segregation sentence will now end on October 25, 2013.

In reaching this decision I considered the following:

- Your guilty plea
- Your lack of remorse
- Your s.22
- Your previous disciplinary convictions and dispositions. This is your first conviction for violence. Your previous three charges (all for abusive and insulting behaviour) received dispositions of six days, six days and ten days respectively
- The need to express strong disapproval of such behaviour and the indication that any future incidents will result in more severe penalties

I have asked the warden at KRCC to ensure that your record is changed to reflect this change in the disposition.

Yours sincerely,



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, Corrections Branch
Mr. E. Vike, Warden, KRCC
Ms. A. Kennedy, Hearing Officer, KRCC
- bc. Mr. A. D'Argis, Policy and Program Analyst, Adult Custody Division, Corrections Branch



November 28, 2013
Mailed N29

59320-20/13-089
2311

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

Dear Mr. s.22 :

I am writing in response to a letter written on your behalf from Mr. D. Donnelly, Barrister and Solicitor, dated November 23, 2013 requesting a review of a disciplinary hearing held at Prince George Regional Correctional Centre. The hearing commenced on October 16 and concluded on November 20.

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)(y) which states that "An inmate must not attempt to obtain or possess contraband." The chairperson heard evidence from the charging officer, and an audio recording of a telephone call between you and another person. He also heard evidence and submissions from you and your legal counsel. The chairperson found you guilty on the balance of probabilities based on the evidence of the charging officer and the audio recording. He subsequently reviewed your disciplinary history and imposed a disposition of 15 days of segregation. In consideration of the fact that based on this incident you had been placed on a restrictive enhanced supervision program, he granted you time served.

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

Your ability to present a full defence to the charge was denied as:

- There was inadequate disclosure of the custody centre's evidence prior to the hearing. The charging officer presented new evidence which included untested hearsay evidence of statements made by two other accused inmates, the charging officer's testimony about the content of a telephone call made by another inmate, and the charging officer's speculations about what occurred during some video footage. The hearing officer only indicated he would

not rely on the testimony about the video footage, suggesting he was accepting all of the other new evidence as presented by the charging officer. If the custody centre had additional evidence it wished to have considered it should have been disclosed prior to the hearing so you could consider the evidence and present a full defence.

- Video evidence you requested in the hearing which you felt would support your defence was not provided nor did the hearing officer acknowledge your request.
- The hearing officer interrupted your presentation of evidence. On three occasions when you were attempting to answer a question or make a statement, the hearing officer cut you off mid sentence, limiting your ability to present a full defence to the charge.

The decision maker's administration of the hearing suggested he was not acting as a neutral decision maker.

An apprehension of bias was created as the hearing officer sought out and allowed the charging officer to present new evidence, as noted above, specifically in order to rebut your defence of the charge as written on the violation report. This creates the appearance of a hearing officer seeking evidence against an accused rather than acting as a neutral adjudicator of the case.

There were three substantial delays in the progress of your disciplinary hearing that resulted in the process taking 35 days from the date of charge to the conclusion of the hearing. These were attributable to decisions made by the custody centre staff. In the interim, you were also reclassified and remained in a restrictive program based on your alleged involvement in this incident for the 30 days prior to the conclusion of your hearing.

The hearing officer reviewed evidence that supported your contention that you were being punished for an offence before a finding of guilt occurred. This situation is prejudicial to an accused person, although the hearing officer attempted to remedy the situation by granting you time served.

The first delay occurred when the hearing was opened on October 17 at 1032 hours. You advised the hearing officer then that your legal counsel was coming to the centre for the hearing at the proposed date and time as noted on the inmate offence report (IOR) and you indicated that you wished to proceed at that time. The hearing officer advised you that the hearing would not reconvene then as the charging officer would be off shift. She adjourned it to accommodate the charging officer who would be available again on October 22. I also note the hearing officer erred in stating the reasons for the initial adjournment on the IOR as she wrote it was to accommodate you consulting with your legal counsel.

During the hearing your legal counsel indicated that there were two later delays due to a scheduled appointment to review the audio evidence being changed by the centre and a scheduled hearing date for November 14 was rescheduled by the custody centre to November 20.

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. R. Richard, Hearing Officer, PGRCC
Mr. D. Donnelly, Barrister and Solicitor



May 29, 2013
Mailed M30

59320-20/08-084

Mr. s.22 CS# s.22
c/o Surrey Pretrial Services Centre
14343 – 57th Avenue
Surrey, BC V3X 1B1

Dear Mr. 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 May 27, 2013.

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 throwing your television at a correctional officer.

You pled not guilty. After hearing evidence the hearing officer found you guilty and imposed a disposition of 15 days in segregation.

During my review I noted the following:

- The officer concerned was not hit by the television. He testified that he was able to close the cell door in time.
- You insisted that you had no intention of hitting the officer with the television.
- The hearing officer accepted that you did not intend to hit the officer and he noted this in his written comments on the inmate offence report.

The deliberate destruction of a television set is clearly a reckless and potentially dangerous act. However, in the absence of any actual assault and in view of the fact that the hearing officer accepted that you had no intention of assaulting the officer, I have concluded that the determination of guilt in this matter cannot be upheld.

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, Adult Custody Division, Corrections Branch
Mr. G. Davis, Warden, SPSC
Mr. B. Penner, Hearing Officer