

IN THE MATTER OF AN ARBITRATION

BETWEEN:

SASKATCHEWAN GOVERNMENT AND GENERAL  
EMPLOYEES' UNION (Irene McGunigal)

Hereinafter referred to as the "Union" (Grievor)

AND:

THE GOVERNMENT OF SASKATCHEWAN

Hereinafter referred to as the "Employer"

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**A W A R D**

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Board of Arbitration:

Sole Arbitrator: Kenneth A. Stevenson, Q.C.

Representing the Union Larry Dawson and Randy St. Denis

Represent the Employer Jerome Tholl

Hearing Dates: March 20, 21, 22, 23, 2007  
May 14, 15, 16, 22, 23, 2007

## AWARD

### INTRODUCTION

By agreement of the parties I acted as a sole arbitrator in respect of a grievance filed by Irene McGunigal on March 2, 2006 claiming unjust termination of employment. The grievance requests reinstatement to a position at the same level in the Prince Albert area and to be made whole in terms of salary and benefits since her termination on March 2, 2006.

### BACKGROUND EVIDENCE

The Grievor was employed as Office Manager, Northern Corrections, La Ronge Community Operations, Department of Corrections and Public Safety ("CPS") in La Ronge since September, 2001. The office manager is responsible for the provision of support services to North East Community Operations (Probation Services) as well as to the Besnard Lake Corrections Camp ("BLCC"). Until May 2003 support services were provided to the Waden Bay camp. BLCC is a high-low or medium security correctional facility located approximately 135 kilometers south-west of La Ronge. The Besnard work camp usually has approximately twenty-five inmates. The staff at BLCC consists of eleven employees including the Director, Deputy Director and nine Corrections Workers (CWs). At any time two CWs are on duty and Monday through Friday either or both the Director and Assistant Director are at BLCC. Neither Director nor Deputy Director have an office in La Ronge.

At all material times the Director of BLCC was Tom MacCallum; after September 2004 the Deputy Director was Ken Mercredi. Rob Hunter was the Director, Northern Corrections, Regional Manager, La Ronge Community Corrections. As Office Manager, Ms. McGunigal reported to Tom MacCallum in respect of BLCC matters including inmate trust accounts, vendor invoices, accounts payable and personnel matters. Ms. McGunigal reported to Rob Hunter in respect of all other matters. Ms. McGunigal was responsible for payment of vendor accounts covering purchases for the operations of BLCC including food, clothing, hardware, groceries and other supplies. These contractual accounts would be paid by way of

a purchase order issued locally, but paid by Saskatchewan Finance in Regina. Inmate accounts for things like supplies and canteen would be paid by cheques prepared by Ms. McGunigal which required the signatures of Tom MacCallum and Rob Hunter.

Support staff for BLCC this was provided from the La Ronge office which was responsible for staff time records, inmate accounting information, the inmate trust account (ITA) and the collective trust account (CTA) as well as preparing cheques for inmate activities and discharges. In the La Ronge office in addition to Mr. Hunter and the Grievor, there were eleven probation officers and one clerical/secretarial staff who reported to Ms. McGunigal. In October 2004, Doreen Polischuk was hired to replace Nellie Dumont as administrative support staff. In November 2004 Rachelle Worobey was hired to fill a second clerical position which was added in 2003 to provide Ms. McGunigal with assistance in completion of the day-to-day work. Ms. Worobey was in this position to October 2005.

Inmates at BLCC may receive monies from various sources. They receive a daily allowance for their work and may, from time to time, be paid wages for loading firewood or picking berries. Inmates may also receive money from family members, the sale of hobbycrafts or other services. All monies received at BLCC are required to be received by and receipted by the CW who is responsible to prepare a three-part receipt. The white top copy is provided to the payor, the yellow copy is to be attached to the cash or cheque received. The pink copy remains in the receipt book. An inmate is usually given a photocopy of any wage receipt. During the material period, receipt books would be delivered to BLCC and either kept in a file cabinet or in the safe. Each receipt book contained twenty-five receipts. At any time there may have been a number of receipt books at BLCC and more than one book in use.

The handling of monies at BLCC was very loose, there were no specific controls for receipt books, the writing of receipts or security of funds received. CWs were directed to write receipts, attach the funds to the yellow copy and to place these in an envelope with the inmate's name and the amount written on the envelope which would then be placed in the safe. Most of the time the safe was not locked. Inmates would, from time to time, be in the

area where the safe was located; no witness ever saw an inmate being in the safe or removing anything from it.

The funds received at BLCC along with the accompanying yellow receipt were transported to the La Ronge office by a CW, the Deputy Director or the Director. Funds were usually transferred once per week however occasionally, they would be transported in two-week intervals. When funds were taken to the La Ronge office, they were turned over to Ms. McGunigal or other office staff who would deliver the package to Ms. McGunigal or place the funds in the safe in Ms. McGunigal's office. Completed receipt books were to be delivered to La Ronge. Ms. McGunigal was responsible to post entries to the ITA on the automated Corrections Management Information System (CMIS) to the credit of individual inmates. Ms. McGunigal was responsible for the financial management of the CTA which account was maintained for the benefit of all inmates and from which payments for recreation expenses, games, events, equipment and satellite television were made. Ms. McGunigal was responsible to see that all funds were deposited to the trust accounts maintained with the La Ronge Branch of the Prince Albert Credit Union which, at the material time, was situate in the same building as the La Ronge office.

There were virtually no controls in respect of the handling of funds, receipts and mail at BLCC, in the transport of the monies and the yellow copy of the receipts to La Ronge or in the reception and confirmation of funds in La Ronge. The evidence is that on only one occasion was there a noted shortage of funds at BLCC; this shortage was apparently covered by the CWs working at the time. There is evidence of only one occasion when the La Ronge office determined that there was a shortage of funds compared to the yellow receipts. On this occasion the monies had been brought to La Ronge by Tom MacCallum and delivered to Irene McGunigal who advised Mr. MacCallum that there was a \$60.00 shortage. No Cash Mail Record system was in place in the La Ronge office to record and to provide a system of controls for incoming cash or cheques.

Ms. McGunigal was responsible for the management of the La Ronge office, including supervision of support staff. The Job Assignment Form (JAF) for Ms.

McGunigal's position identifies the most important primary responsibility of the position to be the provision of support services as earlier noted and responsibility for the management, staffing and supervision of support staff in the office. The next primary responsibility in order of importance of Ms. McGunigal's duties was:

Responsible for the input of data on CMIS for inmate accounting for 3 correctional facilities in Northern Saskatchewan, daily posting to inmate trust accounts, making bank deposits, preparing cheques for inmate activity and discharges on a daily basis. Bank reconciliations and inmate accounts balancing monthly.

Ms. McGunigal was responsible for the performance of these duties from September 2002. In early 2005 Ms. McGunigal began to show Doreen Polischuk how to credit inmate wages and allowances by way of credit entry on CMIS. Ms. McGunigal later trained Ms. Polischuk to post entries for dollars received for individual inmates to the credit of the ITA on CMIS. Ms. McGunigal was responsible for bank deposits to ITA and CTA until September 2005. Ms. McGunigal received and was responsible for the reconciliation of bank statements.

Among the tasks associated with the third primary responsibility of her position Ms. McGunigal was *"responsible for expenditure control, including coding and authorizing invoices, tracking expenditures, requesting journal vouchers, forecasting..."*. Ms. McGunigal was responsible for financial matters related to BLCC including seeing that all invoices for food, clothing, tools and other matters used in connection with the operations of BLCC were properly invoiced and paid through Regina. She was responsible for controlling financial aspects of purchases made by inmates through local businesses. Her responsibility was to see that these accounts were paid and charged against the account of the inmate.

One of the major vendor accounts to be administered by Ms. McGunigal was that of True Value Hardware in La Ronge. On September 28, 2004 True Value wrote to Mr. MacCallum about several overdue invoices covering the period from September 2003 to July 2004. It was noted that late charges were accumulating. On receipt of this correspondence Mr. MacCallum spoke to Ms. McGunigal about this matter and was advised by Ms. McGunigal that she would take care of it. As is further discussed herein, these accounts were

not immediately attended to and ultimately corrections staff and inmates were no longer able to receive credit at True Value.

In January 2005, Ken Mercredi received complaints from a number of inmates that receipts for funds due to the inmate had not been credited to the inmates' trust accounts on CMIS. Mr. Mercredi identified a number of these to Ms. McGunigal which were then remedied. Mr. Mercredi followed up on the number of receipts which had been identified as not being posted to the ITA and requested copies of the receipt books for BLCC covering the last six months. On the direction of Ms. McGunigal, Ms. Polischuk provided copies of these receipt books. Mr. Mercredi says that on review of these he could not find or support approximately thirty to forty receipts. Attempts by Ken Mercredi to have the ITA matters cleared up continued through July 2005. The absence of posted monies caused concern and distrust among the inmates; it resulted in frustration for Mr. Mercredi as a result of being questioned and challenged as to where the inmates' money was. Mr. Mercredi could only explain that the matter would be cleared up sooner or later. Mr. Mercredi's concerns were taken to Tom MacCallum, however according to Mr. Mercredi he did not see much by way of results or improvement.

After Mr. Mercredi raised with Mr. MacCallum the issue of inmate claims that receipts and funds were not credited to the inmates' accounts, Mr. MacCallum and Ms. McGunigal exchanged emails on January 18 and 19. In Mr. MacCallum's email he wrote, in part:

It's very important that Inmate Trust monies be banked and credited to accounts at least once a week. Monies shouldn't be held at all, but for no more than a business week. Also, is the Remittance Sheet working as it should? There might be a gap if the camp doesn't keep a copy. I don't want anybody pointing fingers over inmate funds. Ken mentioned that he also was concerned that people could talk about monies not put into accounts promptly and draw incorrect conclusions (the other word for that is gossip). Mondays are Inmate Account days – all credits and debits need to be processed on that day – hopefully we can get Doreen involved and take some of the load off of you.

Ms. McGunigal replied on January 19, in part:

The Remittance sheet is working well. I've set up a file so that receipts won't be filed until they match the sheet and deposits.

Ms. McGunigal's reply did not address the issue of the inmate accounts, nor undertake to make deposits and balance the accounts weekly. Her email did not raise any issue or concerns that she had in completing the deposits on a weekly basis.

The remittance sheet in question is a form created to accompany the remittance of dollars and receipts from BLCC to La Ronge. This form and the Firewood Sales Payment Record (FSPR) went through a number of variations with the intent to improve controls and provide detailed information about the transaction involved including cash/cheque, the amount, the receipt number, the product involved and the name of the inmate along with the amount to be credited to this inmate's account. The control, including retention of a copy of the form at BLCC, was designed to require the funds on hand at BLCC to be compared and matched to the receipts as well as being verified by two signatures both at BLCC and in La Ronge. Ms. McGunigal was involved in the development and implementation of these forms.

On Tuesday, February 22, 2005 a lengthy meeting was held between Mr. MacCallum and Ms. McGunigal to discuss outstanding matters. Ms. McGunigal was concerned about workloads and how busy she was; Mr. MacCallum's issues related to bank deposits, timely and accurate entry of inmate funds to the ITA and an issue relating to outstanding transfer cheques from Prince Albert Correctional Centre (PACC). The discussion concerning the bank deposits included a recognition that the deposits had not been made regularly as required. Mr. MacCallum had, in April/May 2002 advised Ms. McGunigal that deposits were to be made daily or as required. Mr. MacCallum had a concern about Ken Mercredi's report that eighty percent of inmate funds identified in receipts had not been entered in the inmate accounts. The outcome was that the deposit of funds on hand was to be completed immediately or the latest by Friday with future deposits to be made at least once per week or more frequently if required. Ms. McGunigal stated she was training Ms. Polischuk to do deposits. In the future a process was to be in place so that funds were to be recorded on

receipt. Ms. McGunigal was advised that they could not have a situation where inmate funds were unaccounted for and there was concern about pressure on the CWs by inmates who had not received a credit for their funds. Mr. MacCallum and Ms. McGunigal counted funds on hand in the office and determined that one submission was \$60.00 short. The last deposit prior to this date was made on November 9, 2004. On February 25 Ms. McGunigal completed three deposits to the ITA totaling \$9,889.44 including \$121.00 cash; she also made a deposit of \$598.23 to the CTA.

The issue relating to the outstanding cheques from PACC involved two series of a number of monthly transfer cheques issued by PACC to La Ronge in connection with the transfer of inmate monies. A number of cheques which were issued on a monthly basis had not been negotiated or deposited and were reported to be missing. The initial series of outstanding cheques forwarded by PACC to the La Ronge office had been raised as an issue in July 2003 in respect of cheques covering the period from October 2002 to May 2003. In December 2003 four of these outstanding cheques were cancelled and replaced. The nine consecutive cheques from PACC (January to September 2004) totalling over \$6,100 were not cashed or deposited and reportedly could not be found by the La Ronge office.

In February, 2004, Ms. Yolande Voros of PACC emailed Ms. McGunigal concerning an outstanding cheque issued to the Waden Bay Camp on March 28, 2003. Ms. Voros did not receive a response from Ms. McGunigal. In June 2004, PACC involved Mr. MacCallum in an attempt to have this matter resolved; the result was Mr. MacCallum reported to PACC that Ms. McGunigal could not find the cheque in question which had not been cashed. At the end of October 2004 this matter was not resolved.

Mr. MacCallum had a brief meeting with Ms. McGunigal on March 15 concerning the ITAs. After this meeting, he noted in his diary "*not too responsive*". On March 17 Ms. McGunigal advised Mr. MacCallum she had updated the inmate files.

On Wednesday, May 11, 2005, a meeting was held involving Mr. MacCallum, Ms. McGunigal and Ms. Polischuk. The meeting was to discuss a number of issues related to the



standards required and the work to be done. On May 12 Mr. MacCallum sent an email to Ms. McGunigal as follow-up to the meeting where they discussed "*A number of very important issues.*" The first issue addressed was the ITA including the existing process of receiving/recording funds and receipts; there was concern about complaints from inmates about funds not being credited. In his email Mr. MacCallum reviews his understanding that the process in place at BLCC is being followed in terms of receipting and signing off for funds which are delivered to La Ronge where they are signed off as matching. The email notes "*...-- our meeting was held to find solutions to solve existing issues and to put in place measures to prevent similar occurrences from now on.*" The plan was to revise the Remittance Form to make it easier to identify the destination of receipted funds. Mr. MacCallum continues in his email:

When funds are taken to the office, they need to be received/signed for, posted immediately, entered into the deposit book and deposited at least once a week. The receipts should remain with the funds until the deposit is made, then the receipts need to be filed.

The email references a conversation with Ms. McGunigal that morning when she raised the issue of work pressures on her and staff. Mr. MacCallum's notes the need to maintain a high standard in handling inmate funds and the need to prioritize functions to ensure proper procedures are followed; the highest priority is the ITA. Mr. MacCallum says that no discussions took place nor were issues raised by Ms. McGunigal concerning her ability to post financial information on the CMIS to the ITA.

Mr. MacCallum's diary records a number of additional activities in respect of the outstanding matters being discussed with Ms. McGunigal. On June 1, Mr. MacCallum notes that a re-check of the work required from the May 11 meeting shows that nothing had been done. He attended in La Ronge to meet with Mr. Hunter concerning solutions to this, including the fact that all of the requests to deal with these issues had been ignored or refused. Mr. MacCallum met with Ms. McGunigal and Ms. Polischuk. At this meeting he instructed that the ITA must be brought up-to-date and all outstanding postings completed by June 10.

Following this meeting, Mr. MacCallum reported to his supervisor Carol Fiedelleck, Director, Community Corrections concerning Besnard accounting. Mr. MacCallum notes that he has been working with Ms. McGunigal over the past six to eight months to ensure that proper practices are followed and errors corrected. The email continues:

I held several meetings with Irene on identified areas of concern, setting deadlines for completion of specific tasks and setting standards for ongoing account activity. The most recent of these was today, when I asked Rob Hunter to sit in with me and assist in setting guidelines for the accounting staff to meet standards and maintain appropriate accounting practices.

There is a need to have someone familiar with inmate trust account practices and accounts management to come to La Ronge and provide some training and direction to Irene. Although she has been promised training in these areas (notably by Kevin Kuntz and followed by Carla), she has not yet been fully trained.

I propose to contact someone in the department to come to La Ronge and spend a week to two weeks in assisting/training Irene and the other accounting staff in proper procedures for this area.

Ms. Fiedelleck responded that concerns with respect to inmate trust accounts, timely payment of bills and accounting for cash and receipt books had been outstanding too long. Ms. Fiedelleck would be in La Ronge on June 14 and that she wanted to discuss this very serious issue with Mr. MacCallum, Mr. Hunter and Ms. McGunigal in order to come to an understanding of the issues and to develop an action plan. Ms. Fiedelleck notes that in mid-May, these concerns had been raised with the Deputy Minister.

Mr. MacCallum notes a report from Ms. McGunigal on June 10 that the ITA was up-to-date for active but they were still working on the closed accounts. On June 14 a meeting concerning the ITA was held with Mr. MacCallum, Mr. Hunter, Ms. McGunigal, Ms. Polischuk and Ms. Fiedelleck in attendance. At this meeting it was reiterated as to what needed to be done. Ms. McGunigal undertook that the ITA would be up-to-date within two weeks and the True Value account would be reconciled and outstanding invoices addressed in two weeks. Ms. McGunigal said she was clear on her responsibilities and was able to get these things done. Mr. MacCallum recalls that Ms. McGunigal reported "everything is going fine". Mr. MacCallum recalls the only discussion concerning training related to the MIDAS

Program which is a financial system not used for the inmate trust accounts. There was a discussion of the supervision and division of responsibilities between Mr. Hunter and Mr. MacCallum; Mr. MacCallum was responsible for the ITA and Besnard staff.

On July 15, 2005 Mr. MacCallum forwarded a departmental inquiry concerning outstanding invoices with True Value to Ms. McGunigal with a note to make reconciliation and clearing up the True Value accounts a high priority. On July 20 Mr. MacCallum received a departmental email concerning bank reconciliations not being received and requiring all bank reconciliations by July 29. Future reconciliations were to be in by the 15<sup>th</sup> of each month. This email was forwarded to Ms. McGunigal for compliance. Mr. MacCallum testified that in response to his inquiry as to how things were, Ms. McGunigal responded "*we're getting to them.*" At a meeting in the La Ronge office on August 3 with Ms. McGunigal and Ms. Polischuk, Ms. McGunigal advised that these matters were all "*on the go*". Mr. MacCallum's advice was that these matters needed to be completed by his return from holidays on September 12 and if they were not completed, there would likely be an independent audit required. Mr. MacCallum had no contact with Ms. McGunigal between August 3 and September 12.

In early August 2005 Ms. McGunigal began to have sporadic attendance at work. She advised co-workers that she was ill. The co-workers were surprised because Ms. McGunigal regularly attended at work even when she was not healthy. Ms. McGunigal left no instructions with Ms. Polischuk as to how she was to do her work or look after the office in Ms. McGunigal's absence. Staff made many attempts to contact Ms. McGunigal by telephone and at her residence without success. On September 12 Mr. Hunter wrote to Ms. McGunigal requesting information concerning her time off.

In early September Rob Hunter began looking for records and other matters. He arranged to have a representative of Saskatchewan Property Management (SPM) attend and open Ms. McGunigal's desk in which he found a number of receipt books covering the period November, 2004 to April 2005. Mr. Hunter determined that monies were unaccounted for and no deposit had been made to the ITA for a number of months; he

reported this to Ms. Fiedelleck who asked for an independent audit. Mr. Hunter was unable to find any of the receipted cash in the desk safe or file cabinets. Mr. Hunter located a number of cheques, including some stale-dated ones; among these cheques were a number from PACC for inmates transferred to BLCC.

Mr. Larry Jacobs, Risk Manager and Consultant of the Investigation Division of SPM attended the La Ronge office to review the Inmate Trust Accounts and the Collective Trust Account to determine if cash and cheques which should have been deposited in the accounts had been deposited and the accounts had been properly managed. Mr. Jacobs seized documents which could be located, completed an investigation and ultimately filed a report.

Ms. McGunigal was suspended with pay effective September 15, 2005. On February 14, 2006 Ms. McGunigal was informed that the SPM Investigator's Report noted that in excess of \$25,000.00 was missing of which approximately \$1,880.00 had been traced to her directly. She was notified that effective February 13, 2006 she was placed on leave without pay pending further investigation of this matter. On March 2, 2006 Ms. McGunigal was advised that the investigation by SPM revealed that significant funds could not be accounted for and a portion of those were directly linked to her. Ms. McGunigal was advised "*...Your failure to perform the major duties of your position constitutes gross negligence and as a result, your employment with the Department is terminated effective immediately.*"

#### **The Jacobs' Investigation**

Mr. Larry Jacobs is a Certified Fraud Examiner who has been employed by SPM for nine years. He previously worked for seventeen years with the RCMP in the Commercial Crime Unit. Mr. Jacobs' review began on September 19, 2005. In the course of the investigation, Mr. Jacobs focused on the period October 1, 2001 to August 31, 2005 during which Ms. McGunigal was the Office Manager. In the course of his investigation, Mr. Jacobs received and reviewed fifty-four partially used receipt books containing the pink copy, assorted yellow receipts, four Prince Albert Credit Union deposit books, statements for the Credit Union ITA accounts and the CTA account, along with various Remittance Sheets (earliest dated June 2005), various FSPR (earliest dated February 2005), bank reconciliation

statements for the CTA (latest dated April 2002), deposit slips for the ITA and the CTA and other documents including CMIS print-outs showing postings to inmate accounts during the period April 2004 to August 2005. Mr. Jacobs interviewed a number of CPS employees having knowledge of the accounting procedures at BLCC, La Ronge and other correctional centres. His review focused on accounting for the trust account, cash receipts (cash and cheques) and ensuring that cheques drawn on the trust accounts were legitimate.

The Jacobs' report was not a happy review of the function of the financial operations. Significant controls that ought to have been in place were not in place and there was no effective supervision or oversight. During the period under review, Mr. Jacobs determined that receipted amounts of cheques and cash exceeded deposits by approximately \$25,517.63. This amount was determined to be approximate because it is possible that monies were collected, not receipted and not deposited, however these transactions could not be identified or quantified. It could not be shown that all collections were remitted and came into the possession of Ms. McGunigal. Mr. Jacobs concluded that certain amounts were received by Ms. McGunigal that were not included in subsequent deposits. The monies were unaccounted for and could not be definitely determined what occurred because of the record keeping which was disorganized and incomplete. There were no records kept at BLCC to confirm monies received compared to those received in La Ronge. There was no record of receipt books issued and there was no Cash Mail Record. Mr. Jacobs located approximately 1,400 pink receipts but only 300 to 400 yellow ones. Mr. Jacobs determined that it would be difficult to show whether the collections went missing before BLCC, at BLCC, while en route to La Ronge, after received by an office staff or after being received by Ms. McGunigal. In light of these difficulties, Mr. Jacobs changed his focus to try to determine if any monies received by Ms. McGunigal had not been deposited to the bank accounts.

With this focus, Mr. Jacobs determined that in the years 2003, 2004 and 2005, certain remittances were received by Ms. McGunigal that were not ultimately accounted for. These consisted of the following:

- (a) Cash receipted by Ms. McGunigal and not found in the deposits;

- (b) Cash received by Ms. McGunigal as indicated by her handwriting on FSPRs and Remittance Sheets and not found in the deposits; and
- (c) Receipts received and posted by Ms. McGunigal and not deposited.

Between September 29, 2003 and October 10, 2003, Ms. McGunigal issued six receipts for sale of berries and according to the receipts received \$182.00 cash (yellow copies were not found). Bank deposits were made to the ITA and CTA on October 24 and November 24, 2003. None of these deposits included cash. When interviewed by Mr. Jacobs and at the hearing, Ms. McGunigal acknowledged that she issued the receipts and received the cash. She says that she would have put the cash in the safe and should have deposited it on October 24, however she did not, she does not know what happened to the cash. Ms. McGunigal says she was very busy with orientation and staffing in this period.

Mr. Jacobs reviewed a number of FSPRs and Remittance Sheets which were initialed by Ms. McGunigal on or after February 8, 2005 which indicate that Ms. McGunigal received a total of \$399.00 which was not found in the bank deposits. During her interview by Mr. Jacobs and at the hearing, Ms. McGunigal acknowledged she received the monies however she had no explanation for where these monies went or why they were not deposited.

Mr. Jacobs reviewed twenty-one transactions (forty-five receipts) received and posted by Ms. McGunigal between August 31, 2004 and August 31, 2005 which funds were not deposited in the Credit Union. These transactions totalled \$1,299.50. Ms. McGunigal could not provide Mr. Jacobs with an explanation although she thought she might have posted the monies to the inmate account without receipt of funds as a result of pressure that the inmate was putting on the CW. If this occurred, Ms. McGunigal acknowledged she ought to have ensured that she received all of the monies prior to posting amounts to the inmates accounts. Approximately forty percent of these receipts were posted in what appeared to be a reasonable time period. The remainder of the receipts were delayed six to nine months prior to posting. Fourteen receipts covering the period from September 4, 2004 to February 11, 2005 were posted on March 17, 2005. Ms. McGunigal offered the further explanation that on occasion CWs would provide duplicate receipts to identify amounts received on behalf of

inmates for labour and as a result of this, labour component on wood sales might be duplicated. Mr. Jacobs concluded that if this explanation was accepted, this would reduce the total unaccounted for after having been received by Ms. McGunigal by \$188.50.

Mr. Jacobs concluded that the total amount unaccounted for, after having been received by Ms. McGunigal, was \$1,880.50, namely, \$182.00 in 2003 and \$1,698.50 in the period August 31, 2004 to August 31, 2005. Of the \$1880.50 which Ms. McGunigal failed to deposit, \$910.00 is known to be cash and it is uncertain as to whether the balance of \$970.50 was cheques or cash. Mr. Jacobs reviewed all bank deposits to the ITA and the CTA. In 2003 deposits were made to the ITA on February 12, February 21, April 21, September 26, October 24, November 24, December 23. In 2004 deposits were made on March 30, May 19, October 22, November 9. In 2005 the only deposit made by Ms. McGunigal was on February 25. In the same period, deposits were made to the CTA September 26, October 24 and November 24, 2003, May 19, 2004 and February 25, 2005. After February 25, 2005 and before September 13, 2005, there were no deposits to either trust account.

As a result of his investigation Mr. Jacobs made a number of findings concerning a lack of financial and process controls at BLCC and La Ronge. Some of the significant findings are:

1. The Financial Administration Manual Policy relating to the control of public monies and the CTA guidelines were not followed. Ms. McGunigal advised that she was not aware of these.
2. Accounting for remittances was not segregated and was performed without a proper paper trail.
3. During the review period, Ms. McGunigal's method of operating did not change significantly with the exception that deposits to the bank account were made less frequently.
4. Ms. McGunigal says she maintained a record of receipt books issued however none was found. With no record of receipts in use, sales receipts and cash

received could be removed by either not recording the collection or by issuing a receipt and then diverting the revenue and destroying copies of the receipt.

5. Either all collections were not receipted or if receipted the receipts were lost or destroyed.
6. Remittance Sheets (similar in purpose to Cash Mail Record) were first used in June 2005 at BLCC; FSPRs were first used in February 2005.
7. Copies of Remittance Sheets and FSPRs were not always kept at BLCC and were not receipted by Ms. McGunigal or those employees who received remittances, making it difficult to show whether much of what was unaccounted for was received by Ms. McGunigal.
8. Cash Mail Record was not used during the review period; cash and cheques were seldom distinguished on receipts.
9. Camp CWs, Ms. McGunigal and office staff at La Ronge were not protected because there was no record of what was collected at the camp and remitted and no record of what reached office employees and Ms. McGunigal in La Ronge.
10. He was informed that the trust accounts were never audited during the subject review period and it is likely they were not audited or reviewed since 1994.
11. He was informed that the BLCC ITA CMIS bank reconciliation was never performed and the last CTA bank reconciliation was done in March, 2002.
12. Deposits and postings were not made properly according to policy guidelines and directions given from Mr. MacCallum.
13. Cancelled cheques written on the ITA and CTA that were reviewed appeared to be issued to legitimate payees for legitimate expenses.

Mr. Jacobs also concluded that there was no effective supervision or oversight of the financial administration in the La Ronge office. This was complicated by Mr. MacCallum's location at Besnard. Mr. Jacobs concluded:



1. The CTA Guidelines calling for the use of manual records to account for a CTA were not created and records found were incomplete.
2. Records in the La Ronge office were disorganized.
3. The monies from sale of wood and most berries were deposited to the ITA in the review period when they ought to have correctly deposited to the CTA.
4. Seven inmate transfer cheques from PACC issued between January 2004 and February 2005 were not deposited; although they reached the La Ronge office they were allowed to become stale-dated.
5. Numerous True Value Hardware invoices accumulated for many months and incurred late-payment charges. Ms. McGunigal explained that payment of these could not be made without a TADA signed by the inmates. Ms. McGunigal believed the TADAs went missing.
6. It would appear that Ms. McGunigal did not know how to properly account for collections, yet she did not follow direction when asked to make deposits weekly which would have made it easier to match collections with deposits and account for collections.
7. Very few yellow copies of receipts relating to wood, berry and handicraft sales, that would normally accompany cash and cheque remittances were located suggesting both BLCC and Waden Bay remittances were not being received by Ms. McGunigal or if received, were lost or discarded.

Mr. Jacobs determined that as of October 25, 2005 creditors claims totaling over \$84,000.00 were registered against Ms. McGunigal, her late husband and McGunigal Marine Ltd. Approximately \$80,000.00 was claimed based on judgments obtained in 2000; \$3,100.00 was claimed by a lawyer's judgment obtained in December 2003. Ms. McGunigal rented a house from Ms. Polischuk commencing in July 2004. Ms. Polischuk says there was a problem collecting the rent and Ms. McGunigal was evicted.

### **Evidence of Irene McGunigal**

Ms. McGunigal has worked for approximately twenty years in Government Services in different departments with experience in Clerical, Clerk-typist, Administrative Officer, Executive Secretary and Accounting Clerk positions. Her past duties included processing invoices for payment, monitoring annual budgets, preparing financial reports and reviewing and recommending approval of interim and final reports. She has also worked in reception, typing, filing, acted as confidential secretary and worked in the preparation of and monitoring documents in respect of loan applications and contract payments. She had previously worked as a teller in a credit union. Ms. McGunigal had been involved in the running of a family business which was managed by her husband; she would provide relief work and was knowledgeable in all aspects of the business. In cross-examination Ms. McGunigal acknowledged that she knew how to make deposits including those in the La Ronge office. She also acknowledged that employers place high importance on handling money and making deposits.

At the commencement of her employment, Ms. McGunigal received initial training in a one and one-half day period in terms of access to the ITA on CMIS. Ms. McGunigal testified that she felt that this training was introductory and basic but that there were separate problems with the northern systems like berry-picking and how to record these transactions in respect of which she believed she was not trained. Ms. McGunigal noted an email dated June 1, 2005 from Mr. MacCallum wherein he talked about the need to have someone familiar with ITA practices and accounts management to train and provide direction to her. Ms. McGunigal testified that she did not believe that she was fully and completely trained to perform her duties. Following the training in 2001 Ms. McGunigal could log in, access inmate information, post wages and canteen, but there were many things she did not know about at Waden and BLCC. She followed-up with a former employee and learned a number of these processes. After one year she still had questions regarding the entry of berry and wood sales on CMIS and how an inmate could be credited for berries not yet sold; she resolved this by not crediting accounts until dollars were received from the sale of berries. Ms. McGunigal believed she needed at least one week of CMIS training to learn day-to-day

processes, monthly requirements and how transfers operated on CMIS. She acknowledged having problems with bank reconciliations dealing with one account maintained for Waden and BLCC. She had not learned how to do the reconciliations on CMIS and she was attempting to get help and training, but this was never provided. She acknowledged that she did train Ms. Polischuk on CMIS as to what she knew. Ms. McGunigal acknowledged that no other training was required by her on the ITA except for CMIS.

Ms. McGunigal claims that she was subjected to personal and sexual harassment in the workplace; the harassment included unwelcomed remarks, jokes, insulting gestures, and unwelcomed sexual advances and unwanted contact or threats of bullying. Ms. McGunigal testified that the harassment was principally at the hands of Mr. MacCallum, but related one incident involving Mr. Hunter which she believed constituted harassment.

The incidents involving Mr. MacCallum included comments made by Mr. MacCallum in 2002 following the death of Ms. McGunigal's brother. When she said she was having trouble sleeping, Mr. MacCallum commented "*You need to get laid*" and winked at her. She related an incident on the occasion of a birthday of another female in the office, Mr. MacCallum began to sing Happy Birthday in the manner Marilyn Munroe sang to President Kennedy. While singing, Mr. MacCallum began unbuttoning his shirt and was told by Ms. McGunigal to stop. Shortly after this incident, Ms. McGunigal says that Mr. MacCallum said that the other female employee had filed a sexual harassment complaint but *I belong to two of the most powerful Metis families in this Province and no one can touch me*. This female employee is one that was supervised by Ms. McGunigal. Ms. McGunigal says that Mr. MacCallum would, from time to time, tell inappropriate jokes of a sexual nature. When Ms. McGunigal complained to Mr. Hunter about Mr. MacCallum's jokes as being "*disgusting*", Mr. Hunter dismissed it as "*that's just the way Tom is*". Ms. McGunigal relates an incident which occurred in early 2002 after she and Mr. MacCallum had been on a business dinner, Mr. MacCallum had subsequently reported to her that his wife was jealous of them. Ms. McGunigal could not understand why because there was nothing to be jealous or upset about. Ms. McGunigal did not know how to respond to these various comments; she was angry and her feelings were hurt because of the actions of her supervisor.

Ms. McGunigal claims that a major incident of harassment occurred at a June 21, 2005 staff meeting at Besnard. Mr. MacCallum began the staff meeting by announcing that he and Ms. McGunigal were not sleeping together. Ms. McGunigal says she had no idea that Mr. MacCallum was going to say this at the meeting. The reaction of staff was silence as the CWs were shocked, disgusted and angry. Ms. McGunigal says that a few weeks later Mr. Hunter advised her that Carol Fiedelleck had heard about the event and wanted Ms. McGunigal to write a memorandum of what occurred. On July 19, 2005, Ms. McGunigal wrote a memorandum to Mr. MacCallum copied to Ms. Fiedelleck concerning the staff meeting. In this correspondence Ms. McGunigal addressed the inappropriateness of what occurred and her understanding from a private meeting with Mr. MacCallum before the staff meeting that a comment could be made by one of the corrections workers and that his remarks surprised her. Ms. McGunigal noted that the proper approach would have been to meet with the staff involved to review the harassment policy to address the problem. Ms. McGunigal noted that the incident “..caused unnecessary stress and discomfort in my workplace...” Ms. McGunigal believed the memo would be treated as a complaint and followed-up.

On August 2, 2005 Mr. MacCallum responded with a memorandum to Ms. McGunigal, copied to Ms. Fiedelleck. In his reply Mr. MacCallum noted that in a meeting prior to the staff meeting he had explained to Ms. McGunigal that the staff had been making suggestive and erroneous statements that there was a personal relationship between them. Mr. MacCallum says that he asked Ms. McGunigal if she would be comfortable with him addressing those statements in the meeting. According to Mr. MacCallum’s memo, Ms. McGunigal replied that it would be okay. Ms. McGunigal says that she advised Mr. MacCallum after receipt of his memo that she did not know that he was going to say what he did and she was not okay with it. Ms. McGunigal says she felt powerless, frustrated, angry and isolated in her department; she made no further complaint because she did not feel that it would be taken seriously or that the department would support an harassment-free workplace. Ms. McGunigal says that as a result of these actions she suffered from disruptive

sleep, found it difficult to concentrate, she lacked enthusiasm for her work, her performance suffered and she ultimately had stress which lead to an illness which was now under control.

Ms. McGunigal provided evidence of her responses to the Jacobs' Investigation Report and the allegations of her failure to perform major duties of her position. Ms. McGunigal notes that because of the lack of proper controls the money identified by Mr. Jacobs as being unaccounted for can only be an estimate. Ms. McGunigal says that when she received any cash, it was always placed in the safe. Those having access to the safe in 2003, in addition to her, were Mr. MacCallum, Mr. Hunter, Nellie Dumont and that Doreen Polischuk had access in 2004/05. Ms. McGunigal says that the cash receipted by her in September/October, 2003 in the sum of \$182.00 was collected and placed in the safe. She can offer no explanation as to where the cash went.

Ms. McGunigal was unable to offer any explanation as to what happened to the cash which she acknowledged having received by her writing on the FSPRs and Remittance Sheets and was not found in the deposits. Ms. McGunigal recalls an occasion when Mr. MacCallum delivered cash from BLCC and the remittance was short \$60. According to Ms. McGunigal, these funds were counted and received in the presence of Mr. MacCallum who could offer no explanation as to why the remittance was short. Ms. McGunigal otherwise acknowledged as being accurate the Jacobs findings in respect of these funds. In respect of the Jacobs' Report, finding that there were receipts received and posted by Ms. McGunigal that were not deposited, Ms. McGunigal admits that on a rare occasion she may have posted a receipt without actually receiving the cash or cheque. She acknowledges that it is an error to post to the ITA without receiving the cash. Ms. McGunigal notes that the delay of up to six months in posting receipts could have been due to the receipt being misplaced at BLCC and not arriving to her office in time and that this would be due to lack of proper controls. Ms. McGunigal was unable to determine if the alleged shortage of \$1,880.50 was accurate, approximate or speculative without having detailed accounting on how the monies were tracked from point of sale to safe and deposit. Ms. McGunigal acknowledges that between February 25 and September 12, 2005 she did not make any deposits. She says that during

this time the cheques should be in the safe. According to Ms. McGunigal, several staff, including Ms. Polischuk, knew that the key to her desk was to be found on top of the desk.

In relation to Mr. Jacobs' conclusions, it is Ms. McGunigal's understanding:

1. There were no proper controls in place in terms of the records at BLCC or La Ronge. Management failed to oversee the management of cash, receipts, proper processes and formal reporting. Ms. McGunigal was never told or warned that she might be disciplined or discharged for performance issues.
2. The conclusion that \$25,517.63 is missing is approximate; as a result of the absence of proper controls to determine actual amounts. Ms. McGunigal says she tried to make changes in the beginning concerning the manner in which the cash received from the camps was handled in the La Ronge office, however she was assured by Mr. MacCallum that it has always been done in this way without a problem. Ms. McGunigal saw that this meant there was a window for dishonest behaviour and that management did not ensure proper controls to detect losses.
3. There were no proper controls in place including a lack of adequate record keeping and guidelines were not followed in relation to receipting, tracking, depositing, and posting. Because of this, it is difficult to know where the losses occurred.
4. The fact that the ITA on CMIS was not reconciled was likely a problem before Ms. McGunigal's time and had not been addressed by management who had not corrected poor practices.
5. In respect of the \$1,880.50 which had been in her possession and was not deposited, Ms. McGunigal says she does not have the details and believes this is an approximate amount and because of lack of controls it is difficult to determine if she was responsible for the loss.

6. Because of the poor records, it was difficult to know what amounts Ms. McGunigal received were cash and which were cheques.
7. Ms. McGunigal says that she made an issue with Mr. MacCallum about the large number of receipt books issued to the camps and the lack of controls for these books and it was difficult to know how many sales were being made.

Ms. McGunigal acknowledges that it was her responsibility to make deposits to the bank accounts and that she failed to do so. No deposits were made between February and August 2005 because of the demands in the workplace. Ms. McGunigal says that she was frustrated due to the absence of management in the workplace and other duties had greater priority. She says that she was never warned that failure to make the bank deposits would lead to discipline or termination; she did not consider the bank deposits to be that important as they did not seem to be important to the managers. According to Ms. McGunigal, *"I regret I should have done things differently – that's basically it. I should have ensured the deposits were done."*

In cross-examination Ms. McGunigal acknowledges that from the job posting and the JAF she knew she would be responsible for the supervision of one support staff, inputting data on CMIS for inmate trust accounting, bank deposits, preparing cheques, bank reconciliations, coding and authorizing invoices. She acknowledges that the number two primary responsibility outlined in the JAF was to input data on CMIS for inmate accounting, daily postings of ITAs, making bank deposits, preparing cheques for inmate activity and discharges on a daily basis. The bank reconciliations and inmate accounts were to be balanced monthly. She acknowledges she was responsible for expenditure control, including coding, authorizing and tracking. According to Ms. McGunigal, she put a priority on the ITA, less on the bank deposits even though no one in management said there was less priority. She acknowledges that Mr. MacCallum, at least on three occasions, instructed her that he wanted deposits to be made at least weekly and she was clear on this. There was no physical reason why she could not do the deposits which she knew how to do and agreed that these could be completed within minutes and even with delays at the Credit Union would not

have taken a significant amount of time. She acknowledges that she, at no time, told Mr. MacCallum that she could not do the deposit one time per week. When asked why these were not completed, Ms. McGunigal noted that she was frustrated by the lack of controls and records to track particular monies and there appeared to be no concern by management over the inventory and asset control following the Waden Bay closure in 2003. She tried to keep the office running as best she could in the absence of management and she was frustrated by the lackadaisical attitude of Government regulation and more particularly by Mr. MacCallum than Mr. Hunter. She notes that she was frustrated with the inaction of management in respect of Mr. MacCallum's inappropriate behaviour which had been disregarded and ignored by Mr. MacCallum, Mr. Hunter and Ms. Fiedelleck.

Ms. McGunigal acknowledges receipt of Mr. MacCallum's January 18, 2005 email advice that it was very important that the inmate trust monies be banked and credited to accounts at least once a week; monies should not be held for more than a business week. Ms. McGunigal agrees that she replied that the Remittance Sheet was working well and that she had set up a file so that receipts would not be filed until they match the sheet and deposits. According to Ms. McGunigal, although Mr. MacCallum wrote that it was a priority, his lack of follow-up and checking to determine that it had been done, indicated that it was not a priority for him, rather he was very casual and had time to make other requests and to call her and to make jokes, but not to check on the deposits.

Ms. McGunigal acknowledges a meeting with Mr. MacCallum on February 22, 2005 when they discussed that the bank deposits had not been done regularly as required and it was reaffirmed that all deposits will be done at least once per week or more often as required. Ms. McGunigal understood the clear need for the deposit to be made and monies on hand were deposited on February 25 to both the ITA and the CTA. Ms. McGunigal agrees that the particulars of deposits are properly reflected in the Jacobs' Report.

Ms. McGunigal remembers a meeting with Mr. MacCallum, Mr. Hunter and Ms. Polischuk on May 11, 2005 as well as Mr. MacCallum's follow-up email on May 12. Ms. McGunigal recalls that there was a discussion about when funds are taken to the office, they



need to be received, slips signed for and posted immediately as well as to be entered into the deposit book and deposited at least once per week; the matters discussed at that meeting were covered in Mr. MacCallum's May 12 email. She acknowledges the direction that the receipt should stay with the cash, be posted and deposited. Ms. McGunigal accepts that in January/February/May, Mr. MacCallum had made the requirements for weekly deposits and the orderly handling of funds a priority, however, she says that there were many other items needed to be dealt with. Ms. McGunigal acknowledges that the last deposit was made on February 25, 2005 and that between then and August, 2005 she cannot say whether or not she thought about the need to make deposits or the directions and instructions from Mr. MacCallum. Ms. McGunigal does not think it had been that long since she had made a deposit and she does not recall having given Ms. Polischuk any directions to make bank deposits. She says "*I realize that an error in judgment on my part, but that is what happened.*"

On cross-examination Ms. McGunigal was asked a number of questions concerning cheques from the Prince Albert Correctional Centre representing transfers of funds which cheques were noted to be missing. Ms. McGunigal acknowledges that these cheques went missing in her office and she does not know why. She has no knowledge of any cheques being in her office or in her desk and could offer no explanation as to why they would have been found there.

At the end of each month each correctional centre would issue a cheque to other centres including BLCC to clear accounts payable for inmates transferred during the month. On December 16, 2003 PACC cancelled four such cheques payable to BLCC as these cheques had not been cashed and reportedly could not be located by the La Ronge staff. A replacement cheque for \$2,434.89 was issued. In October 2004, PACC determined that the last nine cheques, covering January to September, 2004, issued to Besnard had not been cashed. These cheques totaled \$6,136.45. Ms. McGunigal accepts that the PACC cheques were mailed, however she has no recollection of these coming to La Ronge and does not remember seeing them. Ms. McGunigal acknowledges that it would be important that these cheques be receipted and deposited; failure to do so could give rise to serious accounting

issues. Ms. McGunigal expected a cheque each month, however she never noticed that these were missing because her work schedule kept her too busy until it was brought to her attention. She then looked for these cheques, but they were not found. She does not recall following-up on this matter to determine if the next month's cheque came nor did she notice that the replacement cheque went missing. Ms. McGunigal says she was too busy to check her day timer to see that these matters were occurring.

Ms. McGunigal recalls that payments to True Value Hardware in La Ronge were behind and were the subject of numerous inquiries. She acknowledges that it is her responsibility to pay such inmate invoices however before payment could be made she says she required a TADA. This form of inmate transfer authorization would describe the item purchased, the inmate, possibly the amount of the money involved and be signed by the inmate and a CW. According to Ms. McGunigal, problems would occur when TADAs were not provided to her. She recalls the True Value, September 28, 2004 letter to Mr. MacCallum was brought to her attention in respect of invoices being greater than one year old. Ms. McGunigal says that she contacted True Value asking for copies of the invoices and put some of these matters in Mr. MacCallum's basket in order to get verification of purchases or inmate TADAs so she would make the payment. According to Ms. McGunigal, some inmates had been released and she was unable to get these; she understood Mr. MacCallum was to be getting supporting documents to address this outstanding matter. Ms. McGunigal recalls the meeting of June 14, 2005 involving herself, Mr. Hunter, Ms. Polischuk, Carol Fiedelleck and Tom MacCallum, when it was understood that the True Value account would be reconciled and dealt with within two weeks. Ms. McGunigal accepts that it was her responsibility and there were no issues. Ms. McGunigal realizes that this was a serious issue because Besnard could no longer charge at True Value. At this meeting Ms. McGunigal did not tell Ms. Fiedelleck that she had been seeking information from Mr. MacCallum for a number of months. It is her recollection that Ms. Polischuk agreed to take over the True Value matter, however she never followed-up to see if Ms. Polischuk did clear this matter up.

Ms. McGunigal acknowledges that judgments were issued in 2000 but says she understood that the lawyer was to liquidate business assets to pay these. The judgment

owing to the lawyer should have been discharged as no debt was owing. Ms. McGunigal says that in early July she left a cheque for \$2,000 on the office bulletin board for Ms. Polischuk who advised she didn't receive it. On August 1 Ms. McGunigal says she gave Ms. Polischuk cheques to cover July to March 2006; she believes three of these cleared her account and the other cheques were not returned as requested. She vacated the premises in September.

### ISSUES AND ARGUMENTS

The issues to be determined include:

1. Does the Employer have just cause to discipline Ms. McGunigal for her conduct?
2. If so, was termination an excessive response in all the circumstances?
3. If termination is excessive, what alternative discipline/disposition is appropriate?

#### A. Employer Position

The Employer submits that discharge is the appropriate disciplinary penalty in light of Ms. McGunigal's gross negligence in actions and inaction in failing to perform the duties of her position which is a position of trust. The Employer's position is that it neither alleged nor proved that Ms. McGunigal took the funds, however, she was responsible for the funds and a significant amount of funds were under her control and in her possession. As a result of her actions or inactions, these monies are missing. Ms. McGunigal failed to post financial information and records as required and failed to pay third party invoices and accounts in particular that of True Value. The Employer's emphasis is on Ms. McGunigal's failure to perform duties in relation to the ITA including making deposits, posting invoices, paying inmates and safeguarding the dollars received. Ms. McGunigal had the necessary skills and training such that she knew how to do that which was not being done and she made a conscious decision to ignore clear instructions, including instructions to make bank deposits. The Employer says that Ms. McGunigal has offered no explanation for her failure to perform her duties or to notice that the funds were missing. For all of these reasons the Employer says it can no longer trust Ms. McGunigal to perform her duties and the employment relationship is no longer viable.

The Employer submits that there is no issue of training as Ms. McGunigal was competent to and knew how to perform her tasks including making bank deposits, posting on CMIS and paying invoices; she knew the rules and the Financial Administration Manual. The issue was not one of training as Ms. McGunigal had been in the position and had the responsibilities for four years. The matters of training raised in June 2005 had to do with CMIS email and bank reconciliations dealing with matters from Waden Bay.

The Employer says that the lack of controls and proper supervision do not detract from the Employer's cause for termination. Ms. McGunigal was responsible for the financial integrity of the systems in place in the La Ronge office; she knew about and was concerned about the lack of controls. Her evidence is that she had previously used a Cash Mail Record and had proposed it to Mr. MacCallum for BLCC. These controls could have been implemented at La Ronge. The Employer points out that when new controls were introduced for the FSPR and Remittance Sheets in January and February, 2005 as a result of concerns being raised by Mr. Mercredi, Ms. McGunigal claims to have welcomed these controls but she responded by not making bank deposits and says she stopped making manual bank reconciliations. Ms. McGunigal's claim that management was negligent in overseeing the system is not a significant factor in view of the fact that Ms. McGunigal was the Office Manager responsible for financial controls, for the money received and she knew how to do her work and had been directed to do her work. In such circumstances, lack of oversight did not affect Ms. McGunigal's ability to perform her duties including performing the trust of safeguarding the funds for an extremely vulnerable group residing 135 kilometers away. A lack of controls did not prejudice Ms. McGunigal's ability to safeguard the dollars received by her as she had control over the receipts, the funds and completed the receipts and received the bank statements and entered credits on the CMIS. The Employer trusted her to perform her duties and if the dollars were taken by an unknown person, and Mr. Tholl says there is no evidence of this, this does not remove the gross negligence in the execution of her duties. The Employer further says that Ms. McGunigal's assertion that she did not perform the bank deposits because she was frustrated with management and other office matters does not excuse her gross negligence. If she had been performing her duties, including making

deposits in a timely manner, she would have noted that the funds were missing. Mr. Tholl says Ms. McGunigal made a conscious choice not to perform these duties, therefore the employment relationship is no longer viable.

The Employer says that Ms. McGunigal committed to Mr. Hunter on July 20, 2005 to have the bank reconciliations completed by August 5, 2007. Ms. McGunigal did not raise the question of her ability to do the reconciliation on CMIS yet claims in her evidence that she did not think that the Department would want the manual reconciliation. Ms. McGunigal committed to do the reconciliations but never submitted any. The Employer says that it is puzzling that Ms. McGunigal failed to deposit cheques from the PACC. The Employer finds it difficult to believe that these cheques were never received by Ms. McGunigal when several of them were found in her office. Ms. McGunigal testified she knew that she should receive monthly cheques however never noticed that these had not been received or entered for a period of nine months. An undertaking given to Mr. MacCallum on February 22 concerning these cheques was not followed-up and Ms. McGunigal did not notice that the cheque for February arriving six days later was not processed. Ms. McGunigal acknowledges the serious problems which this could create for inmates as a result of not getting monies credited to their accounts and this could create a problem in the accounts.

The Employer points out Ms. McGunigal's gross negligence in attending to matters related to the True Value account. Ms. McGunigal failed to properly pay these invoices which were her responsibility. While Ms. McGunigal acknowledges that she was aware of the problem and Mr. MacCallum brought this matter to attention after receiving a letter from True Value in September 2004. Ms. McGunigal acknowledges that Mr. MacCallum and Mr. Hunter wanted this matter cleaned up as soon as possible and it was her responsibility to provide for the orderly and timely payment of this account. She knew that the status of the account was affecting the ability of the BLCC and inmates to obtain credit. In respect of Ms. McGunigal's claim that she could not attend to his because Mr. MacCallum had not provided the necessary TADAs, the Employer says this does not make sense in light of Ms. McGunigal in June, 2005 undertaking in the meeting with Ms. Fiedelleck she would see that these matters were paid and done within two weeks. She did not raise any question of

requiring further information from third parties to be able to attend to this matter. Mr. Tholl discounts Ms. McGunigal's submission that she did not want to raise this issue to Ms. Fiedelleck as Mr. MacCallum's supervisor in light of the fact that she had no problem raising the issue of \$60.00 missing from a remittance with Mr. Hunter. Mr. Tholl says that none of this fits with Ms. McGunigal's assertion that she wanted to make Mr. MacCallum look bad and more significantly, within the next month, she sent a letter to Ms. Fiedelleck about her concern from the staff meeting. It makes no sense that she could not raise the issue of the TADAs. Subsequent to the June 14 meeting, Ms. Polischuk said Ms. McGunigal was working on the reconciliation while Ms. McGunigal claims she had assigned this matter to Ms. Polischuk. However, after this matter having been identified at a high level as a serious problem with the Government's credit being affected and her assurances that this matter would be attended to within two weeks, there is no evidence that Ms. McGunigal followed-up or did anything for a period of two months. Mr. Tholl says this is gross negligence.

The Employer submits that the Jacobs report establishes that a significant amount of dollars which had been in the possession of Ms. McGunigal has disappeared before it was deposited to the bank. Such disappearance is as a result of Ms. McGunigal's failure to perform her duties. Ms. McGunigal was the last link to make sure that the dollars were safely deposited to the bank and she failed to ensure this. No explanation has been provided as to why the monies are missing and in these circumstances the employment relationship is no longer viable. The Employer points to the clearest example of the failings being Ms. McGunigal receipting six receipts in a short period of time and failing to ensure that these amounts were in the next bank deposit and in fact, making a deposit where there was no cash deposited. In these circumstances, Ms. McGunigal clearly ought to have noticed that the cash was missing and taken appropriate steps. Further, there is no evidence that Ms. McGunigal made any attempt to match the deposits to the receipts which were written and available in the office. The failure to safeguard the funds and to allow the dollars to disappear and then not to notice or to report this to anyone is clear evidence of gross negligence.

Mr. Tholl further points to the circumstances where Ms. McGunigal acknowledges having received cash as confirmed by her handwriting on the FSPRs and Remittance Sheets which cash was not subsequently found in the deposits. Ms. McGunigal acknowledges having received the cash but claims it was placed in the safe and disappeared without explanation. The Employer says that it is Ms. McGunigal's failure of her duty that allowed the funds to disappear. When the deposit was done on February 25 it was clear that cash was missing and ought to have been noticed by Ms. McGunigal. Had Ms. McGunigal followed the directions given to her to make the deposit on a weekly basis, it is probable that this would not have occurred. Ms. McGunigal's decision to ignore clear duties and her failure to notice that there was no cash in the safe or to bring the absence of cash to her supervisor's attention is gross negligence. Ms. McGunigal's failure to ensure that cash was attached to yellow copies of the receipts and to thereby notice that funds were missing, is gross negligence.

In respect of receipts received and posted by Ms. McGunigal which were not deposited, the Employer submits that Ms. McGunigal failed to perform the duties entrusted to her to safeguard the money and to keep accurate records. These circumstances show that Ms. McGunigal increased inmate accounts without establishing that the monies had been received. To post without dollars creates a liability and is gross negligence. Ms. McGunigal is the one who was in the position to notice the discrepancy and her failure to do so represents gross negligence to protect the funds. In respect of Ms. McGunigal's suggestion that Ms. Polischuk may have used her code for posting, the Employer submits that there is no evidence of this except for the use by Ms. Polischuk during her training. In relation to Ms. McGunigal's explanation that she may have posted the monies without having received the same as a result of her concern for the Corrections Workers, the Employer suggests that there was no evidence of any violence or threats of violence versus the Corrections Workers and further it was Ms. McGunigal's absolute duty and responsibility to be accountable to her employer and not aid or assist any Corrections Worker in respect of monies that may not have been delivered. Should this have occurred, it is the Employer's position that Ms. McGunigal ought to have reported the same to her supervisor. Further, Ms. McGunigal acknowledges in her evidence that if any such events occurred, it would only have been two

or three times and that she would have followed-up and reported if the monies had not been received. Ms. McGunigal acknowledges it was a critical duty to report missing funds, however, Mr. Jacobs found there were twenty-one occasions that monies were posted by Ms. McGunigal without funds being present or deposited. None of these were reported to management.

The Employer argues that Ms. McGunigal's allegations of sexual harassment ought not to be minimized but cautions that they should not be expanded beyond what is factually established. Mr. Tholl points out that Mr. MacCallum acknowledges that his singing of the birthday song was inappropriate and he stopped; the song was not addressed to Ms. McGunigal nor focused on her. No other sexual behaviour was reported and no complaint filed. Mr. MacCallum agrees that it would be inappropriate to tell Ms. McGunigal jokes she did not wish to hear, however Mr. Tholl points that there was no formal complaint. Comments concerning Mr. MacCallum's wife being unhappy were denied by Mr. MacCallum. Although Mr. MacCallum was not asked about the comments to Ms. McGunigal after her brother passed away, Mr. Tholl agrees that if made, they were entirely inappropriate. The Employer acknowledges that the manner in which Mr. MacCallum at the June 21 staff meeting dealt with the rumors was inappropriate and should have been dealt with in a different manner. Mr. Tholl points out that Ms. McGunigal neither spoke to her Union representative concerning this nor filed a complaint. The Employer submits that the issue of sexual harassment was not raised in respect of performance until the arbitration. While the Employer admits there may have been some inappropriate activity, there is no evidence that there is a connection with this conduct to Ms. McGunigal's performance and her failure to perform her job duties and tasks at the La Ronge office which was 135 miles from Mr. MacCallum's office. Further, there is no connection with the failure to complete deposits which would take about ten minutes per week.

In response to the Union's position that Ms. McGunigal had been disciplined twice for the same offence, the Employer referred the Board to the "rule" described in *Brown and Beatty, Canadian Labour Arbitration, (Third Edition), p.7:4240:*



It is generally accepted that an Employer may not impose more than one penalty for the same offence. Arbitrators have taken the position that when a responsible member of management, possessing the requisite authority, metes out a specific sanction for certain misconduct and specifically so advises the employee, it is not proper for higher levels of management, on being apprised of the events, to subsequently substitute a more severe penalty. However, the rule would not be offended by a suspension which was imposed pending the final resolution of the matter in which was ultimately followed by the discharge of the employee involved....

The Employer says that Ms. McGunigal's initial suspension followed by discharge does not constitute double jeopardy as it was made clear to Ms. McGunigal at the time the suspension was imposed that the suspension, with pay, was to permit an investigation to be conducted into potential financial mismanagement. On February 14 Ms. McGunigal was placed on leave without pay pending further investigation into the investigator's report that approximately \$1,880.00 had been traced directly to her. The Employer says that interim penalties, like suspension, are permissible if an employer needs more time to investigate and the employee is informed.

The Employer referred the Board to a number of decisions to support its position that discharge is appropriate in the circumstances of Ms. McGunigal's gross negligence. In *Canadian Pacific Hotels Ltd. and Canadian Brotherhood of Railway and General Workers Union* 29 L.A.C., (2d), 111, Arbitrator Owen-Flood set aside the grievor's dismissal and substituted a penalty of five months' suspension. In that case the grievor was found to have been guilty of gross misconduct which resulted in the Employer being deprived of the sum of \$3.50 when, on a very busy night, the grievor failed to follow described procedures for entering drinks being served. The Board concluded that it was not satisfied that the grievor had an intent to steal. His procedures were sloppy and negligent and as a result of his voluntary conduct, he pursued a reckless method of carrying out his duties as a result of which he ended up wrongfully with money that belonged to his employer. This was found to be very serious misconduct as a result of which the employer was deprived of money which was converted to the grievor's use. The Employer argues that in Ms. McGunigal's matter there are substantial dollars involved in many transactions over a very extended period of time.

The Employer also referred the Board to the decision in *United Steelworkers of America, Local 862 and Canadian General Tower Ltd.* 118 L.A.C. (4<sup>th</sup>) 193. In that case the discharge of a nineteen-year employee was upheld where the employee tampered with a safety mechanism that put at risk the company's reputation and its pocket book as well as created a hazard for the grievor and his fellow employees. The Arbitrator held that the grievor's actions constituted gross misconduct in a inherently dangerous workplace. The grievor's conduct was not momentary aberration or a spur of the moment occurrence. It was more than just negligence or inadvertence. The arbitrator viewed the actions as being a significant breach of trust.

The Employer also referenced the decision of Batten, C.J. in *Canada Packers Inc. v. Kennedy* 27, Sask. R. 201. In this case the employee worked as a truck driver/delivery person whose duties included collecting monies and remitting the same to the employer. The employee claimed that money left in the truck had been stolen. The defendant had been instructed to deposit monies collected into designated accounts. Chief Justice Batten concluded that the employee acted in contravention of the established practice and direct orders of his employer; this breach was the direct cause of the loss to the employer.

The Employer also relies on the decision of Justice Baynton in *Rea v. Armadale Co. et al* 173 Sask. R. 174. This case involved a termination of the plaintiff's employment as executive secretary. She also was treasurer of the employee's social club. The plaintiff was unable to account for the club's funds or to explain suspicious transactions. The court held that she owed fiduciary duties her fellow employees including the duty to manage the funds in a financially responsible manner. The court concluded that in her conduct in misleading her employer and mismanaging the social club funds she breached the implied terms of her employment and eroded any confidence her employer could have in her future employment. The court held that the employer had just cause to dismiss the plaintiff. In paragraph 29, Justice Baynton writes:

In reaching this conclusion, I have attempted to make every possible allowance to the plaintiff and take into account every reasonable and believable explanation for her conduct. I am satisfied that her actions constitute more than mere carelessness,

inadvertence or inexperience. Only the plaintiff knows (or could have known if she had responsibly performed her duties) what happened to the money that cannot be accounted for. The overwhelming inference from the evidence as a whole is that this money remained in her personal account. She has not rebutted this inference. Even her own evidence supports this conclusion. The law does not require the defendants to prove theft or some other criminal offence to establish just cause. It is sufficient if the defendants prove that the plaintiff was dishonest. As well, the law does not require the defendants to prove what the plaintiff did with the social club money she received personally as this is within the sole knowledge of the plaintiff. Once the defendants prove that the plaintiff received the money, the onus shifts to her to give a credible explanation as to what she did with it. The defendants spent considerable effort to construct financial statements based on information they were able to ferret out. They invited the plaintiff to respond to the discrepancies but their invitation was rejected by her. As Mr. Sinkewicz testified, the defendants are still waiting for a satisfactory explanation.

## **B. Union Position**

The Union acknowledges that Ms. McGunigal's failure to make timely deposits is conduct worthy of discipline, however it submits that the Employer has not established its allegations of gross negligence. The Union argues that the Employer has not established that Ms. McGunigal cannot do her job and in the absence of any prior warnings, previous discipline, no proper oversight and systemic problems, termination is excessive.

The Union argues that the Employer failed to act promptly to deal with performance shortfalls. The Employer was aware of deficiencies in Ms. McGunigal's performance in November 2004, however, there was no disciplinary action taken nor was Ms. McGunigal warned concerning negligent performance of her duties and potential consequences.

The Employer failed to follow the doctrine of progressive discipline. The Union says that the Employer's failure to provide a prior warning or suspension in respect of work performance denied Ms. McGunigal the opportunity to respond to the warnings and to improve her work performance or to know that she would face greater discipline. The Union says that this lack of clear cogent warnings ought to be fatal to the Employer's decision to terminate Ms. McGunigal's employment. In support the Union cites the decision of Arbitrator Shime in *Re North York General Hospital and Canadian Union of General Employees*, 5 L.A.C. (2d) 45 where at page 46, Arbitrator Shime writes:

What is troublesome about this case is that the grievor who has been employed for approximately two years has been summarily discharged notwithstanding the lack of any prior disciplinary record, the lack of any warning that unless her work performance improved that her job would be in jeopardy and the lack of a culminating incident which might explain why the employer which had tolerated her allegedly poor work performance for so long, suddenly decided to terminate her employment relationship.

It is trite to say that the penalty imposed should fit the offense. Summary discharge may be warranted in extremely serious offences such as striking a foreman or theft; however, in less extreme situations, such as infraction of plant rules or carelessness in work performance, it is usual to find some form of corrective discipline in the form of warnings and then suspensions before an employee is discharged. The imposition of discipline is also subject to the type of business or industry, which may have its own peculiar conditions. One of the advantages to adopting a corrective disciplinary approach is that it enables the parties to know where they stand with each other. An employee who is subject to corrective discipline knows that after receiving a warning he may receive a suspension and that after a suspension he may be discharged if he repeats an offence.

Further, where the employer maintains a system of discipline an employee may grieve when discipline is imposed, which prevents stale incidents from being resurrected on a subsequent occasion. In this type of system an employee is given the opportunity to clear his record through the grievance arbitration procedure at the time of the incident and if he is not successful he is put on notice that his past record will be held against him.

However, if the employee's misdeeds are tolerated the employee may form the opinion that the lax standards are all that is reasonably expected by management. The employee is then lulled into a false sense of security. In this type of situation the sudden tightening of standards followed by the discharge of the employee, if done without warning, is manifestly unfair since the employer has tolerated the relaxed standards which had been in existence and which the employee may have considered to be in the norm.

The lack of warning to the employee that her job might be in jeopardy, in the circumstances of this case, may have lulled the employee into a false sense of security about her work performance. (Emphasis added in Union submission).

The Union submits that Ms. McGunigal has been subjected to "double jeopardy" as a result of her suspension with pay from September 15, 2005 to February 13, 2006 followed by her suspension without pay on February 14 and termination on March 2, 2006. It says that the essential objective of a suspension with pay is the correction of unacceptable behaviour even though no economic loss occurred. In support of its submission the Union refers to the

decision of Arbitrator E. Newman in *Re Toronto Humane Society and Teamsters, Local 419*, 128 L.A.C. (4<sup>th</sup>) 296 where at page 303 Arbitrator Newman stated:

My view is that the determination of whether an unpaid suspension is or is not disciplinary in nature is a finding of fact, to be made in each case, and dependent upon the circumstances. It is one thing for an employer to meet with an employee, to share a concern, and to inform the employee in a measured way that there will be suspension with pay pending investigation and consideration. This was the process followed in *Re Canadian Imperial Bank of Commerce and Union of Bank Employees*, unreported, May 26, 1987 (Burkett) [summarized 5 C.L.A.S. 49]. It is entirely another thing for an employer to impose suspension without measured discussion, without explanation, and without any information at all. That is what occurred in this case. The discussion began and ended with the grievor being told she was to go home. Not only is that a disciplinary act from the grievor's perspective, but from an objective perspective as well.

I am influenced in this conclusion by the extensive reasoning of Arbitrator Surdykowski, in *Re Riverdale Hospital and C.U.P.E., Loc. 79 (Reyes)* (2003), 93 L.A.C. (4<sup>th</sup>) 195 at p.202. There, in the shadow of an allegation of extreme misconduct, (a hospital employee was accused of slapping a patient), the hospital suspended the employee with pay, pending investigation. The arbitrator concluded that the suspension was disciplinary. The act of rendering work inaccessible to an employee, based on a preliminary finding that there is sufficient evidence to interfere with the individual's ability to work, generates the perception in both the individual and others in the workplace that there is cause to do so. Regardless of what the process is labeled, it is disciplinary in nature. "Whatever the employer's subjective intent, it appears that the employee is being chastised or punished and the subjective effect on the employee is one of discipline (p.202). In resounding language, Surdykowski said [p.201]:

It is important not to let semantics dictate the analysis or the result. I prefer to deal with the actual events rather than what they have been called. After all, calling an onion a peach does not make it one.

In this case, Corken was told to send the grievor home with pay. She did so. On these facts, this was more than just the start of an investigatory process, and more than the start of an investigatory and disciplinary continuum. It was, subjectively and objectively, an imposition of discipline. To the extent that the paid suspension would have marked the beginning of the discharge process, (in the absence of a successful grievance), it would have formed part of the discipline remaining on the grievor's work record.

The Union says that when the Employer changed the suspension from paid to unpaid "...pending further investigation of this matter..." it had already concluded to make the decision to discharge Ms. McGunigal. The Employer had already paid Ms. McGunigal her five months while it conducted an investigation. The Union says this is a "mean spirited act

*calculated to cause additional stress and grief to the grievor...".* It is unfair to allow the Employer to impose an unpaid suspension and a termination both based on the Jacobs Report.

The Union submits that discharge is inappropriate in light of all the circumstances. It submits that there is a need to focus on the employee's prospects for acceptable conduct in the future and to consider if there is any risk to the Employer if the grievor is reinstated. Mitigating factors in this case include Ms. McGunigal's personal characteristics or issues, her behaviour in all of the circumstances and the lack of clarity and stated consequences in the Employer's policies.

The Union says Ms. McGunigal was a victim of personal or sexual harassment which gave rise to an irrational mental state which resulted in responsive actions. The Union submits harassment is not, on its own, exculpatory but rather, ought to be considered as a contributing factor which would mitigate the penalty. Ms. McGunigal has approximately an eighteen year record of employment with Government. Ms. McGunigal has accepted responsibility and is remorseful. It should be considered that she is an aboriginal female living and working in Northern Saskatchewan who will face severe economic hardship if not reinstated. I am asked to consider the unequal punishment imposed upon the out-of-scope managers in connection with their shortcomings in performance of duties. The Union says that full trust can be restored with the Employer; there is no allegation that Ms. McGunigal stole funds or had the intention to steal. There is good prospect for acceptable behaviour in the future with the acceptance and recognition of the wrong-doing. The Union submits that Ms. McGunigal has the full rehabilitative potential and has the capacity to conform with the Employer's work conditions and terms in the future.

The Union says that the penalty of discharge is excessive and cannot be sustained in light of the Employer's inconsistent actions and its inattentive and/or inappropriate management. The Employer knew of and condoned the historical lack of controls in the La Ronge office and the camps. The Employer appeared to tolerate and accept Ms. McGunigal's lack of performance of her duties; she was neither warned nor disciplined for

her poor work performance, including failure to make bank deposits. It says that it is unfair that the Employer should now, without any warning, tighten the standard. The fact that the Employer never disciplined Ms. McGunigal for her failure to follow the instructions of Mr. MacCallum effectively lulled her to a false sense of security and sent the message that the Employer tolerated poor work performance. The Union says that because of the Employer's conduct all of the allegations of gross negligence or poor performance should be treated as an isolated incident rather than a continuing breach.

The Union further submits the Employer's actions in discharging Ms. McGunigal is discriminatory having regard to the discipline imposed on the outside managers for their actions in this matter. The Union also alleges that there have been prior cases where former employees who did not perform their duties were not punished.

Among other cases which the Union referred to was the decision of Arbitrator Innes Christie in *Pictou District School Board and N.S.T.U.* 63 L.A.C. (4<sup>th</sup>), 14. In this matter the grievor was demoted from his position of Vice-Principal to that of a teacher for breach of his "fiduciary duty" to the Board through "carelessness, incompetence and failure to account for both financial and non-financial records". The failings related to the grievor's duties as Adult Education Coordinator for the Board. It was determined that the employer was entitled to take into account the grievor's off-duty actions in performing that job to the extent that they demonstrated incapacity to administer and maintain financial and non-financial records or an attitude of their responsibility in such matters. As the Board was the grievor's employer were both positions of co-coordinator and vice-principalship, the Board would be justified in considering actions when acting as a co-coordinator in assessing the position of trust required in the vice-principalship as both were positions of trust probably involving fiduciary duties. In this case there was a discrepancy of over \$4,000 for three adult education terms. A considerable amount of money collected by the students appeared to have been either lost or stolen and some cheques were held so long that they became stale-dated. The arbitrator also considered that the grievor's inadequate handling of records and accounts related to funds collected for the high school year book showed that discipline was warranted. The Union points to the similarities between Ms. McGunigal's circumstances and

the *Pictou* decision and the fact that the discipline was demotion, not termination. The Union submits that a period of suspension with reinstatement would be appropriate. Alternatively, it is within the jurisdiction of the Board to not reinstate Ms. McGunigal, and to provide her with a severance settlement.

## ANALYSIS AND DECISION

The parties agree that Ms. McGunigal's conduct in this matter is worthy of discipline. It is beyond doubt that Ms. McGunigal repeatedly failed to perform primary responsibilities and critical tasks associated with her duties as Office Manager. These failures include her failure to perform necessary duties associated with inmate accounting on the CMIS, failure to complete bank reconciliations and the balancing of inmate accounts monthly.

For an extended period of her employment, Ms. McGunigal failed to input data on the CMIS for inmate accounting at BLCC. She failed to complete daily postings and to make bank deposits in a timely fashion as required and directed. There is no evidence of any bank reconciliations being completed by Ms. McGunigal or balancing of the inmate accounts on a monthly basis. No records were found in respect of the Collective Trust Account. Additionally, Ms. McGunigal failed to perform services in respect of payment of invoices in a timely manner. Ms. McGunigal posted credits to inmates accounts without funds being present. Ms. McGunigal knew or ought to have known of shortages of cash in the deposits and failed to report this to her supervisor.

Ms. McGunigal's failure to perform her functions and duties gave rise to circumstances where a significant amount of money disappeared. It has not been deposited to bank accounts as required to the credit of inmates. CPS has a fiduciary duty to the inmates to ensure that any and all funds received by it on behalf of an inmate are properly credited and accounted for. As Office Manager in La Ronge, Ms. McGunigal was entrusted with the due execution and fulfillment of this duty in respect of the funds received in the office and more particularly, those specifically received by her.



Ms. McGunigal was responsible for the input of data on CMIS for inmate accounting. This included a duty to ensure and verify the information being posted to the ITA accurately reflected the financial situation. Ms. McGunigal was responsible to both the inmates and to the Employer. Her responsibility to the inmates was to ensure that the inmate received, in a timely manner, a full credit for all monies received by CPS or to be credited to his account and to only have charged against his account properly incurred and authorized expenses. Her responsibility to the Employer included ensuring that all of the postings accurately reflected true financial transactions and that the monies were in hand before being credited to the inmates accounts and that all funds credited to the account be deposited in a timely manner to the appropriate bank account and that records be maintained to verify these actions. Ms. McGunigal was responsible for bank reconciliations and the balancing of the inmate accounts on a monthly basis.

Mr. Jacobs conducted an investigation that focused on the operations of the La Ronge office and Ms. McGunigal's performance during the period from October 1, 2001 to August 31, 2005. I am satisfied that throughout that period Ms. McGunigal failed to make bank deposits as required and as she was repeatedly directed. In 2003 she made only seven deposits to the ITA. In 2004 she made only four deposits to the ITA. In 2005 the only deposit to the ITA was made on February 25. On some occasions five months elapsed between deposits. Over the same period Ms. McGunigal only made three deposits to the CTA in 2003 and one in each of 2004 and 2005.

The Employer's Financial Administration Manual requires that money is to be kept secure until deposited and that deposits be made at least weekly if the total is between \$100 to \$1,000 and monthly if under \$100. Mr. MacCallum, on numerous occasions between 2002 and 2005, instructed Ms. McGunigal to make deposits as required with deposits to be made typically on a weekly basis and exceptionally every two weeks. The instructions given by Mr. MacCallum at the end of April, 2002 were to make deposits on a daily or as required basis. In a meeting on January 18, 2005 Ms. McGunigal was instructed to make a deposit at least weekly. On February 22 deposits had not been completed and she was instructed to make a deposit by the end of the week and then weekly. A deposit was made on February

25. No further deposits were made notwithstanding ongoing meetings with management concerning the financial affairs of the La Ronge office.

On May 11, Ms. McGunigal and Ms. Polischuk met with Mr. MacCallum to discuss existing issues and to put in place corrective measures required to get the financial records and processes in order. There was a specific concern around the existing process of receipting/recording funds and receipts. This arose as a result of inmate complaints that funds had not been credited to their accounts. Significantly, Mr. MacCallum followed up this meeting with an email directing that funds received in the office should be posted immediately, entered in the deposit book and deposited at least once a week. He further directed that the receipts should remain with the funds until the deposit is made and then the receipts need to be filed. Notwithstanding this need to address the financial issues with the inmate accounts and that these were directly within Ms. McGunigal's responsibility and in the face of direction to make the deposits, Ms. McGunigal did not make a further deposit and had not made a deposit since February 25, 2005.

As a result of Mr. MacCallum's determination that there was no progress towards a resolution of the issues with the ITA, he and Mr. Hunter met with Ms. McGunigal and Ms. Polischuk about the concerns and the lack of progress. Ms. McGunigal was instructed that the ITA must be brought up-to-date and all outstanding postings completed by June 10. Instructions were to meet the existing standards and to maintain appropriate accounting practices. On June 10 Ms. McGunigal reported that the ITA was up-to-date for current but still working on the closed files.

A meeting was held June 14 as a result of concerns raised by Ms. Fiedelleck about the long-outstanding complaints by inmates, the handling of the ITA, the handling and accounting for cash and the receipt books, and the timely payment of outstanding accounts having been raised with the Deputy Minister. Present at that meeting were Ms. McGunigal, Ms. Polischuk, Mr. Hunter, Mr. MacCallum and Ms. Fiedelleck. At this meeting Ms. McGunigal undertook that the ITA would be up-to-date and the True Value account would be reconciled and outstanding invoices addressed within two weeks. Notwithstanding these

concerns raised at a meeting called by Ms. Fiedelleck and with involvement of the Department in Regina, no deposits were made by Ms. McGunigal.

In mid-July, Ms. McGunigal received copies of departmental emails concerning the status of the True Value account and bank reconciliations which were to be received by July 29 and monthly by the 15<sup>th</sup> thereafter. I am satisfied that Ms. McGunigal had the knowledge and ability to complete deposits to the ITA and CTA and to satisfy herself that all funds received were deposited to the appropriate account and to ensure that the deposits matched receipts. The time involved to make a deposit was minimal. Ms. McGunigal offers no explanation as to why she failed to make the deposits as required by her position duties and as specifically directed by her supervisor. This failure was not due to mere carelessness, inadvertence or inexperience. I can reach no other conclusion that she made a deliberate decision not to make the deposits. A primary responsibility and duty of her position was to safeguard and protect the monies received and to fulfill the trust obligation of her employer to the inmates. Ms. McGunigal's refusal to perform this duty and to ensure that all funds received were deposited in a timely manner put the monies at risk. Had Ms. McGunigal been performing her duties and determining on the occasion of each required deposit, that all monies received were deposited, any shortage of funds involved would have been detected; if detected and reported, it is highly probable that the losses sustained would not have occurred.

Ms. McGunigal failed to perform her duties and responsibilities to maintain the ITA including completing or ensuring that the postings to the ITA on CMIS were performed. She failed to ensure that the inmates accounts were properly credited. After Ken Mercredi became Deputy Director at BLCC, many instances of the failure to accurately post and credit funds to inmate accounts were identified. When these were identified, Ms. McGunigal set about correcting the postings. Many postings were not completed in a timely manner in disregard of Ms. McGunigal's responsibility to ensure that data was input on the CMIS for inmate accounting including daily postings to the ITA and a complete balancing on a monthly basis. Of twenty-one transactions involving forty-five receipts reviewed by Mr. Jacobs covering the period August 31, 2004 to August 31, 2005, only forty percent appear to have been posted within a reasonable time. For the others there were delays of six to nine

months before being posted. I do not accept Ms. McGunigal's offered explanation that these delays may have occurred as a result of the receipts not arriving from BLCC. These particular receipts which were reviewed were ones noted to and admitted to have been personally received and posted by Ms. McGunigal. Her explanation that she may have posted the receipts to the credit of the inmate without the funds actually being present as a result of pressure being placed by the inmate on the CW does not seem reasonable. Ms. McGunigal herself admits that if she posted an entry without funds, this would only have occurred occasionally and that she would have ensured that the funds were received. If Ms. McGunigal did post without having the monies, this would be a serious breach of her fiduciary duty to the Employer. As a result of these postings and no matching deposits to the bank accounts, \$1,299.50 was unaccounted for. Such a shortage ought to have been known to Ms. McGunigal and to have been reported to her supervisor. No such report was ever made.

Between September 29 and October 10, 2003 Ms. McGunigal personally issued six receipts for the sale of berries and received \$182.00 cash. At least one of these transactions she vividly recalled at the hearing. Deposits were made to the ITA and the CTA on October 24 and November 24, 2003. None of these deposits included any cash and the yellow copies of these receipts were not found. Had Ms. McGunigal performed her duties as required, she would have required that the deposits match the receipts and it would have been readily apparent that the cash was missing. I find it very difficult to accept that Ms. McGunigal did not realize on October 24 and/or November 24, 2003 that there was a shortage in her deposits. Ms. McGunigal had the ability to perform the deposits and to reconcile the deposits with receipts. She failed to do this as required. She knew or ought to have known that there was a shortage and she did not report the shortage to her supervisor. Such actions are a very clear breach of her responsibilities and duty owed to the Employer. Her actions or inactions are gross negligence.

On February 8, 2005 Ms. McGunigal admittedly received and signed for eight FSPRs which included \$139.00 cash. Of these receipts, three totaling \$59.00 cash were posted by Ms. McGunigal on February 8. Neither the yellow nor pink copies of the other five receipts

were located. On January 5, 2005 Ms. McGunigal noted \$100.00 cash received and receipted on January 10. She also posted an additional \$25.00 received on February 17. On February 25, Ms. McGunigal made three deposits to the ITA and one to the CTA. The only cash deposited was \$121.00. Ms. McGunigal is unable to provide an explanation as to why the cash deposit did not at least equal \$139.00 personally received by her or include the \$125.00 posted on CMIS as received. On March 11, 2005, Ms. McGunigal received \$100.00 cash in connection with the three receipts for the sale of firewood. No copies of the yellow receipts were located. There were no deposits after February 25 and no dollars located after Ms. McGunigal's departure from the workplace. There is no explanation as to why these monies were not deposited. Had Ms. McGunigal ensured that the deposits matched the receipts, she would have known there was a shortage. She either did not match them or did match the deposits to the receipts and knew there was shortage and failed to report it. This was occurring at a time when Ms. McGunigal was being clearly instructed that it was required that she deal with the irregularities on the ITA postings, make weekly deposits, keep the receipts with the funds until the deposit was made and then file the receipts.

Ms. McGunigal responsibilities include expenditure control and the coding and issuing of invoices and cheques for inmate activities. The evidence establishes that Ms. McGunigal did not perform these duties in a reasonable and responsible manner to the level of competence expected. The evidence is that there was an ongoing problem with third party accounts, most particularly, one with True Value. While Ms. McGunigal was not warned or disciplined in respect of these shortcomings, in the period from September 2004 to August 2004, she was very much aware that this was an outstanding issue and the problems it was creating for the camp, the inmates and CPS. On many occasions throughout this period this issue was the subject of specific discussion and direction to Ms. McGunigal to have it cleared up. Significantly, Ms. McGunigal did, on several occasions, undertake to attend to this matter within a defined period. Unfortunately, she never did attend to nor clear up this matter which was still outstanding when she left the office. I do not accept Ms. McGunigal's explanation that the delay in clearing up the True Value matter was a lack of authorizations completed by the inmates. This explanation was not given to Ms. Fiedelleck at a meeting in June 2005 where Ms. McGunigal undertook to have this matter cleared up within two weeks.

Ms. McGunigal claims she assigned responsibility to Ms. Polischuk to clear this matter up but then never did follow-up to see that anything was done nor did she show any further interest or concern.

I am satisfied that Ms. McGunigal failed in her duties and responsibilities in respect of the True Value matter, however I am unable to conclude that her shortcomings in this respect constitute gross negligence. In reaching this conclusion, I take into account that at no time did the Employer warn or discipline Ms. McGunigal in respect of her work performance relative to these accounts. The Employer was aware of this issue in September 2004 and no personnel action was taken. The Employer appears to have accepted this unacceptable level of performance. The conduct may have been potentially disciplinary in terms of poor work performance. I am unable to conclude, in these circumstances, that it is gross negligence.

I find it difficult to understand how and why Ms. McGunigal failed to deal with the internal transfer cheques from PACC. In July 2003 the issue of these cheques being outstanding from October 2002 to May 2003 was raised. Similarly, the issue concerning a cheque issued by PACC on March 28, 2003 regarding Waden Bay was discussed. This cheque had never been deposited and was allowed to become stale-dated. Notwithstanding numerous correspondences and attempts by PACC to have this matter addressed by Ms. McGunigal, nothing occurred. Following the issuance in December 2003 of a cheque to replace four uncashed inmate transfer cheques, the next nine consecutive transfer cheques covering the period January to September 2004 were uncashed and outstanding in October 2004 in the sum of \$6,136.45. Ms. McGunigal claims that the cheques were not received in La Ronge and when asked about them, they could not be found. She realizes the importance of these cheques in terms of the transfer of inmate's monies and the need for them to be processed in an orderly and timely fashion.

After Ms. McGunigal left the office, several of these cheques and other cheques from Saskatoon Correction Centre and Regina Correctional Centre were located by Mr. Hunter in Ms. McGunigal's desk. Some of these were stale-dated. Ms. McGunigal offers no explanation as to why these cheques were found in her desk or when she was aware there

were monthly cheques and none arrived that she did nothing about this. My conclusion is that these cheques were received by Ms. McGunigal and for some reason, she chose not to deposit these and to post the credit to the inmate's accounts on CMIS. Clearly, she knew her responsibility, she knew it was important to process these cheques, she knew the problems were being created for other centres and she knew that management was aware and concerned about what was occurring, yet she chose to do nothing and not to follow-up in this matter. I am of the opinion that Ms. McGunigal's actions, in respect of these cheques, constitutes gross negligence and a breach of the trust obligations surrounding handling of inmate funds.

The Employer says that Ms. McGunigal's conduct constitutes a serious violation of the trust relationship and provides it with just cause to terminate her employment. The gross negligence relied upon is in her failure to perform primary duties over an extended period of time in the face of clear instructions and her failure to fulfill the obligations to safeguard the monies of CPS and the inmates through the performance of her duties with the result that monies are missing and no explanation has been provided. The Employer says this conduct has eroded its confidence in the future employment and Ms. McGunigal's ability to perform her duties. On all of the evidence and in the circumstances, I am not satisfied that the Employer ignored any relevant considerations or proceeded on the basis of any misunderstanding of the events and conditions investigated and in respect of which its decision was made to terminate Ms. McGunigal's employment. There is no evidence that the Employer acted on any improper motive in reaching its conclusion that discharge was the appropriate discipline.

I am satisfied that she breached her trust duties and obligations to her Employer and to the inmates to handle the matters in a financially responsible manner in accordance with established policy and procedures. As a result of these failures, there is in excess of \$25,000 missing for which no explanation has been provided. The Employer's decision to terminate and its case at the hearing places a special emphasis on the sum of \$1,880.50 which had been in Ms. McGunigal's possession and was not deposited. Ms. McGunigal's failure to perform her primary duties created circumstances which permitted monies to go missing, not to be

detected and reported to management. Had Ms. McGunigal complied with the requirements associated with bank deposits, she would have ensured that the deposits match receipts and in so doing it would have been apparent that monies were missing. These would have been reported to management and would have permitted management to take steps to determine the reason for the shortages and to prevent further losses. Ms. McGunigal is responsible for the financial controls within the office and to ensure prompt, accurate accounting for monies received by CPS employees on behalf of inmates and to see that monies were credited to the proper inmate account. These responsibilities, including compliance with the Financial Administration Manual, including usage of the Cash Mail Record, making deposits (including matching with receipts), and controlling and accountability of receipts, responsibility for balancing and reconciling the inmate trust accounts. Ms. McGunigal's failure to perform these duties and the resulting loss in all of the circumstances, gave the Employer just cause to terminate her employment.

The Union says that the Employer failed to properly manage, supervise and oversee the workings of the La Ronge office and Ms. McGunigal's work performance. It says that management accepted a lax standard and its failure to warn of the need for work improvement created a false sense of security or lulled Ms. McGunigal to believe that sub-standard performance was acceptable. There is no doubt that there was a very significant lack of supervision and control by management in the La Ronge office. In part, this supervision was more difficult due to Mr. MacCallum's office being at BLCC which was 135 kilometers away. Mr. MacCallum was responsible for oversight of the financial matters related to the ITA. It is equally clear that Mr. MacCallum did not fulfill his supervisory responsibilities and role to ensure that proper financial administration was followed and that controls were in place. He failed to ensure that Ms. McGunigal performed her duties as required including timely deposits, timely accurate postings to the ITA, completion of bank reconciliations and the balancing of the ITA and the CTA. Notwithstanding Mr. MacCallum's directions to Ms. McGunigal, there was no proper follow-up to ensure that the direction was complied with. The lack of supervision, direction and controls was known to Ms. McGunigal; it gave rise to an opportunity to permit a situation where if her duties were



not fulfilled and performed an opportunity arose for financial irregularities which would not be detected.

This lack of supervision and controls is not a justification or excuse for Ms. McGunigal's failure to perform the duties that she was capable of performing and had, in the past, performed. It does not justify her failure to follow the specific directions given particularly in relation to the making of timely deposits with matching receipts and postings. Lack of supervision does not account for her failure to handle the cheques from the PACC. I do not understand Ms. McGunigal's position to be that the lack of supervision justified her failure to perform her duties. Her claim is that due to Mr. MacCallum's and Mr. Hunter's absences from work and what she perceived to be their failure to perform their duties, she was less concerned about timely performance. There is nothing in the evidence to suggest that Mr. MacCallum or Mr. Hunter knew, condoned or accepted Ms. McGunigal's failure to make deposits and to sanction deposits being made where a shortage of funds existed, and to not report this to management. There is no evidence that Ms. McGunigal was lulled into a false sense of security such that she could reasonably believe that the Employer would accept her failure to perform her primary duties and her failure to ensure that all inmate monies were accounted for or that the Employer would accept a shortage of funds or a failure to match deposits and receipts and not report shortages known or which ought to have been known to her.

Ms. McGunigal alleges she had been subjected to harassment, including sexual harassment, in the workplace. She says that this harassment was a factor which contributed to or caused her work performance. She says that as a result of the harassment she suffered from sleep disruption, found it difficult to concentrate, lacked enthusiasm for her work, her performance suffered as a result of stress and she had an illness which is now under control. No medical evidence was called in respect of Ms. McGunigal's medical condition or to provide any information as to the timing of these medical concerns or the nature of the issues.

I have fully considered Ms. McGunigal's evidence concerning allegations of workplace harassment. Ms. McGunigal's complaint is principally directed at the conduct of Mr. MacCallum. I am satisfied that on some number of occasions, Mr. MacCallum did make inappropriate comments to Ms. McGunigal, which comments Ms. McGunigal found to be offensive. The evidence does not establish any time frame for these inappropriate comments, however does establish that inappropriate comments were made by Mr. MacCallum at the staff meeting on June 21, 2005. Ms. McGunigal responded to an apparent request from Ms. Fiedelleck to put in writing her concerns about the inappropriate conduct. Ms. McGunigal did not otherwise file any complaints with the Employer or with the Union concerning her allegations of harassment.

I am unable to conclude that the inappropriate conduct of Mr. MacCallum played a causal or contributing factor in Ms. McGunigal's failure to perform significant primary duties. In all of the circumstances, I am unable to conclude that Ms. McGunigal's work performance failures were caused or contributed to by the inappropriate conduct in the workplace. The evidence establishes that in September/October, 2003, Ms. McGunigal received, receipted and failed to deposit \$182.00 cash from the sale of berries. This money was not deposited, nor accounted for, nor any explanation offered as to why, when deposits were made, funds were not matched with receipts.

I am not satisfied that the harassment issue was raised by Ms. McGunigal as a contributing factor in her inadequate workplace performance prior to the hearing. As such, there was no error by the Employer not taking into account an allegation of workplace harassment as a factor in making its decision to terminate Ms. McGunigal's employment. It is my conclusion that Ms. McGunigal's complaint of sexual harassment was not advanced by her during the course of the investigation of this matter as a factor which caused or contributed to her failure to perform her duties in the workplace. This issue appears to have arisen as an after-thought in justification of Ms. McGunigal's failed work performance.

The Union claims that the Employer has improperly imposed more than one penalty for the same offence committed by Ms. McGunigal. It alleges that the September 15

suspension with pay is disciplinary, as is the February 14 decision to place Ms. McGunigal on indefinite leave without pay. The Union says that the result is that the Employer's decision to terminate constitutes a further discipline in respect of the same matter.

On September 15, 2005, Ms. McGunigal was informed by Mr. Hunter that she was indefinitely suspended from work with pay. She was advised that the suspension was "*...so that an investigation can be conducted into potential financial mismanagement*". On September 15, Mr. Jacobs was requested to conduct an investigation; he did this including interviewing Ms. McGunigal. Mr. Jacobs prepared a report dated January 26, 2006 in respect of his investigation. This report was provided to CPS.

I do not agree that the suspension with pay in these circumstances was disciplinary. On February 9, 2006, Avonda McKay and Sandra McDonald met with Ms. McGunigal and her union representative in Prince Albert. According to Ms. McDonald, the purpose of this meeting was to inform Ms. McGunigal as to the status of the investigation, to discuss the Jacobs Report and to seek any further information or explanation from Ms. McGunigal in respect of its findings and conclusions. Ms. McGunigal's position was that she did not know where the funds went and she did not take them. Ms. McDonald does not recall advising Ms. McGunigal that the investigation was ongoing. There is no evidence of any further investigation being conducted by Mr. Jacobs or CPS subsequent to the February 9 meeting. Ms. McDonald understood that subsequent to the meeting Ms. McKay did file a report with CPS and the decisions were made.

In his letter of February 14, Deputy Minister Lang notes that he had been briefed by his senior managers about the February 9 meeting. He advised Ms. McGunigal that she was placed on leave without pay pending further investigation of this matter. Ms. McDonald was not involved in the decision to suspend Ms. McGunigal without pay. Ms. McDonald acknowledges that letters such as the March 2, 2006 termination letter written by Deputy Minister Lang are usually prepared by her based on recommendations and decisions made. She does not recall being involved in preparation of the suspension without pay letter. In his February 14 letter, Deputy Minister Lang writes:

I understand you have been on leave with pay since August 2005 (*sic*), pending the outcome of the SPM review. Based on the SPM investigator's report, and the fact that monies in excess of \$25,000 are missing, of which approximately \$1,880 has been traced to you directly, you are hereby being placed on leave without pay, effective February 13, 2006, pending further investigation of this matter.

I anticipate the investigation will be completed the last week of February 2006, and you will be advised at that time of our decision regarding this matter.

There is no evidence of any further investigation being conducted by Mr. Jacobs. In presenting his evidence at the hearing, Mr. Jacobs relied on his January 28, 2006 report and a summary prepared therefrom. If CPS did conduct any further investigation there is no evidence as to what that investigation was or the findings.

On March 2, 2006, Deputy Minister Lang wrote to Ms. McGunigal advising of the termination of her employment. Deputy Minister Lang writes, in part:

The investigations are now complete; the Saskatchewan Property Management investigation revealed there are significant funds which cannot be accounted for and a portion of those funds can be directly linked to you.

In the previous four years your supervisor, on several occasions, reinforced with you the requirement to ensure deposits and reconciliations were completed in a timely manner, that trust accounts were up-to-date, that bills were paid on time and that you were to provide appropriate financial information to head office in Regina. On several occasions, you were offered additional training to assist you to complete your work in a satisfactory manner. You indicated you knew your job responsibilities and did not need additional training; you consistently assured your supervisor the financial work associated with the Besnard Lake Correctional Camp was being done.

The Employer relies upon the Jacobs' investigation; this is the same investigation relied upon by the Employer when it suspended Ms. McGunigal without pay.

In all of these circumstances, I conclude that the imposition of the unpaid suspension on February 13 was disciplinary action and that the termination on March 2 is a second punishment for the same conduct and based upon the same evidence and findings available to the Employer at the time it suspended Ms. McGunigal without pay. I can reach no other conclusion in the absence of any further investigation or findings or information available as

a basis upon which the Employer could impose discipline. The decision to impose the unpaid suspension was that of Deputy Minister Lang. The decision to terminate Ms. McGunigal's employment was that of Deputy Minister Lang. I conclude the unpaid suspension, viewed both subjectively and objectively, was disciplinary. This is not a circumstance where an employee is removed from the workplace by a member of management pending an investigation and decision on discipline. I conclude that the imposition of the unpaid suspension was not the start, nor for that matter the continuation of, the investigation process. As the termination was based on the same offences and improper conduct of Ms. McGunigal, it cannot be allowed to stand. Accordingly, the Grievance is allowed to the extent of setting aside the March 2, 2006 termination of Ms. McGunigal's employment.

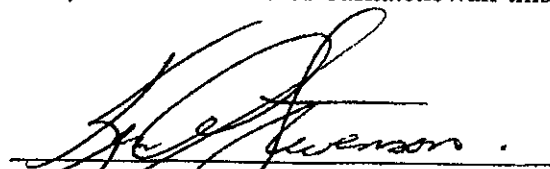
The usual order which would be made in light of my finding of double discipline, would be to set aside Ms. McGunigal's termination and to order her reinstatement. I am of the opinion that it would be inappropriate to make that order in these circumstances. I have concluded that Ms. McGunigal was grossly negligent in the performance of her duties over an extended period of time. Ms. McGunigal occupied a position of high responsibility and trust in respect of the assets of the Employer and of the inmates assets for whom the Employer is responsible. I agree with the Employer that in all of the circumstances the employment relationship is not capable of restoration and has irretrievably broken down.

As an alternative remedy, the Union submitted that if I concluded not to order the reinstatement of Ms. McGunigal, I could order an appropriate severance settlement by way of damages in lieu of reinstatement. The Collective Bargaining Agreement provides that an arbitrator shall have the power to direct a compromise settlement which he deems just and reasonable. A similar power is granted to myself pursuant to *The Trade Union Act*. Arbitral authority clearly recognizes the power of an arbitrator to award compensation in lieu of reinstatement. During its submissions the Employer referred to the decision of Arbitrator Devine in *Slocan Forest Products v. IWA-Canada, Local 1-417* (1996), B.C.C.A.A.A. 275. In *Slocan* Arbitrator Devine determined that notwithstanding his conclusion that the grievor had been subjected to double jeopardy when discharged followed his suspension, it would be

inappropriate to reinstate the employee. Rather than reinstate the employee, Arbitrator Devine made an award of monetary compensation as damages in lieu of reinstatement.

As neither of the parties made submissions in respect of what might be the appropriate quantum of damages in lieu of reinstatement, I retain my jurisdiction and adjourn the Hearing to provide the parties with an opportunity to reach an agreement on the damages. If the parties are unable to agree on damages, at the request of either party, I shall reconvene the Hearing to receive submissions in respect of the appropriate award of damages.

DATED at the City of Saskatoon, in the Province of Saskatchewan this 19<sup>th</sup> day of July, 2007.



Kenneth A. Stevenson  
Sole Arbitrator.