Federal Court of Appeal | Cour d'appel fédérale

Date: 20220613

Docket: A-24-20

Citation: 2022 FCA 112

CORAM: **LOCKE J.A.**
MACTAVISH J.A.
MONAGHAN J.A.

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Appellant

and

JAMES THOMAS EAKIN

Respondent

Heard by online video conference hosted by the registry, on February 17, 2022.

Judgment delivered at Ottawa, Ontario, on June 13, 2022.

REASONS FOR JUDGMENT BY: LOCKE J.A.

CONCURRED IN BY: MACTAVISH J.A.
MONAGHAN J.A.

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REASONS FOR JUDGMENT

LOCKE J.A.

I. Overview

[1] The Attorney General of Canada (the Attorney General) appeals from a decision of the Federal Court (2019 FC 1639, *per* Justice Elizabeth Walker), which granted an application for judicial review by the respondent, James Thomas Eakin, concerning a decision by the Acting

Independent Chairperson (Chair) of the Beaver Creek Institution Disciplinary Court, Colin Wright. That decision (the Chair's Decision) convicted Mr. Eakin, who was an inmate at the Beaver Creek Institution (the Institution), on a charge pursuant to paragraph 40(k) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (CCRA), of taking an intoxicant into his body.

[2] The Federal Court found several errors in the Chair's Decision, and quashed it. The same decision (the Federal Court's Decision) also granted other relief, which is discussed below.

[3] For the reasons set out below, I would allow the present appeal in part.

II. Background Facts

[4] The following summary of the facts is sufficient for the purposes of these reasons.

[5] Mr. Eakin was selected for a random urinalysis on September 19, 2018. The collection of the urine sample was authorized by Officer Gleadhill. On September 24, 2018, a report (the Toxicology Report) was sent to the Institution indicating that Mr. Eakin's sample had tested positive for THC (cannabis).

[6] On October 2, 2018, Mr. Eakin was suspended from his job working at the Institution's grocery store. The "Offender Suspension from a Program Assignment" form (Suspension Form) that he was given provided the following reason for his suspension:

> Positive urinalysis for THC collected 2018-09-21 and resulting charge in contravention of Drug Intervention Strategy and Position of Trust criteria.

[7] Two weeks later, on October 16, 2018, Mr. Eakin received an "Inmate Offence Report and Notification of Charge" form (Offence Report) regarding the charge under paragraph 40(k) of the CCRA. The Offence Report indicated that the charge was laid on October 16, 2018. With regard to the "Proposed date of hearing", the form indicated "not before 13:00 2018-10-19". The form was silent with regard to the "Location of hearing".

[8] The hearing before the Chair began on October 26, 2018. In his submissions, Mr. Eakin raised a number of objections. These included:

A. The failure of the Offence Report to identify the time, date and place of the hearing, as required by paragraph 25(1)(b) of the *Corrections and Conditional Release Regulations*, S.O.R./92-620 (CCRR);

B. The failure to deliver the Offence Report to Mr. Eakin as soon as practicable, as required by subsection 25(2) of the CCRR (this objection was based on an argument that the Institution received the Toxicology Report on September 24, 2018, and the decision to lay the charge had been made no later than October 2, 2018 as indicated by the reference to the "resulting charge" as one of the reasons for his job suspension);

C. The failure to provide to Mr. Eakin, within two working days of the laying of the charge, either the Offence Report or the Toxicology Report or the place, time and

date of the hearing, all as contemplated in paragraph 17 of the Correctional Service of Canada's Commissioner's Directive 580 (CD 580);

D. The involvement of Office Gleadhill both in categorizing the charge against Mr. Eakin and in the authorization to take the urine sample, allegedly in contravention of paragraph 10 of CD 580.

[9] The Chair was apparently unprepared for such detailed and articulate oral submissions. Upon hearing them, the Chair requested a copy of Mr. Eakin's written submissions, and adjourned the hearing until November 19, 2018 on the basis that he did not have the necessary documents. It should be noted that Mr. Eakin objected to the adjournment, citing a desire to have the matter resolved before his parole hearing scheduled for November 8, 2018. It should also be noted that Mr. Eakin finally received the Toxicology Report on October 30, 2018.

[10] The hearing resumed on November 19, 2018, but it was quickly adjourned again until November 26, 2018 because the Chair had not read Mr. Eakin's written submissions. Before the adjournment, Mr. Eakin introduced a further ground for contesting the charge against him. He noted that his copy of the "Urinalysis Chain of Custody" form relating to his sample was missing the bar code sticker that appears on the original. Mr. Eakin argued that this constituted a violation of subparagraph 66(1)(f)(ii) of the CCRR.

[11] The hearing resumed again on November 26, 2018, but could not proceed because the officer who took the urine sample (Officer Quesnelle) was not present. The next attempt to resume the hearing (on December 10, 2018) was likewise unsuccessful because Officer

Quesnelle was not present. This time, the Chair indicated that the charge would be dismissed if Officer Quesnelle was not present when the hearing resumed on December 17, 2018.

[12] The hearing finally proceeded on December 17, 2018. At that time, Officer Quesnelle appeared and was available to answer the Chair's questions concerning the issue of the missing bar code sticker and confirming that the urinalysis sample tested positive for THC. Mr. Eakin had no questions for Officer Quesnelle. The Chair indicated that he would issue a written decision on the charge and Mr. Eakin's objections, and concluded by inviting submissions on penalty in the event of a finding of guilt.

III. The Chair's Decision

[13] The Chair issued his decision on January 7, 2019. He dismissed all of Mr. Eakin's objections, and found that the charge against him was made out.

[14] The Chair acknowledged that paragraph 17 of CD 580 was not respected in that the Offence Report failed to specify the place, time and date of the hearing, and Mr. Eakin was not provided with the documentation that was given to the Chair (namely, the Toxicology Report). However, the Chair concluded that these instances of non-compliance could be cured, and were cured.

[15] The Chair noted that legal requirements can be mandatory (such that a breach results in a nullity) or directory (whereby a breach may be fixed or disregarded). The Chair concluded that

the provisions in question (from CD 580 and the CCRR) were directory because they were intended to ensure that an inmate charged with an offence has an opportunity to respond to the evidence against him. The Chair noted that Mr. Eakin had all of the missing information in ample time to give his version of the matter. The Chair does not appear to have considered Mr. Eakin's concern that the delay resulting from the late production of the Toxicology Report would cause him prejudice (i.e., the charge would remain pending at his upcoming parole hearing).

[16] The Chair found that Mr. Eakin's objection about the delay in delivering the Offence Report, which was based on the charge having been laid on October 2, 2018, lacked merit because the Offence Report indicated that the decision to lay the charge was taken only on October 16, 2018. Based on this later date, the delivery of the Offence Report was not late.

[17] With regard to the involvement of Officer Gleadhill both in categorizing the charge and in authorizing the taking of the urine sample, the Chair found no breach of paragraph 10 of CD 580. That provision read as follows:

> The person categorizing the charge will have had no involvement in the incident that precipitated the offence report. Where appropriate, a committee may be established to assist designated persons in the review, quality control and designation of charges.

[18] The Chair noted that the Offence Report indicated that Officer Quesnelle was the only person involved in completing the portion thereof describing "the incident that precipitated the offence report". The Chair made no comment on the role of Officer Gleadhill in authorizing the collection of Mr. Eakin's urine sample.

[19] With respect to Mr. Eakin's submissions concerning the chain of custody, the Chair accepted the factual allegation that Mr. Eakin's copy of the Urinalysis Chain of Custody form lacked a bar code sticker, but found that the requirements of subparagraph 66(1)(f)(ii) of the CCRR, reproduced here, were met nevertheless:

Collection of Samples	**Prises des échantillons d'urine**
66 (1) A sample shall be collected in the following manner:	66 (1) La prise d'échantillon d'urine se fait de la manière suivante :
…	[…]
(f) once the sample has been provided, the collector shall, in the presence of the donor,	f) lorsque la personne lui remet l'échantillon d'urine, il doit, devant elle :
…	[…]
(ii) affix a label identifying the sample in such a manner that the identity of the donor is not disclosed to the laboratory,	(ii) apposer sur le contenant une étiquette désignant l'échantillon de manière que l'identité de la personne ne soit pas révélée au laboratoire,

[20] The Chair also considered other issues with the chain of custody, including Mr. Eakin's signed certification that his urine sample container was sealed and labelled in his presence and that the information provided on the form and on the container label was correct.

[21] The Chair found no merit in any of Mr. Eakin's objections, and noted that Officer Quesnelle's evidence that Mr. Eakin's urinalysis test was positive for THC went unchallenged. He found that the charge against Mr. Eakin was made out and imposed a penalty.

IV. The Federal Court's Decision

[22] On judicial review, the Federal Court sided with Mr. Eakin, quashing the Chair's Decision. The Federal Court also ordered that:

A. Mr. Eakin be compensated for any financial loss he suffered as a result of the penalty imposed by the Chair and his suspension from his job at the Institution's grocery store; and

B. If the charge against Mr. Eakin were not pursued within 30 days of the judgment, the Offence Report and all references to it should be removed from Mr. Eakin's record.

[23] The Federal Court found that the Chair did not err in concluding that the requirements of the relevant provisions of the CCRR and CD 580 were directory (not mandatory), and therefore failure to comply would not necessarily result in the proceedings being a nullity. However, the Federal Court found that the Chair's conclusion that the breaches cited by Mr. Eakin (and acknowledged by the Chair) were cured was unreasonable.

[24] The Federal Court expressed concern about the Chair's failure to take into account the repeated adjournments and the impacts of delay on Mr. Eakin. The Federal Court also found that the Chair's conclusion that the charge against Mr. Eakin was laid only on October 16, 2018 was unreasonable, as was the Chair's conclusion that the two-day limit contemplated in paragraph 17 of CD 580 for providing the Offence Report was respected. Moreover, the Federal Court at

paragraph 67 characterized the Chair's treatment of the late disclosure of the Toxicology Report (after the hearing had begun) as "somewhat cavalier" and "not justifiable". Finally, the Federal Court noted that the Chair's failure to consider whether Mr. Eakin had been prejudiced by the Institution's non-compliance with the requirements in issue was unreasonable.

[25] The Federal Court did not find any error in the Chair's conclusion that the requirements of subparagraph 66(1)(f)(ii) of the CCRR were met despite the missing bar code sticker on Mr. Eakin's copy of the Urinalysis Chain of Custody form. The Federal Court noted that (i) the Chair had failed to address Mr. Eakin's argument that Officer Quesnelle's certification on the form was incorrect, and (ii) the certification was indeed incorrect. However, it is not clear that this formed part of the basis for the Federal Court quashing the Chair's Decision.

[26] The Federal Court's order that Mr. Eakin be compensated for financial loss arising from his suspension from his grocery store job appears to be based on a finding that the suspension was part of the penalty that was imposed on Mr. Eakin (see paragraphs 61, 65, 66, 72 and 73 of the Federal Court's Decision). In addition to characterizing the suspension as a sanction, the Federal Court also characterized it as premature (paragraph 73), presumably because it was imposed before a decision was made on the charge.

[27] Finally, the Federal Court was silent on the question of paragraph 10 of CD 580, and Officer Gleadhill's involvement both in categorizing the charge and in authorizing the taking of the urine sample. Though it is not clear whether Mr. Eakin took issue with Officer Gleadhill's

involvement before the Federal Court, he did argue in his memorandum of fact and law before the Federal Court that there had been a breach of paragraph 10 of CD 580.

V. Issues

[28] On appeal before this Court, the Attorney General argues that the Federal Court's Decision contains several errors:

A. Mr. Eakin's workplace suspension was not a disciplinary sanction, but rather an administrative consequence of the disciplinary process; moreover, the Federal Court found the suspension to be an improper premature sanction without the parties having raised the issue and without inviting the parties' submissions thereon;

B. The Federal Court should have concluded that the charge against Mr. Eakin was laid on the date of the Offence Report, and therefore it was not provided late;

C. The Federal Court should have found that the several breaches of the requirements of the CCRR and CD 580 in this case were cured by the delays in the hearing; and

D. The Federal Court should not have ordered removal of the Offence Report and all references to it from Mr. Eakin's record; moreover, the Federal Court ordered the removal of records without hearing the parties on the point.

[29] Mr. Eakin takes issue with all of these arguments. He also argues that the Federal Court should have found that subparagraph 66(1)(f)(ii) of the CCRR and the requirements of chain of custody were not respected because of the absence of a bar code sticker on his copy of the Urinalysis Chain of Custody form.

VI. Standard of Review

[30] This is an appeal from a decision of the Federal Court on judicial review. Accordingly, the approach to the issue of standard of review is as contemplated in *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paragraph 45, and confirmed in *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, 462 D.L.R. (4th) 585 at paragraph 12: this Court should determine first whether the court below identified the appropriate standard of review, and then whether the court below applied that standard of review correctly.

[31] In this case, the Federal Court correctly identified reasonableness as the standard of review applicable to the Chair's findings and conclusions, and correctness as the standard of review for issues of procedural fairness.

[32] The paragraphs below discuss whether the Federal Court applied these standards of review correctly.

VII. Analysis

A. *Workplace Suspension as Disciplinary Sanction*

[33] As stated at paragraph 26 above, the Federal Court based its order that compensation be paid to Mr. Eakin on its view that his suspension from his grocery store job was part of his penalty. The Federal Court did not explain this view. Moreover, the issue does not seem to have been raised or argued by the parties before the Federal Court.

[34] I agree with the Attorney General, and Mr. Eakin does not seriously dispute, that the suspension imposed on Mr. Eakin following his urinalysis test was not a disciplinary sanction, but rather an administrative consequence of the positive test result and the pending charge. As noted at paragraph 6 above, the Suspension Form identified the urinalysis test and resulting charge as the reasons for the suspension. There is no reliance on a finding that the charge had merit, and no indication that the suspension was a disciplinary sanction.

[35] The Attorney General relies on the Correctional Service of Canada's Commissioner's Directive 585 (CD 585) to argue that administrative consequences are not the same as disciplinary sanctions and should not be used for purposes of punishment (paragraph 16), and administrative consequences may include the suspension from a job that requires a degree of trust (paragraph 19(i)). The Attorney General also notes that CD 585 addresses administrative consequences and disciplinary sanctions separately and cites authorities that have recognized this distinction: *Charbonneau v. Canada (Attorney General)*, 2013 FC 687, [2013] F.C.J. No. 754

(QL) and *Oliver v. Attorney General (Canada)*, 2010 ONSC 3976. Moreover, the list of possible disciplinary sanctions in subsection 44(1) of the CCRA does not include job suspension.

[36] I agree with the Attorney General that the distinction between a disciplinary sanction and a job suspension is important because an institution must have the ability to administer inmate work programs outside the context of the disciplinary system. In this case, both administrative consequences and a disciplinary sanction were pursued against Mr. Eakin. He sought judicial review of the disciplinary sanction. He could have separately grieved his job suspension, but it appears he did not.

[37] Mr. Eakin notes the statement at paragraph 72 of the Federal Court's Decision that the Attorney General conceded that Mr. Eakin was improperly sanctioned. Asked about this concession at the hearing before this Court, counsel for the Attorney General was unsure what was said before the Federal Court (there being no recording or transcript on the record), but argued that no concession could alter the state of the law. I agree.

[38] Moreover, I do not read much into the concession. Given the dearth of discussion on the point, it appears that the Federal Court failed to recognize the distinction between the suspension and a disciplinary sanction. The relevant passage in the Federal Court's Decision reads, "as the Respondent has conceded, Mr. Eakin was improperly sanctioned on October 2, 2018." It seems more likely that the Attorney General simply conceded that Mr. Eakin was <u>suspended</u> on October 2, 2018, and it was the Federal Court alone that characterized the suspension as a sanction.

[39] I conclude that the Federal Court erred in characterizing Mr. Eakin's suspension as a disciplinary sanction. It follows that the Federal Court also erred in ordering that Mr. Eakin be compensated for any financial loss he suffered as a result of the suspension.

B. *Date of the Charge*

[40] The Attorney General argues that the Federal Court erred in failing to recognize that the date the charge was laid against Mr. Eakin was the day the Offence Report was delivered (October 16, 2018), and not on October 2, 2018, when he received the Suspension Form. The Attorney General argues that the purpose of the Suspension Form was to advise Mr. Eakin that he was suspended, and that it is the Offence Report that addressed the charge. The Attorney General also cites section 25 of the CCRR and paragraph 17 of CD 580.

[41] First, section 25 of the CCRR and paragraph 17 of CD 580 provide that an inmate charged with a disciplinary offence shall be given notice of the charge, including a copy of the Offence Report (with details of the conduct that was the subject of the charge, as well as the time, date and place of the hearing), within two working days of the laying of the charge (*per* paragraph 17 of CD 580), or as soon as practicable (*per* section 25 of the CCRR). Nothing in these provisions defines the delivery of the Offence Report as the date of the laying of the charge, or requires that the date indicated in it for the laying of the charge be accepted as true.

[42] Moreover, while the Chair concluded that there was no decision to lay the charge on October 2, 2018, he failed to address Mr. Eakin's argument that the Suspension Form delivered

on that date indicated that a charge already existed – not that the Suspension Form itself constituted the laying of the charge, but rather that the charge had been laid.

[43] It is not clear to me how the Chair reached his conclusion on the date of the charge. He might have felt that the reference to the "resulting charge" in the Suspension Form was not sufficient to indicate that the charge had already been laid on October 2, 2018. However, he did not state that this was his reasoning. On the other hand, he might have concluded that the charge was laid only on October 16, 2018 based solely on the fact that this was the date of delivery of the Offence Report. Such a conclusion would suggest that the Offence Report defines the date of the charge, which cannot be the case since paragraph 17 of CD 580 clearly treats the laying of the charge as separate from the Offence Report. Based on his decision, the Chair seems to have been convinced by the fact that the Offence Report itself indicates that the charge was laid on October 16, 2018. However, such a conclusion still ignores the apparent conflict with the reference to the charge in the Suspension Form. This conclusion also effectively permits the Offence Report to excuse its own lateness simply by indicating a convenient date for the laying of the charge.

[44] I am left unable to understand the basis for the Chair's conclusion that the charge was laid on October 16, 2018, and not October 2, 2018. I conclude therefore that the Federal Court was correct to find that the Chair's conclusion in this regard was unreasonable.

[45] The Attorney General also argues that the date of the laying of the charge is unimportant, because it was simply another minor breach of the requirements of the CCRR and CD 580 that

was subsequently cured. That argument might have more force if the Chair had stated such a conclusion. However, he did not. He did not recognize a breach in this regard, and therefore never found that it had been cured. Moreover, it is not for this Court to determine that the date of the laying of the charge is unimportant. At a minimum, it could increase by two weeks the various delays to which Mr. Eakin was subjected.

C. *Breaches of CCRR and CD 580*

[46] The breaches of the CCRR and CD 580 as alleged by Mr. Eakin include (i) the failure to deliver the Offence Report to Mr. Eakin as soon as practicable, (ii) the failure of the Offence Report to identify the time, date and place of the hearing, and (iii) the failure to provide to Mr. Eakin, within two working days of the laying of the charge, the Offence Report and the relevant documentation (such as the Toxicology Report), and the place, time and date of the hearing.

[47] Before the Chair, Mr. Eakin also alleged that the involvement of Officer Gleadhill both in categorizing the charge against Mr. Eakin and in the authorization to take the urine sample was a breach. He argued before the Federal Court that there had been a breach of the relevant provision (paragraph 10 of CD 580), but he did not raise this issue before this Court. Accordingly, it is not necessary for this Court to address this issue. That said, my silence on this issue should not be interpreted as a conclusion that there was no breach of paragraph 10 of CD 580.

[48] The Chair found that all of the alleged breaches that remained in issue were either not a breach (in the case of the two-day period for providing the Offence Report) or were cured. The Federal Court disagreed – while accepting that certain breaches could be cured, it was not

convinced that all breaches were cured. I have discussed in the preceding section the issue of the date of the laying of the charge, which led the Chair to find unreasonably that the Offence Report was not provided late. The Federal Court also found other errors by the Chair.

[49] The Federal Court found that the Chair was "simply wrong" to state that evidentiary documents like the Toxicology Report had been provided "well before the hearing actually occurred." This seems to be a mainly semantic issue based on the fact that the Toxicology Report was not provided until after the first day of the hearing on October 26, 2018. In my view, the Chair did not err on the more important question of whether Mr. Eakin was given an opportunity to familiarize himself with the evidence against him and respond to it.

[50] The Federal Court was also concerned with the Chair's failure, following the many delays in the trial of the charge against Mr. Eakin, to consider the impact of those delays on him. Here, I agree with the Federal Court. Mr. Eakin had raised the issue of delay, and its impact on him, at the first date set for the hearing (see paragraph 9 above). He raised the issue again on December 10, 2018, when the hearing was adjourned (for the fourth time) to December 17, 2018. As indicated in the previous paragraph, the Chair addressed the issue of fairness surrounding the timing of the production of documents to Mr. Eakin and his ability to prepare to respond to them. However, Mr. Eakin was also entitled to have the Chair consider other alleged prejudices against him (in particular, the impact of the outstanding charge on his November 8 parole hearing) caused by the repeated delays. This the Chair did not do.

[51] The failure of the Chair to consider prejudice to Mr. Eakin is all the more concerning in view of what the Federal Court described at paragraph 67 as the Chair's "somewhat cavalier treatment" of the requirement to provide relevant documentation. I am particularly concerned with a statement by the Chair himself at the hearing on October 26, 2018 that suggests that he tolerates the routine failure to provide such documentation with the Offence Report. I hope the impression left by the transcript does not reflect how disciplinary proceedings under the CCRA are usually conducted. Some may consider it inefficient or impractical to follow the requirements of the law, but that is no reason to disobey them routinely. The proper solution, if indeed they are inefficient or impractical, is to change them.

D. *Removal of Records vs. Correction*

[52] As indicated at paragraph 22 above, the Federal Court ordered that the Offence Report and all references to it be removed from Mr. Eakin's record if the charge against him was not pursued within 30 days of the judgment. The Attorney General argues that the CCRA authorizes the correction of information (see subsection 24(2)), but not its removal from inmate files. The Attorney General also argues that this aspect of the Federal Court's judgment was unfair because the issue was not raised by the parties, and the parties did not have an opportunity to address the appropriateness of such a remedy.

[53] The Attorney General cites several decisions of the Federal Court and the Ontario Superior Court in which orders were made for correction, rather than removal, of incorrect information on inmate files. For his part, Mr. Eakin argues that the jurisprudence is not clear. He further argues that removal of the information in question is necessary in view of the continued

reference to the Chair's Decision in other proceedings against Mr. Eakin even though it has been quashed by the Federal Court.

[54] In my view, this issue can be decided on the basis of fairness. Mr. Eakin does not dispute that the issue of removal of records rather than correction was not canvassed with the parties. His notice of application before the Federal Court sought correction, rather than removal, of information. The Federal Court should not have included a requirement to remove records without permitting the parties to address the issue. Based on the submissions of the parties, it appears that the Federal Court should have ordered that the records in question be corrected.

E. *Chain of Custody*

[55] As indicated above, Mr. Eakin argued before the Chair, at the Federal Court, and now before this Court, that the requirements surrounding the chain of custody of his urinalysis sample were not respected. Specifically, the bar code sticker that was to have been placed on his copy of the Urinalysis Chain of Custody form was missing.

[56] The Chair found that this omission did not violate subparagraph 66(1)(f)(ii) of the CCRR: see paragraph 20 above. The Federal Court found this conclusion to be reasonable, and I agree.

[57] However, Mr. Eakin also argues that Officer Quesnelle's certification on the Urinalysis Chain of Custody form was incorrect. The Federal Court agreed.

[58] In my view, the Chair did not err on the question of Officer Quesnelle's certification of the urinalysis sample. Firstly, it is not clear that this issue was raised by Mr. Eakin before the Chair. I recognize that he raised the issue of the missing bar code sticker, but I see nothing in the appeal book to indicate that he raised Officer Quesnelle's certification as an issue. I note that the appeal book contains undated handwritten notes, apparently by Mr. Eakin, which are found in the certified tribunal record. These notes raise the question of Officer Quesnelle's certification, but their text suggests that they were prepared for the purposes of the judicial review before the Federal Court, and not for the Chair. If this issue was not raised before the Chair, he cannot be faulted for having failed to address it.

[59] Even if Officer Quesnelle's certification was properly in issue before the Chair, I do not agree with the Federal Court that the certification was incorrect. The certification reads as follows:

> I certify that the sample identified on this form is the same specimen provided to me under direct supervision by the offender identified above, that it bears the same numbered tag as set forth on this form, and that it was labeled and sealed in the presence of the offender.

[60] By this certification, Officer Quesnelle stated that the specimen collected from Mr. Eakin bore the same numbered tag (bar code sticker) "as set forth on this form." Though it is undisputed that Mr. Eakin's copy of the form did not include the sticker, it is likewise undisputed that the original of the form did. The certification is not incorrect because it does not state that Mr. Eakin's copy of the form bears the sticker. More importantly, Mr. Eakin has not suggested, and it is difficult to imagine, how the fact of the missing sticker on Mr. Eakin's copy, but not on the original, could raise doubt concerning the chain of custody.

VIII. Conclusion

[61] For the reasons set out above, I would allow the present appeal in part. I would set aside paragraph 3 of the Federal Court's judgment dealing with compensation for Mr. Eakin's financial loss resulting from his job suspension. I would also modify paragraph 5 of the Federal Court's judgment to read as indicated here:

> Mr. Eakin's record is to be corrected to reflect this Court's judgment, as well as that of the Federal Court to the extent that it remains unaltered, and a copy of this decision is to be added to Mr. Eakin's file.

[62] I would otherwise dismiss the appeal, with costs to Mr. Eakin in the all-inclusive amount of $250.

"George R. Locke"
J.A.

"I agree.
Anne L. Mactavish J.A."

"I agree.
K.A. Siobhan Monaghan J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-24-20
STYLE OF CAUSE:	THE ATTORNEY GENERAL OF CANADA v. JAMES THOMAS EAKIN
PLACE OF HEARING:	HEARD BY ONLINE VIDEO CONFERENCE
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CONCURRED IN BY:	MACTAVISH J.A. MONAGHAN J.A.
DATED:	JUNE 13, 2022

APPEARANCES:

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James Thomas Eakin	FOR THE RESPONDENT (on his own behalf)

SOLICITORS OF RECORD:

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