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Citation: 2009 PSLRB 26



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

SYLVIE PAGÉ

Grievor

and

**DEPUTY HEAD
(Service Canada)**

Respondent

Indexed as
Pagé v. Deputy Head (Service Canada)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: [Marie-Josée Bédard](#), adjudicator

For the Grievor: [Guylaine Bourbeau](#), representative

For the Respondent: [Neil McGraw](#), counsel

Heard at Ottawa, Ontario,
December 9 and 10, 2008, and January 6 and 7, 2009.
(PSLRB Translation)

I. Individual grievance referred to adjudication

[1] Sylvie Pagé (“the grievor”) held the position of Benefits Officer at Service Canada (“the respondent” or “the employer”). Her employment was terminated on June 19, 2007. The letter of termination, signed by Élisabeth Châtillon, Assistant Deputy Minister, Operations Branch, Service Canada, states that the employer accuses Ms. Pagé of “[translation] committing fraud against the federal government by paying Canada Pension Plan (CPP) benefits to a third party, [her] stepsister, knowing that her stepsister was not entitled to them.” On June 26, 2007, Ms. Pagé filed a grievance contesting her termination. The Chairperson of the Public Service Labour Relations Board has appointed me as the adjudicator to deal with Ms. Pagé’s grievance.

II. Summary of the evidence**A. For the employer**

[2] Ms. Pagé worked as a benefits officer at the employer’s Operations Branch, which administers various CPP benefits. She was part of a unit known as National Information and Benefits Services (NIBS), which handles complex benefits files.

[3] The accusations against Ms. Pagé are about how a disabled contributor’s file was handled. To understand that file, it is important to be aware of certain measures provided under the CPP that were brought into evidence. A person who has contributed to the CPP and (if the person has resided in Quebec) to the Quebec Pension Plan and who becomes disabled may be entitled to disability benefits under the *Canada Pension Plan*. When a disabled contributor turns 65, his or her disability benefits are converted to pension benefits. Under the CPP, a disabled contributor who has dependent children may receive a disabled contributor’s child benefit. When that child turns 18, he or she becomes eligible for a disabled contributor’s child benefit if he or she is enrolled full-time at an educational institution. To receive benefits, the child must apply for them and must file a “Declaration of Attendance at School or University” certified by the institution for each school year. He or she must also indicate how he or she wishes to receive the benefits. If the preferred payment method is direct bank deposit, the child identifies the bank account in which to deposit the benefits. Eligibility for the disabled contributor’s child benefit ends at the earlier of the child turning 25 or the contributing parent’s disability benefits converting to pension benefits at age 65.

[4] Beneficiaries' files are generally processed by the employer's regional offices. The NIBS unit, based in Ottawa, manages cases that are more complex than those handled by the regional offices, including cases involving combined benefits, i.e., cases where beneficiaries have contributed, over their lives, to both the Canada Pension Plan and the Quebec Pension Plan. Under an agreement between the federal and Quebec governments, eligible contributors receive a single benefit that is paid by the federal government. Applying a sharing formula, the federal government then invoices the Régie des rentes du Québec (RRQ) for the portion of the benefits for which it is responsible.

[5] The NIBS team is composed of specialized employees, including benefits officers, working in accordance with methods and procedures that are different from those of the regional offices. When asked about the benefits officers' roles, Laila Allouch, Senior Manager, NIBS, indicated that they process clients' files, pay the benefits to which clients are entitled, maintain the accounts and update the files to reflect events in clients' lives. She indicated that NIBS benefits officers are specialized, that they have thorough knowledge and that they handle the most complex files.

[6] Ms. Allouch also indicated that, in processing complex cases, benefits officers work with a computerized operations system that runs in parallel to the centralized system and that only benefits officers may use it. That system, known as the Continuous Supplementary Cheque System (CSCS), can be used to process complex cases that the centralized system cannot, such as those involving combined benefits. The CSCS affords benefits officers much more latitude than the centralized system and involves more procedures and manual calculations. In addition, it has fewer integrated security barriers than the centralized system. According to Ms. Allouch, benefits officers must exercise greater care and attention to detail when using the system.

[7] The evidence established that Ms. Pagé's stepfather, "R.G.," received benefits under the CPP and that his file was handled by the complex benefits unit, of which Ms. Pagé was a part. He initially received disability benefits, which were converted to pension benefits as of January 1, 2001. While receiving disability benefits, R.G. also received a disabled contributor's child benefit for his daughter, "C.G.," who is Ms. Pagé's stepsister. On February 1, 2001, Ms. Pagé, in her capacity as a benefits officer, sent a letter to R.G. informing him that his disability benefits were being converted to pension benefits.

[8] The evidence also established that, when she turned 18, C.G. applied for a disabled contributor's child benefit because she was attending school full-time and because benefits were paid to her between 1997 and 2000. It has further been established that the void cheque put on file when C.G. initially applied for benefits was for her father's bank account. Accordingly, the benefits paid between 1997 and 2000 were deposited into R.G.'s bank account. The evidence also showed that Ms. Pagé handled C.G.'s annual applications for benefits in October 1998, February 2000 and October 2000.

[9] With respect to the events that led to Ms. Pagé's termination, the employer presented the evidence that follows.

[10] Robert Dupras was the employer's first witness. Mr. Dupras indicated that he had worked as a benefits officer at the employer from 2001 to 2006. He left his job in 2006 but continued to do contract work for the employer. In fall 2006, he was contracted to verify reports of errors and anomalies that the RRQ sent in connection with the monthly invoicing that the employer performed in combined benefits cases. With respect to the invoicing for September and October 2003, the RRQ questioned two invoices pertaining to two priority payments made to a beneficiary. The RRQ believed that the beneficiary in question was not entitled to the benefits and asked the employer to look into the matter.

[11] Priority payments are payments that benefits officers can generate manually in certain circumstances. The files of beneficiaries receiving regular benefits are identified as "[translation] payable," and the system generates payments automatically. Officers can issue priority payments for files that do not fall into that category but for which benefits are paid for various reasons. Those payments are calculated manually and are generated using a payment request form. The procedure is as follows: the benefits officer calculates the benefit and completes the payment request form, which includes information such as the contributor's identity (or the beneficiary's identity if that person is different from the contributor), the type of benefit and the payment requested. Before payment can be issued, another benefits officer double-checks and signs the payment request form. The person to whom authority has been delegated under the *Financial Administration Act* then approves the form. The benefits officer also enters payment information into the CSCS.

[12] The payment request forms for the priority payments in question were produced. The first payment request, prepared on September 9, 2003, was for a priority payment to C.G. and was for a disabled contributor's child benefit for January 2001 to December 2001. The payment request, signed by Ms. Pagé, also had a co-worker's signature, attesting that he had verified it, along with that of the manager who authorized the payment. The second payment request, prepared on September 26, 2003, also involved a priority payment for C.G. for a disabled contributor's child benefit for January 2001 to September 2003. That payment request also has the signature of another co-worker and that of the same manager who had approved the payment. As previously indicated, the RRQ questioned both payments. Its representative had noted the following on the September 26 payment request: "[translation] We have been paying pension benefits since 02-2001."

[13] Mr. Dupras stated that his mandate was to verify whether questionable payments had in fact been made and whether the beneficiary was entitled to benefits. He testified that his research had led him to conclude that the payments had in fact been made and that the beneficiary was not entitled to the disabled contributor's child benefit from 2001 to 2003 because the disability benefits of her father, the contributor, had been converted to pension benefits in January 2001.

[14] Mr. Dupras explained that he had had difficulty tracking the payments in question in the CSCS. When he queried the system to retrieve the payments, he did so using the contributor's file number, which corresponds to the contributor's social insurance number (SIN) followed by an address localizer used to identify the type of benefits concerned. He stated that he initially queried the system by entering the account number, using what he referred to as the standardized procedure, i.e., by entering the numbers corresponding to the SIN in sequence followed by a space and then by the address localizer. The query did not enable him to access the payment information, so he consulted a program advisor. Following the advisor's recommendation, he queried the system again, but this time using the payment numbers. He then accessed the search screen, which showed the two payments. Because he wanted to understand why he had not been able to trace the payments on his first attempt, he consulted the program advisor again. They then noticed that the payments could not be traced using the account number because the contributor's SIN had been entered with a space after each sequence of three numbers. Mr. Dupras maintained that this was the first time he had ever seen a SIN entered in that manner.

[15] He indicated that after having traced the payments he wanted to check whether they had actually been made. He looked up the payment history and the tax information. In looking at the T4 that had been generated automatically from the two payments, for a taxable income of \$8167.71 (which was equal to the total of the two payments), he noted that it had been changed by an operator identified as “H00” and that the taxable amount had been reduced to \$816.71. Judith Browarski, the director of the production support group, testified and confirmed that “H00” was Ms. Pagé’s operator code.

[16] Mr. Dupras indicated that he had done some research and noted that the same operator had initially tried to reinstate (make payable) the disabled contributor’s child benefit for C.G. for January 2001 to September 2003 in the amount of \$6026.67. However, the system had generated an error message (a Statement of Contributions (SOC)) stating that C.G.’s entitlement to benefits had ended in January 2001 and that the payment of benefits to C.G. could not be established. He then checked the paper file and saw that it did not contain any substantiating documentation or information pertaining to the two priority payments. He subsequently informed Claudine Chauret, Manager, NIBS, of the results of his research and verifications.

[17] Ms. Chauret has been manager of the NIBS unit since 2005. She had previously worked as a benefits officer and then as a program advisor. She confirmed that Mr. Dupras had informed her of his findings. In reviewing the file, she noted that the benefits officer concerned was Ms. Pagé. She knew that Ms. Pagé was related to the contributor, R.G., and to the recipient of the payments, C.G. She stated that, because she had worked with Ms. Pagé for 10 years, she knew that R.G. was Ms. Pagé’s stepfather and that C.G. was her stepsister. Suspecting some irregularities, Ms. Chauret decided to inform her senior manager, Ms. Allouch, of the situation.

[18] Ms. Allouch indicated that Ms. Chauret had brought information to her attention that Ms. Pagé had authorized priority payments to a person who was not entitled to them, namely, her stepsister (C.G.); that the file showed that C.G. had already received a disabled contributor’s child benefit between 1997 and 2000 when she was entitled to it and that Ms. Pagé had handled most of C.G.’s benefits requests; that the file showed that, in 2001, she had sent a letter to R.G. informing him that his benefits were being converted; that Ms. Pagé had tried to reinstate the benefits in the computerized system, which had generated an error message; that there had been no justification for

priority payments being made to C.G. from 2001 to 2003; that, when she had entered the data into the computerized system to generate the payments, Ms. Pagé had entered the client's SIN in a non-standard way so that the transactions could not be traced; that the taxable amount that appeared on the T4, which the system had generated automatically following the payments, had been changed; and that the paper file did not contain any substantiating documentation or mention of priority payments.

[19] Ms. Allouch stated that what had bothered her the most was the modification of the T4. In her opinion, any changes to a T4 had to be documented, and the officer first had to obtain authorization. However, in this case, there was no information or explanation concerning the change.

[20] In cross-examination, Ms. Allouch confirmed that, to her knowledge, aside from the two payments in question, Ms. Pagé had not been responsible for any other errors or anomalies in her stepfather's case.

[21] Faced with this situation, Ms. Allouch met with Mr. Dupras, after which she stated that she informed her director, Claudia Ferland.

[22] Ms. Ferland confirmed that Ms. Allouch informed her of the situation in December 2006. She then decided to inform John Rath-Wilson, Director General, who in turn decided to inform Ms. Châtillon. On December 14, 2006, Ms. Châtillon asked the employer's special investigations unit to conduct an independent administrative investigation. It was also agreed that Ms. Pagé would be suspended with pay during the investigation.

[23] Ms. Allouch and Ms. Ferland met with Ms. Pagé on January 9, 2007 to inform her of the allegations against her, the administrative investigation and her administrative suspension during the investigation. The letter issued to Ms. Pagé during the meeting reads in part as follows:

[Translation]

I wish to inform you that an administrative investigation will be conducted into an allegation of fraud against the government and breach of trust. The allegations are about fraudulent benefits issued to [C.G.], one of your close relatives.

...

Once the investigation is complete, you will be given the opportunity to present any further information or mitigating factors that in your opinion were not taken into account during the investigation. Service Canada management will then make a final decision in this matter.

Should it be determined that the allegations against you are well-founded, disciplinary measures could be taken, including termination. We encourage you to cooperate fully with the investigation. Management would like the investigation to be carried out in a thorough and expeditious manner.

...

[24] Ms. Ferland stated that the meeting had been difficult and that it had lasted about 15 minutes. She indicated that Ms. Pagé was surprised and that she was in shock. She also stated that she had informed Ms. Pagé that she would act as a resource person during the investigation. She testified that Ms. Pagé had followed the rules and had cooperated with the investigation.

[25] Ms. Allouch indicated that during the meeting Ms. Ferland had asked Ms. Pagé whether she knew R.G. and C.G.; Ms. Pagé apparently replied that she had no idea who they were. Ms. Ferland did not testify on that point. However, Ms. Chauret indicated in her testimony that after the meeting with Ms. Pagé, which she had not attended, Ms. Allouch asked Ms. Chauret whether she was certain that Ms. Pagé, R.G. and C.G. were related because Ms. Pagé had denied it.

[26] The investigation was assigned to Wendy Heon, an investigator with the special investigations unit. The investigation took place from January 3, 2007 to March 27, 2007, when Ms. Heon filed her investigation report. The report was adduced in evidence.

[27] Ms. Heon testified about the process followed during her investigation. She further indicated that she had met with Mr. Dupras, Ms. Chauret, Ms. Allouch, Ms. Ferland and Judith Browarski, Director, CPP and Old Age Security, International Agreements, Production Support. She stated that Ms. Ferland indicated that all employees knew that they were not supposed to process the files of family members and friends. Ms. Heon's report stated that Ms. Allouch and Ms. Chauret also shared that position.

[28] As part of her investigation, Ms. Heon met with Ms. Pagé on February 7, 2007. Because Ms. Heon is anglophone, she was accompanied by a francophone investigator, Claude Campeau, who questioned Ms. Pagé in the presence of her union representative. The investigation report contains the following account of Ms. Pagé's questioning:

[Translation]

During the interview, Ms. Pagé confirmed that [C.G.] was her stepsister and that [R.G.] was her stepfather. The payment request forms that were questioned were submitted to Ms. Pagé. She confirmed that it was in fact her signature and acknowledged that she had issued priority payments to [C.G.]. She gave the following explanation as justification:

- *Her sister had told her that she had not been receiving the benefits to which she was entitled because she was 18 years old and was attending school full-time;*
- *When the CSCS rejected Ms. Pagé's attempt to carry out the steps needed to pay benefits to her sister, she assumed that the system had made a mistake;*
- *Ms. Pagé did not investigate her sister's claim to verify whether she was eligible because she believed that what her sister had said was true;*
- *She made a mistake in neglecting to review the claim to verify whether the payments had been deposited to her stepfather's [R.G.'s] account;*
- *She sent a letter informing her stepfather that his disability benefits had been converted to pension benefits in January 2001;*
- *She made an error on the eligibility period: it should have been from 1997 to 2000;*
- *Since the allegation, she determined that the payments had in fact been deposited to her stepfather's bank account;*
- *Her stepfather apparently did not notice the additional funds in his account;*
- *Her sister apparently did not realize that she had not been receiving the money;*
- *[C.G.] indicated that she had received a T4 for the benefits without receiving any money;*

- *It was an honest mistake, and if the “verifier” and the person responsible for approving and authorizing payments had done their jobs the mistake would have been detected from the beginning and Ms. Pagé would not be in the situation that she is in now;*
- *If she had been trying to do things in secret, she would have simply signed the claims and authorized them herself;*
- *It is common to work on the files of close friends and family members, and she had never heard of any policies prohibiting the practice or obtained any instructions about it.*

Ms. Pagé also stated the following:

- *There was no standardized method for entering the SIN, and she did not receive any instructions in that respect;*
- *It was not unusual for papers marked as needing “to be filed” to go missing;*
- *She did not know why the payments could not be easily traced in the SPS;*
- *She did not change the T4 screen to reduce the amount of taxable income from 8167.71 to 816.71.*

[29] In her testimony, Ms. Heon stated that Ms. Pagé had invited them to meet with her co-workers and with her stepsister. In cross-examination, Ms. Heon asserted that she could not remember whether Ms. Pagé had also invited them to check her credit rating. She testified as well that she could not remember whether Ms. Pagé had told the investigators that she had been experiencing personal problems in 2003. She also confirmed that the interviews with the witnesses had been recorded but that part of the interview with Ms. Pagé could not be recorded because of problems with the recording equipment.

[30] The investigation report also indicated that meetings were held on February 7, 2007 with some of Ms. Pagé’s co-workers. The report provides the following summary of her co-workers’ comments:

[Translation]

...

The main purpose of the interviews was to confirm Ms. Pagé's statements that employees work on the files of their respective family members, that documents "to be filed" are often lost and that the systems provide inaccurate information. Another objective of the interview was to determine how the SINS are entered. On the contrary, the interviews refuted Ms. Pagé's assertions by indicating the following:

- *that employees do not work on the files of their respective family members because it would constitute a conflict of interest;*
- *that although it can sometimes take a while for documents stamped as needing "to be filed" to actually be filed, eventually they do end up being filed;*
- *that there is a standardized method for entering the SINS.*

The interviews also revealed that when an SOC flags a case of non-eligibility, a more thorough investigation is carried out in the "existing system" and in the CSCS if necessary. If that finding is called into question, if necessary, the paper file is consulted to determine whether the beneficiary is eligible.

Furthermore, the investigator was informed that, when the child of a disabled contributor turns 18 and is attending school full-time, the NIBS considers the child in terms of his or her entitlement and not in relation to the parent. It is the child who contacts the NIBS and indicates how and where the benefits are to be deposited or sent.

...

[31] The report also states that the co-worker of Ms. Pagé who had signed the second payment request for \$6026.67 as having verified it was questioned and that he stated that he had not actually verified it. On that point, the report indicates the following:

[Translation]

...

... To support his assertions, Mr. Gilbert stated that it was necessary to have faith in one's co-workers' abilities to do their jobs. In addition, he would not have verified the

eligibility, and even if he had done so, he would not have detected the ineligibility. Mr. Gilbert believes that Ms. Pagé was aware of the fact that files are not verified in accordance with the policies.

...

[32] The report does not include any explanation that would have been provided by Ms. Pagé's other co-worker who verified and signed the first payment request. In her testimony, Ms. Heon asserted that, as far as she could recall, the co-worker in question was on holidays when she held the meetings and was absent when the report was being prepared.

[33] The report also includes the explanation from the manager who authorized and signed the two payment requests and provides comments on that explanation as follows:

[Translation]

...

- *She was Sylvie Pagé's manager at the time she approved and authorized the two payments;*
- *She would not have verified either the information that appeared on the request forms or the eligibility;*
- *Ms. Pagé would have been aware of the fact that verifying does not normally take place;*
- *During a meeting of a previous team in 2000, her team, which included Ms. Pagé, would have been informed that it was contrary to the policy in force to work on family members' files.*

...

[34] Ms. Heon asserts having also met with C.G. The report gives the following account of her comments:

[Translation]

...

- *Sylvie Pagé is her stepsister;*

- *She acknowledges her signature on forms 1400 “Application for a Canada Pension Plan Child’s Benefit” and 1401 “Declaration of Attendance at School or University”;*
- *She believes that the bank account to which the money was sent is her father’s, [R.G.’s];*
- *She cannot remember completing the forms;*
- *She did not ask her father if he had received the benefits;*
- *She spoke with her sister about her entitlement to benefits during the period when she was attending school when someone had told her that she might be eligible;*
- *Her sister told her that she was eligible and gave her the forms so that she could apply for the benefits; she completed the forms and forwarded them to her sister;*
- *She cannot explain why she received two cheques.*

...

[35] The investigation report also states that, on January 15, 1992, Ms. Pagé had signed an offer of employment that stated that all employees had to comply with the *Conflict of Interest and Post-employment Code for the Public Service*.

[36] After her investigation, Ms. Heon issued the following conclusions, which are set out in her report:

[Translation]

...

The interviews conducted during this investigation indicate that employees working at the NIBS benefits section, including Sylvie Pagé, are aware of the fact that they are not to be involved in application cases submitted by members of

their respective families. Her assertion that she had not been aware of this is not credible.

Sylvie Pagé acknowledged having sent her sister [C.G.] the priority payments that were being questioned and explained that she had made a mistake in the belief that her sister had not received benefits to which she was entitled.

The investigation shows that Ms. Pagé deliberately circumvented the CSCS by sending priority payments to pay benefits to [C.G.], knowing that she [C.G.] was not entitled to them. This is obvious in light of a number of events, notably the fact that steps had been carried out a number of times as part of the process for paying benefits to her sister when she was entitled to them (which indicates that she knew that her sister had received benefits in the past) and the fact that the SOC indicating that her sister was not eligible for the benefits and the reasons for this non-eligibility was ignored. After the system rejected the attempt to carry out steps as part of the process for paying benefits to C.G., our employee achieved her objective by sending the two priority payments, which did not require compliance with the CSCS.

Ms. Pagé also engaged in acts of deception by concealing what she had done through operations intended to ensure that the payments would not be easily discovered. She achieved that by neglecting to prepare the documents needed to send the payments associated with the file and by entering the SIN and the address localizer in a way that prevented any indication of payment by a normal query for the purpose of obtaining the file.

Sylvie Pagé's complicity in this fraud and breach of trust committed against Service Canada is also illustrated by the fact that she altered the T4 documents to reduce the tax implications for her sister.

...

[37] The report contains the following recommendations:

[Translation]

...

That this report be submitted to the assistant deputy ministers of the Operations Branch, the Integrity Branch and the Persons and Culture Branch for their review and for actions that they judge appropriate;

That the matter be referred to the Royal Canadian Mounted Police for consideration of a criminal investigation;

That the Canada Revenue Agency be alerted to the change to the T4 document so that its records can be adjusted accordingly to reflect [C.G.]’s actual income for fiscal year 2003;

That the \$8167.71 overpayment that is the subject of Robert Dupras’ recommendations be recovered.

...

[38] Ms. Heon’s report was submitted to Ms. Ferland in late March 2007. Ms. Ferland in turn met with her director, Mr. Rath-Wilson, and prepared a briefing note for Ms. Châtillon. The investigation report was also translated to French. It was thus agreed that Ms. Pagé would be given a copy of the investigation report so that she could review it and provide her comments.

[39] Ms. Ferland indicated that she had met with Ms. Pagé, accompanied by her union representative, in mid-April 2007 and that she had given Ms. Pagé a copy of Ms. Heon’s investigation report. It was agreed at that time that Ms. Pagé and her union representative would review the report and provide their comments.

[40] It was in that context that Ms. Pagé was summoned to a second meeting. Ms. Pagé then asked that Mr. Rath-Wilson attend the meeting, which was held on May 1, 2007. Mr. Rath-Wilson, Ms. Ferland, a labour relations officer, Ms. Pagé and Ms. Pagé’s union representative attended. Ms. Ferland indicated that during the meeting Ms. Pagé made counter-arguments against several of the points in the report. Ms. Pagé was then asked to submit her comments in writing. Ms. Ferland also indicated that during the meeting Ms. Pagé asked that two new persons be charged with reassessing the files of R.G. and C.G., and Ms. Ferland agreed to the request.

[41] Ms. Ferland indicated that she had assigned the task of reassessing the file to two experts, who had confirmed that Ms. Pagé had carried out some anomalous operations and that she should not have paid benefits to C.G.

[42] Ms. Ferland confirmed that Ms. Pagé’s union representative had sent her Ms. Pagé’s comments on May 16, 2007 and that the management team and technical advisors had analyzed each of Ms. Pagé’s comments and arguments. Ms. Pagé’s arguments and the employer’s response to each argument were recorded in a document that was adduced in evidence and that contains the following:

[Translation]

<p><i>The investigator did not understand French well enough: A number of times during the interview with Sylvie Pagé (on February 1, 2007) it was necessary to stop the interview to explain what certain words meant. The investigator was not able to clearly understand the information that the employee provided during her interview. Therefore, the report misrepresented a number of facts.</i></p>	<p><i>During questioning, a francophone fellow investigator, Claude Campeau, accompanied the investigator. Mr. Campeau was a senior investigator with the special investigations unit. The investigator not being perfectly bilingual does not mean a lack of competence as such. Furthermore, the interview was recorded so that it could be referred to later.</i></p>
<p><i>The investigator completely ignored the mitigating factors that apply in the employee's favour, such as:</i></p> <p><i>her years of service (19 years)</i></p> <p><i>her work record (unblemished)</i></p> <p><i>her disciplinary record (unblemished)</i></p> <p><i>operational pressures, as well as pressures in her private life</i></p> <p><i>the clarity of internal policies, etc. (the Douglas Factors encompass 12 factors to be applied in disciplinary proceedings)</i></p>	<p><i>The investigator's mandate was to assess the facts and indicate what was to be done next. Her mandate did not include taking mitigating factors into account or making recommendations given that the latter is strictly management's responsibility.</i></p>
<p><i>The report does not specify why the employee would want to do what she is accused of doing. The investigator should have asked for a credit check to determine her financial situation. Had that been done, it would have been determined that the employee was financially stable and responsible — and therefore had no motive.</i></p>	<p><i>The purpose of the investigation was not to prove that the employee had done wrong but to compile all the relevant information and to try to understand the reason behind all the irregularities associated with the case.</i></p> <p><i>Same response as for the previous point.</i></p>
<p><i>The report does not establish that the employee had any criminal tendencies. The investigator should have obtained a criminal record check. It would have shown that the employee does not have a criminal history — and therefore shows no criminal tendencies. The child's entitlement to the disabled contributor's child benefit should not be at issue. The child was entitled for a specific period (from 1997, when the child turned 18, until 2001, when the contributor turned 65). A calculation of</i></p>	<p><i>The child was entitled to the disabled contributor's child benefit from August 1997 to December 2000. According to our files, the child did in fact receive all the benefits to which she was entitled.</i></p> <p><i>Given that the disabled contributor turned 65 in December 2000, no amount was owed to the child after that date. It was the employee who treated the account as a special case.</i></p>

<p><i>the benefits for the period in question would show that the amount paid by the employee is in fact the correct amount.</i></p>	
<p><i>The report does not mention that the employee had stated during the investigation that there was a technical flaw: the contributor's electronic file had been converted from the Legacy system to the CSCS. However, the child's electronic file had not been converted, which gave the employee the impression that the benefits had never been paid to the child.</i></p>	<p><i>According to the information that we have on the case, the files of the contributor and the child were converted from the Legacy system to the CSCS and were accepted on 21-11-1997. That operation was performed simultaneously on both accounts (of the contributor and of the child), and the file contains paper proof.</i></p>
<p><i>A routine check would have prevented <u>all</u> the human errors committed by the employee. The employee cannot be held responsible for the fact that the employees who verified the file (notably Richard Gilbert, Lynne LeGros and Gayle Beauchamps) did not do their jobs.</i></p>	<p><i>Although a verification could have stopped the payments, that does not obviate the fact that there were substantial irregularities in the case, especially given that the employee who handled it had over 19 years of service.</i></p>
<p><i>The report relates that the employee had stated during her interview that she had not handled the information pertaining to the child's T4. What the employee actually had said during her interview with the investigator was that she could not remember. The amount in question should have been \$8167.71 — whereas the amount of \$816.71 was entered into the system. We can clearly see that a figure was missing in the entry. If the employee had truly intended to do something wrong, why stop at one figure? She could have reduced the amount to \$0.</i></p>	<p><i>A T4 is issued automatically when the system detects income on a client's account. In this case, there was no valid reason to amend the T4 given that the payments that were issued had in fact been cashed by the child and that she had made no requests or complaints.</i></p>

[Emphasis in the original]

[43] Ms. Ferland explained that, in her opinion, there were too many inconsistencies, given Ms. Pagé's experience. Given all the inconsistencies, along with the serious nature of the acts that had been committed, she concluded that there had been a breach of trust and likely fraud. She and Mr. Rath-Wilson recommended to Ms. Châtillon that the employee be terminated, and she drafted a memorandum to Ms. Châtillon, which reads as follows:

[Translation]

...

In accordance with Service Canada's discipline guide and the federal accountability legislation, Sylvie Pagé has been given the necessary time (7 days) to analyze the investigation report and to present all the mitigating factors and clarifications that, according to her, management did not take into account during the investigation.

After the report was submitted, a meeting with Sylvie Pagé, Steve McCuaig (her union representative), John Rath-Wilson (Director General, Operations and Processing) and Claudia Ferland (Director, NIBS) was held on May 1, 2007.

During the meeting, the employee made a number of claims to justify her actions, and subsequently, on May 16, 2007, her union representative sent an email intending to demonstrate that the employee had not committed any wrongdoing.

Accordingly, management carefully analyzed the documents and determined that there were no mitigating factors that could be taken into account for the employee (see Appendix B).

Furthermore, two CPP experts were asked to examine the case, and both concluded that there had been some anomalous operations on the account and that the employee who handled it did so with full knowledge of what she was doing and for the purpose of doing something wrong.

From the employer's point of view, when a disciplinary sanction is to be determined, the onus is on management to establish that, on a balance of probabilities, there is just cause for the disciplinary measure. That means that it is more likely that a given fact exists than that it does not exist and that the issue to be determined is not only possible but also probable, rather than improbable.

Further, the Values and Ethics Code for the Public Service as well as the CPP manual preclude processing a family member's files and provide that any employee who fails to comply with that requirement may be subject to disciplinary measures, including termination.

In this case, the investigation report reveals that Sylvie Pagé's explanations are not credible. The interviews with employees and the documentary evidence support the assertion that Sylvie Pagé committed fraud against the Government of Canada and a breach of trust.

...

[44] When questioned during cross-examination about the mitigating factors taken into account by the employer, Ms. Ferland indicated that she had kept those mitigating factors in mind but that they could not attenuate the seriousness of the wrongdoing. She also confirmed that Ms. Pagé had indicated that she was having family problems in 2003 but that, to her recollection, Ms. Pagé file did not show any unusual absences in 2003.

[45] Ms. Ferland was also cross-examined about certain facts that became known during the investigation. With respect to the procedure for verifying priority payment requests, she confirmed that the co-workers and the supervisor who double-check the payment requests must actually verify them before signing them. With respect to the two payments at issue, she could not confirm whether the signatories had in fact carried out the standard verifications.

[46] Ms. Ferland also confirmed in cross-examination that to her knowledge no other anomalies had been identified in R.G.'s file and that between 2003 and 2007 Ms. Pagé had not been held responsible for any irregularities in any other cases. She indicated that none of the other files processed by Ms. Pagé had been verified and that doing so would have been impossible.

[47] In response to a question, Ms. Ferland also indicated that it had not been recommended that Ms. Pagé be moved to another position given the nature of the misconduct.

[48] Mr. Rath-Wilson also testified about the recommendations that had been made to the Assistant Deputy Minister. He indicated that there was nothing in the file that would call for any measure other than termination. The employee's actions had constituted a violation of the *Values and Ethics Code for the Public Service* ("the Code") and a breach of trust. That determination was based on the nature of the position, which required a very high level of trust given the latitude that employees had. In his mind, it is very clear that employees know that they must not handle the files of family members or friends, and he indicated that the Code is the subject of an ongoing information campaign within the organization. He also stated that, given the nature of Ms. Pagé's work and the nature of the wrongdoing, he had not considered moving her to another position. He further indicated that the employer had very high expectations for the integrity of employees working at the NIBS.

[49] On conflict of interest, Ms. Allouch testified for her part that the NIBS section has a manual (the CPP manual) that deals with the prohibition against employees handling the files of family members and friends. She stated that employees are given a paper copy of the manual during their initial training and that an electronic version is available on the intranet. She stated that all employees know that they must not work on the files of family members and that this is a matter of judgment because there is always a risk of a conflict of interest.

[50] On June 19, 2007, Ms. Châtillon signed a letter terminating Ms. Pagé, which stated as follows:

[Translation]

...

The investigation report dated March 27, 2007, of which you were made aware on April 23, 2007, revealed that you committed fraud against the federal government by paying Canada Pension Plan (CPP) benefits to a third party, in this case your stepsister, knowing that she was not entitled to them.

I have carefully examined the evidence in this matter, and I have determined that because of these activities you are no longer worthy of trust and that you no longer possess the qualities of honesty and integrity that your position as a payment services officer requires.

Your actions are serious enough that you have irreparably broken the bond of trust that is essential to your continued employment as a member of the Public Service of Canada.

You have conducted yourself in a way that is completely incompatible with your duties and responsibilities as a public servant, and I cannot find any mitigating factors that would lead me to conclude that you should not be terminated for cause.

Accordingly, given the seriousness of your misconduct, and based on the information available to me now, I have decided to terminate you for cause, by virtue of the authority delegated to me as deputy head under paragraph 12(1)(c) of the Financial Administration Act. Your termination comes into force when the offices close on June 29, 2007.

...

B. For the grievor

[51] Ms. Pagé's representative called Guylaine Gauthier, who has been working as a benefits officer for 18 years. Ms. Gauthier testified about the procedure for issuing priority payments. She indicated that officers must calculate benefits and complete payment request forms. With respect to entering the client's SIN, Ms. Gauthier stated that from 2001 to 2004 the method for entering the SIN in the case of a priority payment required inserting a space after each sequence of three figures. Copies of query screens associated with payments issued to a beneficiary in 2001 were adduced, and it could be seen that the client's account number had in fact been entered with a space inserted after each consecutive sequence of three figures in the SIN. Ms. Gauthier also stated that officers still had a tendency to leave spaces when entering the SIN even after the procedure was changed in 2004.

[52] Ms. Gauthier also testified on the procedure that co-workers followed in verifying payment requests. She reported that she herself had verified priority payment requests prepared by co-workers and that the verification process requires verifying all the information as well as the entitlement to benefits and the benefit calculations before signing the payment request form.

[53] She also testified about the process for changing T4s. She indicated that T4s could sometimes need to be changed at the end of a fiscal year to reflect changes in a beneficiary's file or to correct errors. She stated that changing a T4 did not require any authorization and that benefits officers had the authority to make changes.

[54] Ms. Pagé testified at length. She spoke of her career, indicating that she had joined the employer (or its predecessors) in 1988, initially working as an office clerk and then as an administrative assistant and that she had been appointed to the position of Benefits Officer in 1993. She added that, from 1993 to 1998, she was part of the team that handled disability claims and that she had been transferred to the NIBS in 1998. She acknowledged that the files processed by the NIBS are more complex.

[55] She related the incidents that had taken place in her stepsister's case in 2003. She stated that in late August or early September 2003 her sister had called to ask if she was entitled to the child benefit between the ages of 18 and 25 while her father was receiving disability benefits. Ms. Pagé indicated that her sister was 24 years old

when that conversation took place. She stated that she had asked her stepsister the following: “[translation] You have never received benefits?” Her stepsister allegedly asserted that she had not. Ms. Pagé reported that she had sent her the appropriate forms so that she could fill them out and have them completed by the academic institutions.

[56] Ms. Pagé confirmed that she received her stepsister’s application for benefits and that she handled it on a priority basis by using the priority payment procedure, as she would have done for any other client, given that there was a three-year retroactivity period. She indicated that she used the priority payment procedure to expedite the process. She also indicated that had she had improper intentions, she could have chosen to issue the payments by using the account review process, which does not require double-checking and that would have enabled her to authorize payments of up to \$99,999 without authorization or double-checking. Had she done that, she would have been able to make the transaction without anyone being able to see it. She instead chose the priority payment procedure, which involves a secure process that includes having two people double-check the payment requests.

[57] She acknowledged preparing the payment requests. She explained that she had issued two payments because her stepsister had attended two different schools. She testified that she had prepared the priority payments in accordance with the applicable procedure and had forwarded them so that they could be verified by co-workers and then approved by the manager. She followed that same procedure for both payments. She stated that when she again looked at the payment requests during the investigation, she realized that she had made a mistake on the dates entered on the payment requests: the September 9, 2003 payment of \$2141.04 should have corresponded to 1997 to 1998 and the September 26, 2003 payment of \$6026.67 should have corresponded to 1998 to 2000 to cover the total period from 1997 to 2000.

[58] Ms. Pagé explained the change to C.G.’s T4. Because a disabled contributor’s child benefit had been paid to C.G. before age 18, she had to make a change of address given that the system was showing the address on file, i.e., her father’s address, whereas C.G. was no longer living with him. She therefore amended the T4 to enter her stepsister’s new address. She stated that to change a T4 she had to retranscribe on the screen all the information appearing on the original T4.

[59] Ms. Pagé stated that after issuing the priority payments and changing the T4 to reflect the change of address, she never touched her stepsister's file again.

[60] Ms. Pagé testified about the January 9, 2007 meeting with Ms. Allouch and Ms. Ferland. She indicated that at the beginning of the meeting the first question that Ms. Ferland allegedly asked her was whether she knew why she had been called to the meeting, to which she replied that she did not. She then stated that when Ms. Ferland asked her whether she knew C.G., she replied that she did.

[61] Ms. Pagé indicated that after she was informed that she was suspected of fraud and was the subject of an investigation, she entered a state of shock and did not understand what might be happening. When she returned home, she contacted her parents and her stepsister to find out if anything had happened with their cases or whether they had received any duplicate payments.

[62] She indicated that, after checking his bank accounts, her stepfather realized that he had received benefits for his daughter C.G. when she was between the ages of 18 and 21 and that benefits had been paid until 2000. Ms. Pagé stated that she could not understand it because the benefits should have been paid directly to C.G. and not to her father. In her opinion, it was the result of an error on the part of the benefits officer who had dealt with the initial application for benefits. She stated that she was told that her employer's representatives would look into whether a mistake had been made and whether the benefits had been paid in error into the account of C.G.'s father. She believed that her employer would see that there had been no fraud because C.G. had never received the money between 1997 and 2000.

[63] Ms. Pagé also testified about the investigation process. She initially stated that she could not understand why her employer would have assigned the responsibility to an investigator who did not understand French. She stated that, during her interview with Ms. Heon and Mr. Campeau, Mr. Campeau led the discussion while Ms. Heon took notes. Referring to her interview with Mr. Campeau, she acknowledged that she had completed the payment requests and that when she saw the request forms again, she realized that she had put the wrong dates. She also stated that she had confirmed that she had amended the T4 to change the address and that when asked whether she had changed the amount she replied that she had not and that she had simply retranscribed the information that appeared on the original T4.

[64] Ms. Pagé reported that when she received a copy of Ms. Heon's investigation report she noted that some of her comments had not been reported accurately.

[65] In her testimony, Ms. Pagé commented on each of the statements attributed to her in Ms. Heon's report. To present Ms. Pagé's testimony in the proper context, I will reproduce each of her statements as reported in Ms. Heon's report, followed by Ms. Pagé's comments during her testimony.

[66] Extract from Ms. Heon's report: "[translation] Her sister had told her that she had not been receiving the benefits to which she was entitled because she was 18 years old and was attending school full-time."

[67] Ms. Pagé indicated that the statement had been reported accurately.

[68] Extract from Ms. Heon's report: "[translation] When the CSCS rejected Ms. Pagé's attempt to carry out the steps needed to pay benefits to her sister, she assumed that the system had made a mistake."

[69] Ms. Pagé stated that she had never said those words and that when the system generates an error message it can take up to a month before the message is received.

[70] Extract from Ms. Heon's report: "[translation] Ms. Pagé did not investigate her sister's claim to verify whether she was eligible because she believed that what her sister had said was true."

[71] Ms. Pagé indicated that her comments were reported incorrectly, that she was an experienced officer, that it was part of her duties to verify entitlement to benefits, and that she did not need to refer to co-workers to do so.

[72] Extract from Ms. Heon's report: "[translation] She made a mistake in neglecting to review the claim to verify whether the payments had been deposited to her stepfather's [R.G.'s] account."

[73] Ms. Pagé indicated that her comments were reported incorrectly and that she had checked in the system and was able to see that C.G. had not received any benefits. She added that she could not have known that the money had been deposited into her stepfather's account.

[74] Extract from Ms. Heon's report: "[translation] She sent a letter informing her stepfather that his disability benefits had been converted to pension benefits in January 2001."

[75] Ms. Pagé indicated that the statement was accurate, adding that she had not concealed anything and that she had in fact sent that letter to her stepfather.

[76] Extract from Ms. Heon's report: "[translation] She made an error on the eligibility period: it should have been from 1997 to 2000."

[77] Ms. Pagé indicated that the statement was accurate, adding that the employer had understood the mistake but that it continued to claim that she had issued payments for a period for which C.G. was not eligible.

[78] Extract from Ms. Heon's report: "[translation] Since the allegation, she determined that the payments had in fact been deposited to her stepfather's bank account."

[79] Ms. Pagé indicated that the statement was accurate.

[80] Extract from Ms. Heon's report: "[translation] Her stepfather apparently did not notice the additional funds in his account."

[81] Ms. Pagé indicated that the statement was accurate, adding that, because her stepfather had received the child benefit when his daughter was under 18, he undoubtedly did not realize that he was no longer entitled to it once she turned 18.

[82] Extract from Ms. Heon's report: "[translation] Her sister apparently did not realize that she had not been receiving the money."

[83] Ms. Pagé indicated that the statement was accurate, adding that her sister had told her that she had completed a number of forms during that period, including among others forms for loans and bursaries, and that she could not remember having completed the forms for the disabled contributor's child benefit.

[84] Extract from Ms. Heon's report: "[translation] [C.G.] indicated that she had received a T4 for the benefits without receiving any money."

[85] Ms. Pagé indicated that the statement was incorrect and that she was surprised that C.G. would have received a T4 given that, if her father had received the money, he should have received the related T4.

[86] Extract from Ms. Heon's report:

[Translation]

...

It was an honest mistake, and if the "verifier" and the person responsible for approving and authorizing payments had done their jobs the mistake would have been detected from the beginning and Ms. Pagé would not be in the situation that she is in now;

...

[87] Ms. Pagé indicated that the statement was accurate, adding that she blamed herself for handling her family members' files but that she had never committed theft or fraud and had never intended to. She added that she had been shocked to see that the payment requests she had completed had not been verified. Although she would have acknowledged her own mistakes, she feels that the errors committed in the file would have been discovered quickly had the people required to do the verification actually performed the required verifications.

[88] Extract from Ms. Heon's report: "[translation] If she had been trying to do things in secret, she would have simply signed the claims and authorized them herself."

[89] Ms. Pagé stated that her comments had been reported incorrectly and that what she had said was that if she had wanted to conceal her actions, she would have performed an account review, which does not require verification by co-workers. Once again, she stressed that, in her opinion, when someone signs a document to indicate that it has been verified, that should mean that it actually has been verified. She added that she had been trained by a manager who liked to do things by the book and who had taught her that verification was an important step.

[90] Extract from Ms. Heon's report:

[Translation]

...

It is common to work on the files of close friends and family members, and she had never heard of any policies prohibiting the practice or obtained any instructions about it.

...

[91] Ms. Pagé indicated that the statement was inaccurate and that she had never said that it was common to work on family members' files but that she knew that some of her co-workers had handled family members' files in the past. She added that there was a clear policy on bribes but no clear policy prohibiting working on the files of family members and friends.

[92] Extract from Ms. Heon's report: "[translation] There was no standardized method for entering the SIN, and she did not receive any instructions in that respect."

[93] Ms. Pagé indicated that the computerized system is complex and that the same information needs to be entered one way on one particular screen but differently on another. She also stated that there was no standard way of entering information, that it had been that way for 20 years and that it was easy to make mistakes.

[94] Extract from Ms. Heon's report: "[translation] It was not unusual for papers marked as needing "to be filed" to go missing."

[95] Ms. Pagé indicated that no one would sign a cheque without documents being attached and that she had the substantiating documents when she issued the payments but that they must have been lost after that.

[96] Extract from Ms. Heon's report: "[translation] She did not know why the payments could not be easily traced in the SPS."

[97] Ms. Pagé stated that she did not know that it was difficult to trace a file if the SIN was entered differently.

[98] Extract from Ms. Heon's report: "[translation] She did not change the T4 screen to reduce the amount of taxable income from 8167.71 to 816.71."

[99] Ms. Pagé indicated that she had in fact modified the T4 to change the address and that she may have noticed that the digit "7" was missing and that it may have been a retranscription error. She added that had she wanted to change the amount on the T4, she would have made it zero.

[100] Ms. Pagé also explained that in 2003 she was going through a very difficult period in her personal life. I do not find it necessary to describe here the nature of the difficulties that Ms. Pagé detailed in her testimony. She indicated that she was burnt out and that she had been seeing a psychologist when she had handled her stepsister's file. She also stated that her family doctor had suggested that she take sick leave but that she thought that things would improve. She noted that her condition could have explained the errors she made on her stepsister's file, adding that she had made mistakes on other files during that period.

[101] Ms. Pagé stated that she had cooperated fully with the investigation and had provided all the information needed to clear her name. She had provided her stepfather's and her stepsister's bank statements, had provided access to her own bank accounts and had suggested that the investigators request her credit history.

[102] With respect to the investigation process, Ms. Pagé stated that the employer had not taken into account the mitigating factors in her case, that she had not felt listened to during the investigation, that she had the impression that the investigators did not try to understand what she had been trying to explain to them and that she had the impression that the employer had considered her guilty from the outset.

[103] She reiterated that she had made a mistake by working on the files of family members but insisted that she had never done anything dishonest. She also indicated that she had not derived any personal benefit from the monies paid to her stepsister.

[104] Ms. Pagé also testified about the difficulties that she had experienced since her termination, including her inability to find another job. She also spoke of the serious financial difficulties that had arisen because of her termination and the resulting loss of income.

[105] In cross-examination, Ms. Pagé was confronted about her assertion that the officer who had initially processed C.G.'s request in 1997 must have made a mistake because the benefits should have been paid into C.G.'s account and not into that of her father. She acknowledged that persons aged 18 or over who apply for the disabled contributor's child benefit must indicate how they wish to receive the benefits and in which bank account, if applicable. Counsel for the employer adduced a void cheque taken from C.G.'s file, which accompanied her initial request in 1997, and it appears that the cheque was for her father's account.

[106] Ms. Pagé also confirmed that, after she noted that C.G. did not seem to have received any benefits, she did not look into the matter any further to verify whether the benefits might have been paid to an account other than C.G.'s. She added that she would not have done so even if it had been another client's file. She also confirmed that she had not checked the paper file, noting that it was not common practice.

[107] When questioned about the policy governing the handling of family members' files, Ms. Pagé reiterated that to her knowledge there was no clear policy about that and that she had never wondered about it when handling the files of R.G. and C.G. As for the CPP manual and the *Code*, she maintained that she has never seen those documents. She also confirmed not having automatically wondered whether it was appropriate to handle family members' files.

[108] Also during cross-examination, Ms. Pagé stated that she had not worked on her stepfather's file before 2001, when she sent him the letter informing him that his disability benefits were being converted to pension benefits. Counsel for the employer then adduced some copies of the "Declaration of Attendance at School or University" that C.G. submitted between 1997 and 2000, which Ms. Pagé had initialled, as well as three processing forms for those requests dated October 1998, February 2000 and October 2000. All bore her signature. Ms. Pagé stated that she could not remember having processed C.G.'s requests during that period.

[109] Ms. Pagé was also confronted with her statement that, even if she had entered the wrong dates on the payment requests, the calculations themselves corresponded to the amounts to which C.G. was entitled for 1997 to 2000. She acknowledged that the calculations made in 2003 had been made based on the 2003 rates rather than those for 1997 to 2000.

[110] Ms. Pagé was also cross-examined about the fact that the T4 had been changed. When asked about the existence of two different methods for changing a T4, namely, duplication and amendment, she acknowledged that there were two methods but stated that she could not remember the information that could be changed with each. She also indicated that, regardless of the method used, all the information appearing on the original T4 had to be re-entered when a change was made.

III. Employer's rebuttal

[111] The employer called Ms. Chauret. She explained that there are two methods that benefits officers use when they amend a T4 and that each method allows specific fields to be changed. Only the beneficiary's address can be changed when the duplication method is used, whereas a number of different fields can be altered using the amendment method. The fields that can be changed using each method are identified in colour. When officers make changes they do not need to re-enter all the information appearing on the original T4. On the contrary, Ms. Chauret stated that to change the information in a given field the officer needs to type over or erase the information that appears in the field since the original information remains unless the officer modifies it.

IV. Summary of the arguments

A. For the employer

[112] Counsel for the employer indicated that the outcome of this case rested essentially on the credibility attributed to the witnesses that were heard and that the evidence needed to be assessed on a balance of probabilities. Acknowledging that Ms. Pagé's version was completely different from the employer's, counsel for the employer asserted that I had to decide and determine which of the two accounts was the most likely and that an assessment of the evidence would lead me to conclude that the employer's version was more likely than that of Ms. Pagé.

[113] With respect to the evidence adduced by both parties, counsel for the employer maintained that some of the evidence cast serious doubt on Ms. Pagé's credibility, thus discrediting her version in its entirety. Without presenting a comprehensive analysis of all the evidence that was adduced, he focused on certain elements that he considered determinative.

[114] He began by emphasizing the fact that Ms. Pagé had denied being related to R.G. and C.G. during the meeting of January 9, 2007. The employer relied on Ms. Allouch's testimony, who reported that during the meeting of January 9, 2007 Ms. Pagé had denied being related to R.G. and C.G.. He also relied on Ms. Chauret's testimony, who reported that, following the meeting with Ms. Pagé (which Ms. Chauret did not attend), Ms. Allouch asked her whether she was certain that Ms. Pagé, R.G. and C.G. were

related, which Ms. Pagé had denied during the meeting. Counsel for the employer maintained that Ms. Chauret's testimony, even though it was hearsay, was admissible because Ms. Allouch's statement was contemporaneous with the statement that she reported.

[115] The employer maintained that, to accept Ms. Pagé's assertion that she admitted to being related to R.G. and C.G. during the meeting of January 9, 2007, I would have to conclude that Ms. Allouch and Ms. Chauret were mistaken and that for some pernicious reason Ms. Allouch apparently failed to give Ms. Chauret an accurate account of the meeting with Ms. Pagé. The employer maintained that the balance of probabilities tilted in favour of the veracity of the testimonies of Ms. Allouch and Ms. Chauret. Counsel for the employer asserted that Ms. Pagé not being open and honest about her family ties at the first opportunity cast doubt on her credibility and on the veracity of her entire testimony.

[116] Counsel for the employer then focused on the issue of conflict of interest and asserted that it was implausible that Ms. Pagé would not know that it was not permitted or appropriate to handle the files of members of her family. Commenting on Ms. Pagé's testimony that there was no clear policy on that subject, he indicated that, aside from the policies that had been adduced in evidence, common sense alone dictates that it is not appropriate for a benefits officer to handle applications for benefits submitted by members of his or her family or to change the T4s of family members. In the employer's opinion, it is inconceivable that an employee of the federal public service would need to have it clearly spelled out for him or her that he or she could not handle files involving members of his or her family. Counsel submitted that it was illogical to believe that Ms. Pagé, with more than 18 years of experience, did not know that her behaviour was inappropriate. He further argued that it was absurd to claim that it was not inappropriate to handle her family members' files. Counsel for the employer maintained that Ms. Pagé's assertions about the rules governing conflict of interest were not credible and that they discredited the whole of her testimony.

[117] Counsel for the employer then focused on Ms. Pagé's lack of verification before issuing the priority payments. He asserted that it was unlikely to imagine that Ms. Pagé would have issued the priority payments to her stepsister simply on the strength of her stepsister's statement that she had not received benefits from 1997 to 2000 and a quick look at the computerized operations system. Counsel for the employer argued

that it was inconceivable that Ms. Pagé, who was part of a team of specialized officers, would not have looked into the matter more thoroughly. He also asserted that Ms. Pagé's claim that she could not remember having worked on her stepsister's file was equally implausible.

[118] Counsel for the employer invited me to thoroughly examine all the other evidence that, in his opinion, upheld the employer's version of the events.

[119] Anticipating the union's argument that Ms. Pagé's irreproachable conduct between 2003 and 2006 indicates that the relationship of trust had continued, counsel asserted that an employer must have all the information at hand when assessing the extent to which a particular employee can be trusted. In this case, the passing of time between 2003 and 2006 was not pertinent to assessing the impact of Ms. Pagé's actions on the continuation of the relationship of trust given that the employer had no knowledge of Ms. Pagé's misconduct.

[120] Counsel for the employer also submitted that Ms. Pagé's claims that she would have proceeded differently if she had intended to conceal what she had done and that she could have reduced the T4 to zero can in no way constitute a valid defence.

[121] The employer submitted that the evidence had shown that Ms. Pagé had erred in handling the files of her stepfather and her stepsister and that she had committed serious misconduct by granting her sister benefits to which she was not entitled. The employer maintained that Ms. Pagé knew or at the very least ought to have known that her conduct was completely inappropriate.

[122] With respect to the sanction, the employer asserted that the seriousness of the misconduct was such that it warranted termination because the bond of trust necessary to her continued employment was irreparably broken.

[123] The employer's assertions were based on a number of decisions. It referred to *Gannon v. Treasury Board (National Defence)*, 2002 PSSRB 32, in which the Board Member stated at paragraph 127 that ". . . the employer is not obligated to present a policy on common sense nor to educate its employees on common sense." Counsel for the employer maintained that that principle applied in this case because the rule on handling family members' files and conflict of interest was a matter of common sense. The employer also relied on *Threader v. Treasury Board (Revenue Canada, Customs*

and Excise), PSSRB File No. 166-02-15264 (19860114), in asserting that termination was an appropriate sanction in cases of wrongdoing relating to conflict of interest.

[124] The employer also referred to *Lalla v. Treasury Board (Industry, Science and Technology)*, PSSRB File No. 166-02-23969 (19940113), in which the adjudicator determined that the onus is on the employee to ensure that he or she does not place himself or herself in a conflict of interest situation. The employer relied as well on *McIntyre v. Treasury Board (Revenue Canada - Customs and Excise)*, PSSRB File No. 166-02-25417 (19940718), in asserting that, although the employer did not establish all the grounds argued to support the termination, the ground associated with conflict of interest was sufficient in itself to warrant termination. Thus the employer maintained that, even if I did not find in this case that Ms. Pagé had committed fraud against the Government of Canada, the conflict of interest in which she placed herself was sufficient to justify her termination. The employer also referred to *Renouf v. Treasury Board (Revenue Canada, Taxation)*, PSSRB File Nos. 166-02-27766 and 27865 (19980608), to support its contention that the amount at issue is not determinative in establishing that the bond of trust has been broken. The employer relied lastly on *Brazeau v. Deputy Head (Department of Public Works and Government Services)*, 2008 PSLRB 62, arguing that the principles at issue in that case were the same as those raised in this case.

B. For the grievor

[125] Ms. Pagé's representative submitted that the evidence showed a much less dire picture than that presented by the employer.

[126] She insisted that Ms. Pagé was acting in good faith when she processed her stepsister's application, insisting that she had made a mistake when she entered the wrong benefit period and that other errors had arisen as a result of that initial error: she had issued a second payment for the same incorrect period, and the benefit calculations had been made based on incorrect rates. She asserted that Ms. Pagé sincerely believed that C.G. was entitled to the benefits because the computerized system did not show that benefits for C.G. had been paid into the account of her stepfather, who had not realized that he was receiving benefits intended for his daughter.

[127] Ms. Pagé's representative also focused on Ms. Pagé's testimony that the payment requests had not been verified by her co-workers or the manager, indicating that her testimony to that effect had not been intended to cast blame on the employer but rather to establish that if the verifications had actually been performed the mistake would have been detected with the first payment.

[128] Ms. Pagé's representative also stressed that Ms. Pagé had been going through a very difficult period at the time of the events in 2003.

[129] Returning to the January 9, 2007 meeting, Ms. Pagé's representative argued that it was incorrect to claim that there were only two versions: that of Ms. Allouch and that of Ms. Pagé. She indicated that Ms. Ferland had testified that Ms. Pagé had been extremely surprised and shocked by the allegations but had not denied her family ties.

[130] Ms. Pagé's representative also discussed Mr. Dupras' statement that he had never seen a SIN entered in the way that Ms. Pagé had when she entered R.G.'s client number. Ms. Pagé's representative stressed the importance of this point that, in her opinion, constituted the basis of the fraud allegation against Ms. Pagé, who, according to the employer, would have tried to conceal her wrongdoings. She argued instead that Mr. Dupras' testimony had clearly been contradicted by Ms. Gauthier's testimony and by the search screen that had been adduced during her testimony. Ms. Gauthier reported that in 2003, the SINs were entered by inserting a space after each consecutive three-figure sequence. Ms. Pagé's representative asserted that Ms. Pagé had followed the procedure in effect at that time when she completed the payment requests.

[131] Ms. Pagé's representative also raised the inconsistency of Ms. Allouch's statement about making changes to a T4, which she stated required prior authorization. Rather, the balance of probabilities apparently established that officers had the authority to change T4s without authorization from a third party, as Ms. Gauthier had stated.

[132] Ms. Pagé's representative also stressed the fact that Ms. Pagé cooperated with the investigation and provided the investigator with all the information and documentation she could and had even suggested that her credit be checked.

[133] Ms. Pagé's representative asserted that the employer had not discharged its burden of proof, particularly proving that fraud had been committed, and that the only person who could have enlightened the tribunal was Ms. Pagé's manager in 2003, Ms. Legros, whom the employer had not chosen to call.

[134] With respect to the sanction imposed by the employer, Ms. Pagé's representative maintained that the disciplinary measure had to be corrective and not punitive and that it had to be proportional to the wrongdoing. She added that, in this case, Ms. Pagé acknowledged that she had made a mistake in handling her stepsister's file, that she had never intended to commit fraud and that she had not paid C.G. an amount that was higher than what she would have paid to another person in the same circumstances.

[135] Ms. Pagé's representative also insisted that, if Ms. Pagé had wanted to conceal the payments she had made, she could have chosen to update the file, a procedure that did not involve double-checking. She indicated that Ms. Pagé had chosen to use the priority payment process for two reasons: it was quicker and it was more secure because of the required verification.

[136] Ms. Pagé's representative maintained that there were a number of mitigating factors that justified a penalty less severe than termination. She stressed the grievor's years of service, the fact of her unblemished and discipline-free employment history, the pressure that she was under and the personal problems that she was experiencing at that time, the lack of clarity of the internal policies about handling family members' files, the fact that she acknowledged her mistakes, and the possibility that Ms. Pagé could be rehabilitated because she had not derived any personal benefit from her mistakes. Ms. Pagé's representative insisted that the relationship of trust was not irreparably broken.

[137] Ms. Pagé's representative based her assertions on a number of decisions. She referred to *Jalal v. Treasury Board (Solicitor General - Correctional Service Canada)*, PSSRB File No. 166-02-27992 (19990421), and to the following passage in particular:

...

Accordingly, I am convinced that Mr. Jalal's act was an isolated one which, while being serious in nature, was the result more of an error in judgment than a lack of integrity that would make it impossible to preserve the bond of trust

necessary to the employment relationship. I find that the employer's statement that the bond of trust has been irreparably broken is not reasonable in the circumstances and that the evidence reasonably shows that, in future, Mr. Jalal could be worthy of trust.

...

[138] She drew a parallel between *Jalal* and this case by asserting that the two payments issued by Ms. Pagé had to be considered a one-time occurrence and thus an isolated mistake that attested to an error in judgment on Ms. Pagé's part and not a lack of integrity.

[139] She also cited *Beaulne v. Treasury Board (Transport Canada)*, PSSRB File No. 166-02-27737 (19970923), in support of her argument that the employer had to assume some of the responsibility arising from the failure to verify the payment requests that Ms. Pagé prepared. She referred as well to *Charlebois v. Treasury Board (Department of Human Resources and Skills Development)*, 2006 PSLRB 19, which involved the same department and that referred to a lack of rigour on the employer's part. She stressed that, in that case, the employee, who had processed his own benefit claim, had been reinstated. She also based her position on *Amarteifio v. Treasury Board (Citizenship and Immigration Canada)*, PSSRB File No. 166-02-25829 (19950704), in which the employee, who was accused of having endeavoured to obtain preferential treatment for a member of her family, had also been reinstated.

V. Employer's reply

[140] Counsel for the employer focused on two points. First, he commented on the assertion by Ms. Pagé's representative that Ms. Ferland apparently confirmed that Ms. Pagé had not denied her family ties during the January 9 meeting. He indicated that that interpretation was not accurate and that Ms. Ferland's testimony was neutral on this matter.

[141] He also commented on the allegation that Ms. Legros, who was Ms. Pagé's manager in 2003, had not testified, indicating that the employer was in control of its evidence, which was in fact sufficient, and that it did not need to call every person who had been involved in the matter. He went on to state that there were significant factual distinctions between the decisions cited by Ms. Pagé and this case.

VI. Reasons

[142] To dispose of this grievance, I must first determine whether the employer has proven the accusations against Ms. Pagé on a balance of probabilities. If applicable, I will then need to determine whether termination constituted the appropriate sanction.

[143] The employer accuses Ms. Pagé of committing fraud against the federal government by paying CPP benefits to her stepsister when she knew that her stepsister was not entitled to them.

[144] The adduced evidence was largely contradictory, and the parties' contentions are diametrically opposed: the employer claims that Ms. Pagé paid benefits to her stepsister from 2001 to 2003 knowing that her stepsister was not entitled to them. Ms. Pagé acknowledges that she paid benefits to her stepsister for the period in question but claims that she made an error in good faith about the period to which the payments were applied. She maintains that, in fact, she wanted to pay her stepsister benefits for 1997 to 2000, when her stepsister was eligible, and believed that her stepsister had not received the benefits to which she was entitled.

[145] My analysis of the evidence leads me to conclude that the version of the facts submitted by the employer is more likely than that asserted by Ms. Pagé. Before addressing the points that support that conclusion, I wish to note that some of the employer's allegations were not included in my deliberations.

[146] The first allegation pertains to the method that Ms. Pagé used to record the SIN when she entered the information about the payments in the electronic file. I find that I am unable to draw any clear conclusions from the evidence that was adduced. Two witnesses who had no interest in lying, who were equally credible and who worked as benefits officers in 2003, made conflicting statements about the standardized procedure in effect in 2003. Given that the burden of proof is on the employer, I find that it has failed to establish, on a balance of probabilities, that the method in effect in 2003 required that all the figures be entered consecutively. Therefore, I reject any conclusion that Ms. Pagé could have deliberately entered R.G.'s SIN in a non-standard way to make the payments difficult to trace.

[147] Furthermore, my deliberations did not take into account the allegation that Ms. Pagé allegedly denied being related to C.G. and R.G. during the meeting of January 9, 2007. The employer's allegation is based on the testimony of Ms. Allouch, who was

present at the meeting, and that of Ms. Chauret, who was not a witness to Ms. Pagé's statement but who reported a conversation that she had had with Ms. Allouch, who in turn was reporting Ms. Pagé's comments. Two things confuse me about this evidence. First, Ms. Allouch, who testified on a number of different points, did not herself testify about the conversation that she allegedly had with Ms. Chauret. Second, Ms. Ferland, who also testified on various points, did not testify about the statement that Ms. Pagé allegedly made in response to a question that Ms. Chauret had allegedly asked her. Ms. Pagé, for her part, stated that she had admitted to her family ties during the meeting. Given that it was clearly established that Ms. Pagé was in a state of shock during the meeting, it is possible that she would not exactly remember her answer or that it would not have been clear. I find that, based on the foregoing, the employer failed to establish, on a balance of probabilities, that Ms. Pagé denied her family ties when she was questioned on that point on January 9, 2007.

[148] I have disregarded a third element, namely, the issue of whether officers need to obtain prior authorization to change a T4. I find that there is probative evidence that indicates that benefits officers had the authority to change T4s. I therefore reject any conclusion that Ms. Pagé would have failed to obtain authorization before changing C.G.'s T4. I will revisit the purpose of that change a little later.

[149] Even after the elements described above have been disregarded, there are certain signs that lead me to believe that the employer's version is more likely than Ms. Pagé's. First, to accept the version presented by Ms. Pagé, I would have to conclude as follows:

- that Ms. Pagé did not remember having processed her stepsister's benefits applications on three occasions between 1997 and 2000;
- that Ms. Pagé made a mistake in good faith when she indicated that the amount of the first payment was associated with the benefits for January 2001 to December 2001, instead of from 1997 to 1998;
- that, after making an initial payment, Ms. Pagé made another mistake in good faith when she indicated that the second payment was for January 2001 to December 2003 instead of from 1997 to 2000, when a portion of that period was already covered by the first payment made a few days earlier;

- that Ms. Pagé did not receive the error message (the SOC) that the system would have generated when she tried to reinstate payment for the benefits in the system (make them payable) before proceeding with the priority payment method;
- that Ms. Pagé considered that she had performed sufficient verifications on C.G.'s entitlement to benefits before proceeding with the priority payments;
- that the substantiating documents associated with the payments were not in C.G.'s file because they had likely been lost;
- that Ms. Pagé did not know that the appropriate method for changing an address on a T4 is the one that permits amending only the address.
- that, to change the address on a T4, a benefits officer must reproduce all the information that appears on the original T4 and that, in this case, Ms. Pagé must have made a transcription error by entering a taxable amount of \$816.71 instead of \$8167.71; and
- that Ms. Pagé was not aware of the rules governing conflict of interest, notably those pertaining to the processing of family members' files.

[150] Taken in isolation, each of the above points may seem plausible. I nonetheless find that taken as a whole they do not withstand scrutiny. With respect, I find that the version of the facts asserted by Ms. Pagé contains a series of errors, irregularities and errors in judgment that are too numerous to appear credible.

[151] To begin with, I find it surprising that Ms. Pagé would not remember having processed her stepsister's benefits applications on three occasions between 1997 and 2000.

[152] I also remain perplexed at the manner in which Ms. Pagé states that she handled her stepsister's file. Ms. Pagé worked as part of a team of specialized benefits officers with the expertise and knowledge required to handle complex cases. The evidence established that NIBS officers had a great deal of latitude in their work, which involved various manual procedures and required care and attention to detail on their part. If I were to accept Ms. Pagé explanation, I would also have to find that she displayed negligence and a lack of basic caution and care. However, I have no evidence that

would lead me to think that Ms. Pagé was incompetent or negligent in her work. Ms. Pagé was an experienced officer with an unblemished employment record. The following elements lead me to think that Ms. Pagé was well aware of what she was doing.

[153] First, I have difficulty accepting the contention that Ms. Pagé could have made mistakes on two occasions about her stepsister's eligibility period for benefits. Ms. Pagé testified that she was in possession of the benefits applications completed by her stepsister and by the academic institutions, from which she took the information needed to prepare the payments. I find it strange that she could have erred twice on an element as important as the eligibility period and that she did not realize her mistake before the benefits applications were actually processed. I find it even stranger to imagine that, when she prepared the second payment, not only did she make another mistake about the eligibility period, but she also would unknowingly issue a payment for January to December 2001, which had already been covered by the first payment. Ms. Pagé explained that she had issued two payments because her stepsister had attended two different schools. I assume that she attended each of the schools at different times, so why would she have included the period for which the first payment was made with the second?

[154] I also have a great deal of difficulty believing that Ms. Pagé was content to simply verify whether benefits had been paid to her stepsister's bank account before issuing priority cheques for an amount of over \$6000. Ms. Pagé acknowledged that a person claiming a disabled contributor's child benefit has to indicate the bank account to which the benefits are paid. Given the connection between the payment of benefits to C.G. and R.G.'s case, the most basic level of caution would have called for checking R.G.'s electronic file or even the paper file to verify whether the payments had been made to an account other than hers, in particular that of her father. Ms. Pagé herself testified how important it was to be careful in double-checking payment requests. I cannot fathom that, with all of her experience, Ms. Pagé would have been so negligent in processing a file as sensitive as that of a family member. Nor did the evidence establish that Ms. Pagé's state of health could have explained such negligence. A finding to that effect would have required substantial medical evidence supported by a doctor's testimony. Ms. Pagé's testimony that she was going through a difficult period, that she was at the end of her rope and that her doctor had suggested that she stop

working is clearly insufficient to suggest that she would have committed a series of errors attributable to a medical condition.

[155] One other point leaves me perplexed. Before issuing the priority payments, Ms. Pagé tried to re-enter (make payable) the benefits into the operations system, which generated an error message (an SOC) that indicated why the reinstatement of benefits was rejected. The evidence is contradictory as to when an officer who makes a request receives such a message. Mr. Dupras indicated that the message is generated by the system and that the officer receives the message stating the reason for rejection. Ms. Heon's investigation report discusses the interviews that she conducted with Ms. Pagé's co-workers, who apparently indicated that, when the system flags a case of non-eligibility, further investigation is carried out to verify the person's eligibility. I understand from those comments that officers receive error messages and that they conduct further investigations before paying benefits in a different way. In her investigation report, Ms. Heon indicated that during questioning Ms. Pagé had explained that when the system refused her attempt to reinstate payment she thought that the system had made an error. If that were Ms. Pagé's explanation, why would she not have investigated the matter a little more fully before assuming that the system had made an error?

[156] In her testimony, Ms. Pagé denied having made such a statement to the investigators. However, she did not explain why she had initially tried to reinstate the benefits in the operations system, although she stated that it could sometimes take a month before an error message was received. She nonetheless stated that she used the priority payment method because it was retroactive and quick. I am very surprised that Ms. Pagé would not explain why she had initially tried to reinstate the payments in the operations systems when she chose the priority payments procedure in any event. With respect to the error message, I am inclined to believe that it is more likely that the system generates such a message as soon as a transaction is rejected. If in fact Ms. Pagé did not receive an error message, she no doubt realized that the system had rejected her request because she then proceeded to use the priority payment method. The fact that the system would not generate the payment, even without a message indicating the reason it had been rejected, should have created doubt in her mind as to C.G.'s entitlement to benefits.

[157] I am also reluctant to think that the substantiating documents for the priority payments would have been lost when Ms. Pagé's co-workers informed the investigators that, although there could sometimes be delays, the documents would eventually be placed in the paper files.

[158] One other element that I find seriously challenges Ms. Pagé's version is the T4 being modified. First, I have difficulty believing that Ms. Pagé, who had 18 years of experience, would not be able to remember the two methods used to change T4s. I am also reluctant to believe that, regardless of the method used to change a T4, an officer would have to reproduce all the information that appeared on the original T4. I am more inclined to accept Ms. Chauret's testimony on the point rather than Ms. Pagé's. Ms. Chauret explained that the amendment procedure was appropriate for changing only an address and that, regardless of the procedure used, an officer did not have to re-enter all the information that appeared on the original T4. I find that her testimony was neutral and that her explanation makes sense. The system generates a T4 automatically when a taxable amount is paid. It would not make sense that the system would be designed in such a way that a simple change of address would require re-entering all the information that appeared on the original T4, with the associated risk of error in such a procedure. Therefore, I find that the probative evidence establishes that Ms. Pagé did not have to re-enter all the information on the original T4 to make a simple change of address. The only logical conclusion is that she deliberately changed the taxable amount that appeared on the T4 to reduce the tax implications of the payments for C.G. That point is determinative on the credibility to be attached to Ms. Pagé's explanations that an error had been made, given that it shows intent. If Ms. Pagé paid the benefits because she wrongly believed that C.G. was entitled to them, then why did she change the taxable amount entered on the T4?

[159] I am also reluctant to believe that Ms. Pagé had not been aware of the rules governing conflict of interest as set out in the *Code* and in the CPP manual. First, the offer letter signed in 1992 refers to the obligation to comply with the *Code*. Second, the testimonies of Ms. Allouch, Ms. Ferland and Mr. Rath-Wilson indicate that employees were aware of the rules. Ms. Heon's interviews with Ms. Pagé's co-workers also indicate that employees know that they are not to handle the files of members of their own families.

[160] Therefore, my analysis of the evidence leads me to conclude that, on a balance of probabilities, Ms. Pagé paid benefits to her stepsister knowing that she was not entitled to them.

[161] The *Code* sets out the values of the public service and the measures that apply to cases of conflict of interest. It includes the following provisions:

Objectives of this Code

The Values and Ethics Code for the Public Service sets forth the values and ethics of public service to guide and support public servants in all their professional activities. It will serve to maintain and enhance public confidence in the integrity of the Public Service. The Code will also serve to strengthen respect for, and appreciation of, the role played by the Public Service within Canadian democracy.

...

Ethical Values: Acting at all times in such a way as to uphold the public trust.

...

Public servants shall act at all times in a manner that will bear the closest public scrutiny; an obligation that is not fully discharged by simply acting within the law.

Public servants, in fulfilling their official duties and responsibilities, shall make decisions in the public interest.

...

Measures to Prevent Conflict of Interest

Avoiding and preventing situations that could give rise to a conflict of interest, or the appearance of a conflict of interest, is one of the primary means by which a public servant maintains public confidence in the impartiality and objectivity of the Public Service.

These Conflict of Interest Measures are adopted both to protect public servants from conflict of interest allegations and to help them avoid situations of risk. Conflict of interest does not relate exclusively to matters concerning financial transactions and the transfer of economic benefit. While financial activity is important, it is not the sole source of potential conflict of interest situations.

It is impossible to prescribe a remedy for every situation that could give rise to a real, apparent or potential conflict. When

in doubt, public servants should seek guidance from their manager, from the senior official designated by the Deputy Head, or from the Deputy Head, and refer to the Public Service Values stated in Chapter 1

. . .

Avoidance of Preferential Treatment

. . .

When making decisions that will result in a financial award to an external party, public servants shall not grant preferential treatment or assistance to family or friends.

. . .

[162] The CPP manual states as follows (clause 7-3-3 of the manual was taken from Ms. Heon's investigation report, given that the extract filed by the employer was limited to clauses 7-3-4 and 7-3-5):

[Translation]

. . .

7-3-3 HRDC employees shall not knowingly validate, modify or process in any other way an application, file or account relating to ISP benefits on their own behalf or on behalf of colleagues, blood relatives or relatives by marriage (including common-law spouses) or friends in their capacity as HRDC employees. This condition applies to validation of documents and all other types of benefits processing, including appeals.

7-3-4 Processing of applications, files and accounts of colleagues, relatives or friends

To maintain HRDC's ethical values and to adhere to the federal government's code pertaining to conflict of interest, the following procedures shall apply to the processing or handling of an application, file or account of an HRDC employee or of a friend or relative of that employee:

Any HRDC employee who receives an application, file or account relating to ISP benefits that involves him or her or that of a colleague, friend or relative by blood or by marriage shall forward the application or the file to his or her manager or team leader.

Comment: *These procedures shall apply to applications from current or former employees who have left the Department*

less than one year from the date on which the application was received, regardless of the reasons for their leaving.

The manager or team leader shall assign the application or the file immediately to another employee who is not personally related or associated with the client for processing purposes.

Comment: *If it is not possible to find an employee who is not personally related to or associated with the client, the manager or team leader can request that processing be carried out by another region or another sector.*

If it is discovered that an HRDC employee is processing his or her own ISP application or that of a friend or relative, it must be reported to the employee's manager or team leader.

If there is a risk of conflict of interest, HRDC employees who act as agents or trustees on behalf of an ISP client must declare themselves as such to their manager or team leader. This will enable them to better manage employees' workloads and avoid assigning files to employees where there is a possibility of conflict of interest.

7-3-5 Non-compliance

An HRDC employee found to have processed an ISP benefits file or application that involves him or her or that of a friend or relative or to have exerted any other influence on the processing of such an application or file shall be subject to disciplinary measures in accordance with clause 33 of the Conflict of Interest and Post-employment Code for the Public Service, which provides as follows: "An employee who does not comply with the measures described in Parts I and II is subject to appropriate disciplinary action, up to and including termination of employment."

The onus is on employees and managers to learn about these procedures and to follow them. In accordance with clauses 7 and 8 of the Conflict of Interest and Post-employment Code for the Public Service, employees shall sign a document certifying that they have read and understood the Code and shall review their obligations under it at least once a year. Managers shall take the disciplinary measures deemed appropriate in cases of non-adherence to these procedures.

...

[163] Ms. Pagé clearly violated the *Code* and the CPP manual. Her misconduct is contrary to the basic principles relating to the integrity of public servants and the public service as a whole. Without going so far as to characterize Ms. Pagé's actions as

fraud, I find that through her misconduct Ms. Pagé placed herself in a conflict of interest by handling her stepsister's file. She gave preferential treatment to a member of her family, and she committed a breach of trust against the federal government by granting benefits to a person who was not entitled to them.

[164] I must now determine whether termination constituted the appropriate sanction in the circumstances.

[165] I reviewed all the case law cited by both parties, and I find that the adjudicators took essentially the same factors into account in determining the appropriateness of a particular sanction. However, ultimately each case stands on its own merits and must be judged on the specific circumstances that apply. The weight to be given to each factor is also dictated by the specific circumstances of each case.

[166] In this case, Ms. Pagé's representative raised a number of factors that, in her opinion, should be considered as mitigating factors in favour of a sanction less severe than termination. She also maintained that I should take Ms. Pagé's rehabilitation potential into account and submitted that the relationship of trust had not been irreparably broken.

[167] Along with her representative's arguments, Ms. Pagé insisted a number of times that she considered the employer's investigation process to be inequitable and unjust. For example, she accused the employer, among other things, of assigning the investigation to an English-speaking investigator who did not clearly understand the grievor's attempted explanations. She also accused Ms. Heon of not taking her explanations into account and of inaccurately reporting her comments in her report. She further stated that she did not feel that she had been listened to and that she had the impression that the employer had considered her guilty from the outset.

[168] I will begin by discussing the employer's investigation process. I find that Ms. Pagé was right to complain that the investigator whom the employer charged with conducting the investigation was a unilingual anglophone. The employer's investigation was important given that the investigator's findings and recommendations would serve as the basis for the manner in which the employer would deal with Ms. Pagé. It was therefore important that the employer entrust the responsibility to a person who had the necessary expertise to properly conduct the investigation. I have no doubt as to Ms. Heon's expertise, but it is undeniable that her

language proficiency in French is limited. One of the essential elements of the investigation was the analysis of Ms. Pagé's version, and if the investigation was important to the employer it was equally important, if not more so, to Ms. Pagé. In my view, the employer had a responsibility to ensure that Ms. Pagé could communicate with the persons charged with the investigation in her own language and that she feel that her comments had been clearly understood. Although Mr. Campeau led Ms. Pagé's questioning in French, Ms. Heon remained the investigator in charge, and she may not have been able to clearly understand what Ms. Pagé said. In my opinion, it was reasonable for Ms. Pagé to expect that the person in charge of the investigation be able to communicate directly with her in her own language.

[169] Nonetheless, I do not find that failing sufficient to conclude that the employer's decision-making process was not fair and equitable towards Ms. Pagé. She had the opportunity to give her version of the facts before the investigator issued her findings. Ms. Pagé's questioning was led by a francophone co-worker of Ms. Heon. Ms. Pagé's had the chance to analyse the investigation report with her union representative and to submit her comments. Ms. Pagé also had the opportunity to present to the employer all the mitigating factors that she considered relevant before a decision was made on the sanction. Finally, at the hearing, Ms. Pagé had the opportunity to restate her version of the facts and to correct any comments that, in her opinion, had been misrepresented in Ms. Heon's report.

[170] I will now address the mitigating and aggravating factors, starting with the factors raised by Ms. Pagé's representative.

a) Ms. Pagé's years of service and employment record

[171] Ms. Pagé's unblemished record and disciplinary file constitute mitigating factors in this case. I have mixed feelings about the consideration to be given to Ms. Pagé's many years of service. Although that factor is generally taken to justify a less-severe sanction, I find that, in the matters of breach of trust and conflict of interest, the length of service may work to the employee's disadvantage in that it supports the contention that the person knew what constituted a conflict of interest and was able to appreciate its serious nature.

b) The isolated nature of the breach

[172] I share the opinion of Ms. Pagé's representative about the misconduct being an isolated act. Ms. Pagé is accused of paying benefits to her stepsister when she was not entitled to them. Although there were two payments, I find that they should be considered as part of the same incident. My conclusion would have been different had the employer also accused Ms. Pagé of handling her stepfather's file in 2001, but no such claim was made in the termination letter.

c) Absence of personal benefit

[173] The evidence did not establish that Ms. Pagé derived any personal benefit from her conduct, and I am of the opinion that this element constitutes a mitigating factor.

d) Lack of clarity in internal policies

[174] I find that the evidence does not support the assertion that the employer's policies on conflict of interest and on handling files of friends or family members were not clear. On the contrary, I find that the *Code* and the CPP manual set out unequivocal rules and also that those documents were easily accessible. As for the principle that an employee must not pay benefits to a person who is not entitled to them, no further comment is needed.

[175] With respect to the lack of clarity of the procedure for entering the SINs, I indicated in the previous section that I did not take this element into account in my deliberations.

[176] With respect to the procedures for verifying payment requests, I agree that the fact that Ms. Pagé's co-workers did not conduct the standard verifications shows a rather lax approach to the application of work procedures. In my opinion, however, that element does not excuse Ms. Pagé's conduct or make it any less serious.

e) Ms. Pagé's personal situation

[177] I acknowledge that at the time of the incidents Ms. Pagé seemed to be going through a difficult period in her personal life. However, the evidence failed to establish that her condition could have been responsible for such a serious lack of judgment or that it could have justified a lack of integrity.

f) Acknowledging mistakes

[178] Ms. Pagé acknowledged that she made a mistake in handling her stepsister's file and that she made some errors processing it. Nonetheless, such acknowledgment was in line with her defence based on the contention that mistakes had been committed. However, as indicated in the previous section, I did not accept Ms. Pagé's version in that respect, and I found that the benefits had been paid with full knowledge of what she was doing. Although she acknowledged that it was inappropriate to handle C.G.'s file, she in no way acknowledged the key act of which she has been accused, namely, of paying benefits to her stepsister knowing that she was not entitled to them. On the contrary, she denied that contention during the employer's investigation and continued to deny it at the hearing. I therefore find that Ms. Pagé's acknowledgement of her mistakes cannot be referred to as a mitigating factor.

g) Cooperation with the investigation

[179] I agree that Ms. Pagé cooperated with the investigation, but again in the context of a defence based on mistakes. In that context, my comments on her acknowledgment of her mistakes are equally relevant, and I find that Ms. Pagé's cooperation with the investigation cannot be referred to as a mitigating factor in this case.

[180] Aside from the points raised by Ms. Pagé's representative, I find that other factors must be taken into account in determining the appropriateness of the sanction imposed, including that of the objective seriousness of the wrongdoing. On that note, I find that the nature of the position that Ms. Pagé held is an important element. Her position provided her a very high level of autonomy, significant latitude and substantial authority. Ms. Pagé herself indicated that, when carrying out a file review, she had the authority to issue payments of up to \$99,999 without authorization or double-checking. Along with that autonomy went responsibilities of equal magnitude. Benefits officers' responsibilities fall within the public domain. They are responsible for paying sums of money in accordance with the parameters set out for the programs that they administer. In that sense, they act as trustees of public funds.

[181] The nature of the duties, powers and responsibilities of NIBS benefits officers requires a very high level of trust. The employer is entitled to expect a very high level of integrity and ethics from NIBS benefits officers. In that context, I find that Ms. Pagé's breach constitutes serious misconduct.

[182] I find further that Ms. Pagé's attitude towards this misconduct must be taken into account.

[183] On conflict of interest, Ms. Pagé acknowledged that she should not have handled her stepsister's file, but at the same time, she did not clearly admit that handling a family member's file was unacceptable. Her attitude on that point was vague, to say the least. She simply stated that the rules were not clear and that she had not thought that her behaviour was inappropriate.

[184] On breach of trust, Ms. Pagé denied that she consciously paid benefits to her stepsister knowing that she was not entitled to them. With respect, I find that the balance of probabilities does not support such a conclusion and that, if Ms. Pagé did not know that she was paying benefits to which her stepsister was not entitled, then it was through wilful blindness. I find that Ms. Pagé was not honest, that she tried to minimize her responsibility and that she expressed no regret. That attitude appears determinative to me in assessing her rehabilitation potential and the possibility of continuing a relationship of trust with her employer. A relationship of trust cannot be maintained without honesty, and rehabilitation must be based on acknowledging wrongdoing and its serious nature. In this case, Ms. Pagé did not seem to me to grasp the seriousness of her misconduct. Even in her defence based on mistakes, Ms. Pagé seemed cavalier to me in her attempt to minimize her supposed mistakes and to abdicate responsibility for them. Her attitude leaves me perplexed as to her rehabilitation potential given that, in this case, I see no foundation on which the employer could base its trust in Ms. Pagé.

[185] I find that this file differs significantly from the decisions submitted by Ms. Pagé's representative. In *Charlebois*, the adjudicator's rationale for reinstating the employee was that, although he had committed serious misconduct in handling his own benefits claim, the evidence failed to establish that he was not entitled to the benefits in question. The situation in this case is quite different. In *Amarteifio*, the adjudicator found that the employee had displayed a lack of judgment rather than a lack of integrity. In this case, I find that Ms. Pagé displayed not only a lack of judgment but also a lack of integrity.

[186] Given the nature of Ms. Pagé's responsibilities, the gravity of her misconduct and her attitude towards her actions, I find that she irreparably broke the relationship

of trust and integrity required for me to be able to order that she be reinstated into her functions. Therefore, I find that termination was appropriate in this case.

[187] For all the above reasons, I make the following order:

(The Order appears on the next page)

VII. Order

[188] The grievance is dismissed.

March 3, 2009.

PSLRB Translation

**Marie-Josée Bédard,
adjudicator**