

**Date:** 20170523

**File:** 566-34-9643

**Citation:** 2017 PSLREB 57

*Public Service Labour Relations  
and Employment Board Act and  
Public Service Labour Relations Act*



Before a panel of the  
Public Service Labour Relations  
and Employment Board

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BETWEEN

**GINETTE GAUTHIER**

Grievor

and

**CANADA REVENUE AGENCY**

Employer

Indexed as  
*Gauthier v. Canada Revenue Agency*

In the matter of an individual grievance referred to adjudication

**Before:** Michael F. McNamara, adjudicator

**For the Grievor:** Kim Patenaude, counsel

**For the Employer:** Vanessa Reshitnyk, counsel

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Heard at Ottawa, Ontario,  
February 9 to 11, 2015.

## REASONS FOR DECISION

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### I. Grievance referred to adjudication

[1] I am seized with a grievance presented by Ginette Gauthier (“the grievor”) on October 25, 2013, against the decision of the employer, the Canada Revenue Agency (CRA), to terminate her employment for cause. The grounds it invoked in support of its decision are set out in a letter sent to her on October 4, 2013. The relevant excerpts of the letter are as follows:

*As a result of the telephone call you made to the Toronto Call Centre requesting assistance in navigating your own taxpayer information using the Canada Revenue Agency’s (CRA) Random Access Personal Information Data (RAPID) system, the Internal Affairs and Fraud Prevention Division (IAFPD) initiated an internal investigation. In August 2013, the IAFPD provided management with the final report detailing the results of their investigation; you were provided a copy of said report on August 19, 2013.*

*A disciplinary hearing was held on August 21, 2013, whereby Pablo Donoso, Manager, Risk Management, Litigation Support, and Business Management section, represented by Chanelle Brassard-Dion, Workplace Relations, met with you. You were offered on two separate occasions, representation from your union and you declined both times, including at the discipline hearing, stating that you wished to proceed without union representation.*

*By your own admission during the discipline hearing, you made unauthorized accesses to your own tax information and to other taxpayer information on numerous occasions over the course of three years. Both the investigation report and the disciplinary hearing also revealed that you engaged in fraudulent practices in the course of 7 CRA selection processes having falsely stated that you had graduated from various institutions and having submitted false diplomas.*

*In light of the foregoing, I have concluded that you have breached the CRA Code of Ethics and Conduct by committing acts of serious misconduct.*

*In addition to the seriousness of your misconducts, I have also considered your years of employment, performance, and disciplinary record in arriving at my decision.*

*The public’s trust in our integrity is something very precious. It’s something that we must work together to nurture and protect, because it’s absolutely critical to our ability to carry out our business. In view of the fact that you have irreparably breached the confidence and trust that your Employer placed in you and which is required as an*

*employee of the CRA, I find it necessary to terminate your employment for cause effective immediately. This action is taken under authority of Section 51(1)(f) of the Canada Revenue Agency Act.*

...

[2] Ms. Gauthier had been an employee of the CRA or its predecessors since 1988. At the time of her termination, she was employed as an appeals clerk classified at the SP-03 group and level and had held that position since 2010. Before that, she had worked in several positions with the CRA's Information Technology (IT) branch. Her essential duties in her appeals clerk position were as follows:

- (i) to screen, update, and control incoming and outgoing correspondence related to appeals and objections;
- (ii) to record and action "Notices of Appeals" for appeals or litigation officers or the Tax Court, Federal Court, and Supreme Court; and
- (iii) to ensure the timely distribution of court documents within the branch and with the courts, Justice Canada offices, and taxpayers.

[3] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board ("the new Board") to replace the former Public Service Labour Relations Board ("the former Board") as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to s. 396 of the *Economic Action Plan 2013 Act, No. 2*, an adjudicator seized of a grievance before November 1, 2014, continues to exercise the powers set out in the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2) as that Act read immediately before that day.

## **II. Summary of the facts**

### **A. For the employer**

[4] The employer called Rachelle Sculley to testify. She is employed as an investigator in its Internal Affairs and Fraud Prevention Division. She explained the intricacies of the Random Access Personal Information Data (RAPID) system ("the

system”), which is a database that houses all taxpayers’ information, and how all access to it has to be authorized. She stressed that any access to the information it contains has to be solely for work-related purposes.

[5] The grievor had limited access to the system, only to the extent necessary to carry out her functions as an appeals clerk. Her duties involved opening correspondence, sorting it, and establishing which office it belonged to. That correspondence usually was about appeals from taxpayers or businesses. When a social insurance number (SIN) or business registration number did not appear on correspondence, she was required to find it by using RAPID.

[6] Ms. Sculley initiated her investigation after a report was received from a call centre employee that identified that the grievor had called, wanting to know how to navigate RAPID and her personal tax information. He notified the grievor that she should not access the system or her personal tax information and then notified his supervisor of the grievor’s actions.

[7] The investigation identified all the SINs that the grievor had accessed. She had accessed her own taxpayer information on five occasions between October 5, 2011, and February 7, 2013, using “Option T” on the system’s menu as well as other options, such as those to display her identification, her 2010 income tax return, and a summary of T1 data. She had accessed the account of one individual on six occasions between July 13, 2011, and February 7, 2013. She had accessed another account 55 times on 7 occasions between July 13, 2011, and February 7, 2013. All the accesses were unauthorized, and they all violated CRA policies.

[8] From information received from the employer’s Human Resources Division, the investigation also revealed that a copy of a university diploma in the grievor’s file was suspected to be fraudulent. Subsequent inquiries with Carleton University confirmed that the diploma it allegedly issued was not genuine. It never issued the diploma.

[9] The investigation also revealed several discrepancies in job applications the grievor submitted between 2005 and 2012. The academic backgrounds and related time frames listed on them indicated that the grievor graduated alternatively from Carleton University, University of Ottawa - Institute, Athabasca University, University of Wisconsin, Algonquin College, and Larocque-Lafortune College. The information on her academic background varied from one application to another and was not consistent.

[10] Information gathered during the investigation indicated that the grievor had provided inaccurate and false information on her academic credentials in the course of seven selection processes. As such, Rachelle Sculley concluded that Ms. Gauthier had violated the CRA's Staffing Program, which provides that certain actions, including impersonations and other fraudulent practices, are offences under the *Criminal Code* (R.S.C., 1985, c. C-46) and could be subject to disciplinary measures per the CRA's discipline policy procedures and guidelines.

[11] Ms. Sculley interviewed the grievor on May 22 and 23, 2013, during the course of her investigation. When presented with the facts, Ms. Gauthier admitted that she had accessed taxpayers' information without their knowledge or consent because she was bored, had nothing to do, and wanted to familiarize herself with RAPID.

[12] As for the discrepancies in her education credentials stated in job applications, the grievor was unable to explain them but suggested that perhaps she had used the online application site's drop-down menus incorrectly. She admitted that she did not attend or graduate from Carleton University and explained that she had received the related diploma by mail. The only explanation was that she had taken correspondence courses from Athabasca University, which uses outside facilities to administer testing and suggested that that might be why Carleton University had mailed her the diploma. She was unable to provide any information to support that she had graduated from any other post-secondary institution aside from Algonquin College.

[13] The employer called Suzanne Dionne to testify; she was the grievor's manager when the grievor returned to work after a long absence due to an injury. She did not identify any performance or attendance issues with Ms. Gauthier.

[14] Ms. Dionne explained the training process for a person who returns to work after being away for several years. She explained that every year, employees receive an email from Human Resources and have to acknowledge that they have read and understood the employer's "Code of Ethics and Conduct" ("the Code"). Specifically, she stated that Ms. Gauthier had attended a training session on the Code on February 22, 2011. Ms. Dionne stated that the grievor had clearly not been authorized to access the information that she had accessed and that her accesses had been unrelated to her duties.

[15] The employer called Pablo Donoso to testify. He has been the manager, risk management, with the employer since 2013. He testified that when he began in his position in 2013, he reminded all staff of the requirements of the CRA's Code, "Electronic Resources Policy", and "Disciplinary Policy". He stressed that employees are aware that they should not access the system without a valid reason and that serious consequences follow if they do. The login screen display reaffirms this warning every day.

[16] Mr. Donoso explained that the grievor's access to RAPID was suspended on May 16, 2013, because of the investigation into her activities and that she was then assigned only administrative tasks. He testified that the results set out in the investigation report concluded that she had made unauthorized accesses to her tax information and that of some of her family members and that she had provided false diplomas in staffing processes.

[17] He testified that Ms. Gauthier attended a disciplinary hearing to discuss the report's conclusions. A copy of it had been provided to her before the hearing. She was advised of her right to union representation, which she declined. Mr. Donoso related that Ms. Gauthier explained that she had explored the system for no purpose other than self-training. She also admitted to using some of the information to prepare the tax return of one of the individuals in question.

[18] Mr. Donoso added that the grievor had no credible answers on the issue of her education credentials. She claimed that she received the Carleton University diploma in the mail.

[19] In cross-examination, Mr. Donoso was asked about an email dated June 19, 2013, which he sent to the grievor and that summarized a meeting he had initiated when he wanted to have a fitness-to-work evaluation done for her. He explained that he wanted it done as a result of observed past and recent work performances and behaviours. Ms. Gauthier declined to submit to the evaluation and did not agree with the observations.

[20] The employer called Catherine Letellier de St-Just to testify. She currently occupies the position of director general in the CRA's Tax and Charities Appeals Directorate. She explained that system accesses are monitored and that much training is in place to explain to employees the conditions under which it can be accessed. She

testified that the importance of the system's integrity is emphasized often in the workplace. Access must be for business purposes, and everyone in the workplace knows that unauthorized access is serious misconduct and a breach of tax laws.

[21] Ms. Gauthier's actions meant that that the CRA had to write letters to the two taxpayers who were subjected to unauthorized access informing them that their accounts had been accessed without authorization.

[22] Ms. Letellier de St-Just explained why she decided to terminate Ms. Gauthier's employment. She took into account the fact that Ms. Gauthier's actions violated the Code and that she had lied on seven occasions in staffing processes. Although she admitted to accessing the system, she did not seem to recognize the gravity of unauthorized access and of its consequences. Ms. Letellier de St-Just was aware of Ms. Gauthier's 25 years of employment without a disciplinary record. However, she testified that Ms. Gauthier's performance ratings had identified some difficulties in the past.

[23] On balance, Ms. Letellier de St-Just concluded that those factors did not outweigh the significance and seriousness of the grievor making repeated unauthorized accesses to her tax data and to those of other people, of her being trained on those requirements, and of her having lied seven times in staffing processes and having provided false documents to her employer. In the final analysis, Ms. Gauthier was not a reliable employee, and after 25 years of employment, she should have known better.

#### **B. For the grievor**

[24] The grievor was called to testify. She explained that she had been employed with the CRA and its predecessors since 1988 and that she was assigned mostly to administrative work during her career. She became ill in 2005 and suffered from a disability after two accidents, one of which resulted in a broken wrist; the other was a fall on some stairs. She returned to work with an accommodation prescribing that she not use stairs, that she do no lifting or bending, and that she do only limited walking.

[25] She testified that she was assigned work of limited importance because she was taking heavy medication, including OxyContin, morphine-based medicine, marijuana, methadone, and methadol to soothe the chronic pain from her injuries. She testified that she experienced side effects from the medication and persistent burning

sensations in her back. Her medication had to be adjusted and increased as it did not completely remove her symptoms, but higher doses of opiates made her sleepy.

[26] She discussed her medical situation with her supervisor, Ms. Dionne, and was moved closer to a boardroom with a printer, raised desk, and chair.

[27] As for her education credentials, Ms. Gauthier referred to a “Grade Report” from the University of Ottawa in relation to a one-semester (three-credit) course on “Concepts in Programming Languages”. She also referred to a certificate of completion of “Legal Administration” studies at Larocque-Lafortune College in 1989, and to one of “Computer Programming” issued by Algonquin College in 2007 for a course she enrolled in 2004.

[28] She testified that she probably applied to Wisconsin University but that she never attended that institution and stated that she does not know why it appeared in her job applications. She stated that the years mentioned in the applications for the Larocque-Lafortune College diploma are wrong; so is the reference to an aeronautics engineering degree. Her explanations were very vague; she claimed that she did not pay attention to what she was doing at the time. She applied for in her words “lots of jobs” if she thought she was interested in them.

[29] After receiving an information package from Carleton University, she attended an information session there. She stated that she did not pay attention and that she submitted the certificate that she received in the mail from that university when she was asked to submit her education credits in one of her applications. Her testimony was vague on what she applied for and what she has achieved in terms of education, as she did not recall much from the courses she took. She explained that she had different résumés for applying for different types of jobs. She neglected to read what she entered and admitted that the information could have been incorrect. She recognized that she should have been more careful.

[30] The grievor admitted that she did not attend or graduate from Carleton University and explained that she had received the diploma by mail as well as a letter thanking her for using the university’s services for a session on Athabasca University. The only explanation is that she had taken correspondence courses from Athabasca University, which used outside facilities to administer testing, suggesting a possible reason that Carleton University mailed her a diploma. She stated that she phoned



Athabasca University to inquire why she received a certificate, and it was unable to provide an answer. She stated that she included the diploma in the job application package for the CS-01 position to show that her education was ongoing.

[31] When asked about the Code, she acknowledged having seen it on her computer and having quickly glimpsed it. She stated that she thought she was authorized to access RAPID as she had a password for it. She claimed that nobody ever told her that she did not have authorization to access information in the system and that had she known, she would not have accessed it. She did not think the disclaimer appearing on the screen stating that access was permitted only on a “need-to-know” basis and that one must be authorized to enter the system applied to her because she was provided with a password to access it. She did not think that she was given access only to complete her work and only for business reasons.

[32] The grievor stated that she remembered the training session on the Code held in February 2013 but that she did not recall what was discussed.

[33] Ms. Gauthier testified that she identified herself as a CRA employee when she called the 1-800 number at the call centre for Retirement Savings Plan information. She testified that the employee guided her through the system. He never mentioned that he would issue an alert about her call and report it to his supervisor.

[34] Responding to the report showing that she had accessed one individual’s account 55 times, the grievor stated that she did not recall ever receiving a copy of that document. She explained that she accessed that account because the person in question was sick and had asked her to in the grievor’s words, “do her taxes”. She did it on her personal time, during her lunch break. She was looking for an amount from 2011 that had been referenced by the person whose account she accessed.

[35] As for the report showing that she had accessed another individual’s account 17 times, the grievor stated that she had been filling out disability forms and had needed that individual’s SIN. When asked to explain the 46 entries reported on her personal account, she stated that she did not know why she had made them. She indicated that she had been told to practice using the system, to familiarize herself with it, in particular when André Ouellette, the employee who had been tasked to train her, was on vacation.

[36] The grievor testified that the document that the CRA filed in evidence setting out the questions and her answers during the disciplinary hearing of August 21, 2013, was an accurate representation of the meeting. She stated that she did not request union representation because she did not know what Mr. Donoso wanted to discuss. I note that that statement was contradicted by the notice of the disciplinary hearing that was forwarded to the grievor in advance of the meeting, which the employer filed in evidence.

[37] Finally, the grievor referred to the fact that she had been taking medication, which affected her work. She had felt lightheaded and sweaty at times. Although she admitted to informing the employer that it did not affect her work, she added that perhaps she did not realize it at the relevant time.

[38] She stated that she was aware that the employer monitors the use of its electronic networks, that she was aware of the system's disclaimer, and that she was told not to access her tax data. She did not recall the presentations on the specific prohibitions on accessing the system; nor did she recall them being discussed at staff meetings. She claimed that she was given access to RAPID, that she was trained by Mr. Ouellette, a co-worker, and that she tried to do her best. She tried not to "miss anything" and she thought she was doing a good job and was trying to avoid making the same mistakes twice. She now understands the consequences of her actions and the damage to the CRA's reputation, but she did not at the relevant times.

### **III. Summary of the arguments**

#### **A. For the employer**

[39] Counsel for the employer submitted that Ms. Gauthier's termination was justified in light of the gravity of her misconduct and the aggravating factors.

[40] Counsel for the employer argued that the evidence should be assessed on the balance of probabilities (see *Narayan v. Canada Revenue Agency*, 2009 PSLRB 40; and *Turner v. Canada Customs and Revenue Agency*, 2001 PSSRB 38). There are issues of credibility with Ms. Gauthier's explanations and with the contradictions in the evidence the witnesses adduced at the hearing. Credibility issues should be resolved by applying the test set out in *Faryna v. Chorny*, [1951] 2 D.L.R. 354 (BC CA), and by looking at the totality of the evidence to assess the impact of the inconsistencies on the credibility of the witnesses' evidence (see *F.H. v. McDougall*, 2008 SCC 53). The inconsistencies

should be resolved in favour of the evidence that the employer presented in this case.

[41] Counsel for the employer submitted that there is no question that misconduct was proven. Ms. Gauthier accessed her tax file in RAPID several times, without authorization. She accessed tax information of another individual known to her without that person's consent, and the other person's tax information without that person's consent, for tax purposes. Those accesses were not related to the work assigned to the grievor and were contrary to the clear rules prescribed by the employer. It compromised the CRA's reputation with respect to the integrity and confidentiality of taxpayer information. She has no compelling reasons that explain why she did it; at times, she alleged curiosity or the need to familiarize herself with the system. At other times, she simply had no recollection of why she made an access. This was very serious misconduct that warranted a disciplinary response (see *Ward v. Treasury Board (Revenue Canada - Taxation)*, PSSRB File Nos. 166-02-16121 and 16122 (19861229), [1986] C.P.S.S.R.B. No. 335 (QL); and *McKenzie v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 26 (QL)).

[42] In this case, termination was an appropriate disciplinary response, and the adjudicator ought not intervene unless the discipline was clearly unreasonable or wrong (see *Kingston General Hospital v. Ontario Public Service Employees' Union, Local 444*, 2013 ONSC 1752; *Cooper v. Deputy Head (Correctional Service of Canada)*, 2013 PSRLB 119; *Gravelle v. Deputy Head (Department of Justice)*, 2014 PSLRB 61; and *Shaver v. Deputy Head (Department of Human Resources and Skills Development)*, 2011 PSLRB 43).

[43] Counsel for the employer stressed that the employer considered all the factors, including any mitigating factors, when reaching its conclusion on the appropriate disciplinary measure. She referred to Ms. Letellier de St-Just's testimony and the care she applied assessing the factors to make her decision. The aggravating factors present in this case outweigh the factors that could serve to mitigate the penalty. The misconduct was very serious, and it occurred repeatedly over a long period, both in terms of unauthorized access to RAPID and false education credentials being supplied in staffing processes. The employer's policy on unauthorized system access was explained repeatedly to all employees, through training, information sessions, and on-screen warnings and is of fundamental importance to the employer's business. Not reading the information or not paying attention to the warnings is no excuse.

[44] Adjudicators have also upheld terminations when employees cheated in the course of staffing processes, like the grievor did (see *Balikwisha Patanguli v. Deputy Head (Department of Citizenship and Immigration)*, 2014 PSLRB 6; and *Rivard v. Treasury Board (Solicitor General of Canada - Correctional Service)*, 2002 PSSRB 75).

[45] Counsel for the employer submitted further that the grievor never admitted to any wrongdoing and that she showed no remorse, even in the face of evidence that she fabricated the Carleton University diploma. She has displayed a clear inability to accept responsibility and has done so in a way that breaches the bond of trust that must exist between her and her employer. Counsel stressed that the grievor occupied a position that required an important level of trust. She had access to all Canadian taxpayers' information, and her actions struck at the heart of the employment relationship. After 25 years of employment with the CRA, she should have known the rules and should have complied with them. Her reinstatement would clearly pose a risk to the employer, as unlawful access to taxpayer information and dishonesty cannot be tolerated (see *Ward*; and *Horne v. Parks Canada Agency*, 2014 PSRLB 30).

[46] Counsel for the employer further argued that no weight should be given to the grievor's explanations of the effects of her medication. She adduced no medical evidence in support of her claim that her medication could have affected her judgement to such an extent over such a long period.

#### **B. For the grievor**

[47] The grievor's representative referred to the termination letter and reiterated the two grounds on which the employer had terminated Ms. Gauthier's employment, which were unauthorized accesses to RAPID and fraudulent practices in staffing processes.

[48] The grievor never denied that she had accessed the system. She did not see anything wrong with going in to retrieve information about the individual who had asked her to help prepare a tax return. As to her accessing the other account of someone known to her, Ms. Gauthier explained that she needed a SIN to complete a disability form for him. Lastly, she explained the accesses to her tax information as simply wanting to familiarize herself with the system.

[49] The grievor's representative stressed that the grievor never used, disclosed, or amended any information that she accessed on the system and that no other taxpayer accounts were accessed.

[50] The grievor's representative further submitted that the grievor admitted that she never read the Code and that although she attended information meetings, she did not fully understand her responsibilities under the Code. Had she understood those requirements, she would never have accessed the accounts. She would never do it again.

[51] As for her education credentials as stated in the staffing processes at issue, the grievor's representative argued that Ms. Gauthier provided credible explanations. On the false diploma from Carleton University, she stated that she received it in the mail and that apparently, Athabasca University issued it. She asked for further explanations but did not receive any. The diploma was submitted along with a letter from Carleton University about ongoing courses. There was clearly no intention to defraud or mislead, as her education at that institution was ongoing. The inconsistencies found in the other staffing processes can be explained by the grievor's carelessness and failure to review the information that she had inserted in the online applications, without intending to deceive anyone.

[52] The grievor's representative then turned to the mitigating factors in this case that she said should lead me to reduce the grievor's termination to a lesser disciplinary measure. First, Ms. Gauthier had 25 years of service and a clean disciplinary record, two factors that should have significant weight in determining whether the decision to terminate her was reasonable. The majority of her years of service were spent in positions that did not give her access to taxpayer information. As a result, there was no Code issue for her.

[53] Secondly, the grievor's personal circumstances should be considered. It was uncontested that she had chronic back pain and that the employer had accommodated her. She was taking strong medication that had been prescribed to her for that pain, and Mr. Donoso had expressed concerns about her cognitive abilities, as noted in his request for a fitness-to-work evaluation for her. It is true that some of her explanations did not make much sense, which should have triggered a concern about her cognitive capacity and should have been given more weight when determining the penalty.

[54] Overall, the evidence establishes that Ms. Gauthier cooperated with the investigation, admitted that she had accessed information in RAPID, and did not deny submitting false documents. She did not gain any personal benefit from those accesses. Since she repeated her accesses, proper monitoring by the employer should

have caught her earlier and would have avoided this situation.

[55] While recognizing that discipline was warranted, the grievor's representative urged me to find that the termination was excessive. She referred me to the following authorities, in which the adjudicators considered applicable mitigating circumstances, which should be applied in this case to reduce the grievor's termination to a lesser disciplinary measure: *Yensen v. Treasury Board (Revenue Canada - Taxation)*, 2000 PSSRB 6 (the adjudicator found that unauthorized access to an employee's own tax information was "less serious misconduct" than failing to report earned income); *Nolan v. Treasury Board (Revenue Canada - Taxation)*, PSSRB File No. 166-02-17111 (19871125), [1987] C.P.S.S.R.B. No. 338 (QL); *Naidu v. Canada Customs and Revenue Agency*, 2001 PSSRB 124; *Foon v. Canada Customs and Revenue Agency*, 2001 PSSRB 126; and *C & C Lath Ltd. v. Industrial Wood and Allied Woodworkers Union of Canada, Local 1-80* (1992), 28 L.A.C. (4<sup>th</sup>) 111.

#### **IV. Reasons**

##### **A. Request for confidentiality order**

[56] The parties requested that I issue an order that would prevent the names of third parties who were the object of unauthorized tax disclosure from being revealed. For the reasons set out below, I grant the request and order that the names of those persons will remain confidential and will not be disclosed.

[57] It was not established in the evidence that the parties whose files were accessed had asked the grievor to do so on their behalf, in fact there was a sense that they might not have been aware. Regardless, the parties deserve to have their privacy protected and their names will not be revealed.

[58] The Board has published its own Policy on Openness and Privacy ("the Policy"), available on its web-site. The Policy acknowledges that hearings before the Board are open to the public. It states:

*The open court principle is significant in our legal system. In accordance with this constitutionally protected principle, the Board conducts its hearings in public, save for exceptional circumstances. Because of its mandate and the nature of its proceedings, the Board maintains an open justice policy to foster transparency in its processes, accountability and fairness in its proceedings.*

*...Parties that engage the Board's services should be aware that they are embarking on a process that presumes a public airing of the dispute between them, including the public availability of decisions. Parties and their witnesses are subject to public scrutiny when giving evidence before the Board, and they are more likely to be truthful if their identities are known. Board decisions identify parties and their witnesses by name and may set out information about them that is relevant and necessary to the determination of the dispute.*

[59] The Policy acknowledges, however, that in some instances only, mentioning an individual's personal information during a hearing or in a written decision may affect an individual's life:

*In exceptional circumstances, the Board departs from its open justice principles, and in doing so, the Board may grant requests to maintain the confidentiality of specific evidence and tailor its decisions to accommodate the protection of an individual's privacy (including holding a hearing in private, sealing exhibits containing sensitive medical or personal information or protecting the identities of witnesses or third parties). The Board may grant such requests when they accord with applicable recognized legal principles.*

[60] The Dagenais/Mentuck test is the relevant test to consider in protecting information or exhibits: *Dagenais v. Canadian Broadcasting Corporation*, 1994 CanLii 39 (SCC), [1994] 3 S.C. R. 835:

*(a) Is the order necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk?*

*and:*

*(b) Do the salutary effects of the order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings?*

[61] In light of this test, I find that the names of the third parties are not relevant to understanding this decision in a transparent way. The interest of these third party taxpayers in question outweighs the value the exposure of this information would contribute to the open court principle. Therefore, there will be no reference to the names of these third parties in the decision. In addition, all references to the third

parties who were subject to the unauthorized tax access will be redacted from the exhibits in the file. While not at all determinative, I also note that the parties have presented this request for a confidentiality order on consent.

[62] I order the parties to redact from the exhibits any information that would identify these third parties and to remit the redacted versions of the exhibits to the Board within two weeks from the date of this decision. In addition, I am also directing that the parties redact from the exhibits all information regarding the grievor's PRI, SIN, home address and home phone number. In order to enable the parties to complete the anonymization process, the Board will temporarily seal its files for a period of one month.

[63] It is my view that this order is the least intrusive measure to balance the public's right to open and accessible proceedings with the protection of the privacy of individuals who are not directly involved in the proceeding.

#### **V. Merits**

[64] Ms. Gauthier grieved her termination from her employment as an appeals clerk with the CRA that was founded on the grounds set out in the letter dated October 4, 2013, in which the employer informed her of its decision. She allegedly made unauthorized accesses to her tax information and to other taxpayers' information several times. She also allegedly engaged in fraudulent practices in the course of seven CRA selection processes, falsely stating that she had graduated from several institutions and submitting false diplomas.

[65] The questions that I must determine are twofold:

- (i) did the employer discharge its onus of proving on a balance of probabilities that the grievor engaged in misconduct for which discipline was warranted? If so,
- (ii) (ii) was termination an appropriate and reasonable disciplinary response to such misconduct?

To determine whether termination is justified, a number of factors must be assessed, including the nature of the offence, the effect on the employer's operations, and the circumstances of the grievor, including any mitigating and aggravating factors (see



*Narayan*).

[66] For the reasons set out later in this decision, I find that there is compelling evidence establishing that Ms. Gauthier's actions over an extended period constituted serious misconduct and a breach of the employer's rules and policies. I also find that the nature of the breaches in the context of her responsibilities as a CRA employee and the fact that they occurred repeatedly mean that termination was not an unreasonable penalty in the circumstances.

[67] It was clearly established in evidence that Ms. Gauthier accessed her tax information as well as that of other taxpayers in the system, without authorization. Such access was unrelated to her official duties and assigned workload and occurred on many occasions over a period of three years. The grievor claimed that she did not realize that those accesses were unauthorized, as she was provided with a password to enter RAPID as part of her duties as an appeals clerk. I find her explanations rather difficult to accept in light of the frequent reminders prompted by the system about the prohibition against access without a need to know and the specific prohibition against an employee accessing his or her tax account.

[68] The employer established the importance it places on ensuring the integrity of the taxpayer information that is under its control. It developed the Code, which makes it abundantly clear that any unauthorized access to an employee's tax information account is strictly prohibited. Likewise, accessing other persons' tax information is permitted only to the extent that it is required by an employee's specific caseload. Employees are regularly reminded of those rules and policies. They were also reiterated to the grievor, who attended an information session in 2011 on the importance of those responsibilities for all CRA employees. The system reiterates that prohibition when employees login to RAPID, as evidenced by the screenshot document filed in evidence, which contains the following highly visible text: "Access is permitted on a need-to-know basis". The consequences of not complying with those rules are again highlighted in the sign-in screen for the mainframe — which includes RAPID — with the following text: "Unauthorized use may result in disciplinary action and/or criminal prosecution".

[69] Those obligations find their justification in the fact that taxpayers must have the utmost confidence in the integrity of the tax collection system administered by the CRA and must be convinced that their confidential personal information is protected

at all times. It is an important pillar of the Canadian tax system, and any breach of its confidentiality or unauthorized access by employees is bound to affect the employer's reputation and the public's trust in the integrity of its operations.

[70] At pages 6 and 12 of the Code, the following is stipulated:

[Page 6:]

***Three scenarios about access to and disclosure of taxpayer information:***

- 1. I have been asked by a relative to access and disclose tax information about their file (and I am the official representative listed on their T1);*
- 2. I have been asked by a colleague to access the tax information of a famous hockey player;*
- 3. I want to access my own tax or benefit information.*

***Can I do it? The answer is "no".***

*Accessing information that is not part of your official duties and assigned workload, whether for simple curiosity or at the request of a relative, friend, colleague or former colleague, for any purpose, is serious misconduct.*

...

***You must never:***

- Access any information that is not part of your officially assigned workload;***
- Disclose any CRA information that has not been made public; or***
- Use any CRA information that is not publicly available, for personal use, gain or financial benefit for yourself, your relatives or anyone else.***

...

[Page 12:]

***Misconduct related to using CRA computers and electronic networks – Examples:***

***CRA computers and databases:***

- Unauthorized access or disclosure of tax or other confidential information, including your own.***

...

[Emphasis added]

[71] This obligation can hardly be spelled out more clearly. The grievor's statement that she did not really pay attention to the Code and the information session reiterating its importance to the CRA and that she only "glimpsed through [sic] it" are less than satisfactory.

[72] The grievor did not deny the facts presented by the employer and the unauthorized accesses to her account and to the account of other taxpayers. She testified that she did not know that such accesses were prohibited. As she was given a password to enter the system as part of her duties as an appeals clerk, she thought that she could access it at will. She saw nothing wrong with what she did. She stated that she accessed her data simply to familiarize herself with the operation of the system and its many menus.

[73] Her explanations as to why she accessed the account of one of the individuals are not credible. If her intention was to obtain the SIN of one of the individual accounts for the purpose of filling in a disability form, then why did she access the system on 6 occasions, with 17 entries, as shown by the printout entered into evidence of the list of accesses? Likewise, she could hardly explain why she accessed her own tax account 46 times on 5 different occasions (as shown by the printout) other than because she was bored or she wished to familiarize herself with the system, as Mr. Ouellette had suggested. Again, I find those explanations rather unconvincing.

[74] Regardless, it remains that Ms. Gauthier did access her tax account and those of two others for reasons unrelated to her duties and hence without authorization. Those actions, repeated over a period of three years, contravened the employer's clearly established rules against such conduct. Ms. Gauthier does not seem to appreciate the importance of the employer's rules about accessing taxpayers' information. Her belief that she did not know that she could not do what she did is simply untenable in the face of the repeated information provided to employees on these matters and the importance the employer places on the rules governing access to and use by its employees of taxpayers' information, as demonstrated in the evidence.

[75] The seriousness of the grievor's actions is compounded by the facts that her unauthorized access was repeated and that her access was intended to help her deal with private matters (one individual's disability form and another's tax return), which is a clear prohibition set out in the Code.

[76] Turning to the second ground invoked by the employer to terminate the grievor's employment, I find compelling evidence establishing that she entered false information in seven applications for advertised CRA staffing actions. I conclude that she was unable to provide a credible explanation for the inconsistencies and false entries appearing in those online applications over a period of seven years.

[77] For example, the dates entered for her Algonquin College diploma vary from 2004-2008 (from a staffing process in 2010) to 2007-2008 (from a staffing process in 2011) to 2002-2005 (from a staffing process in 2013). In addition, she entered a diploma from Algonquin College in aeronautical engineering that was allegedly obtained on dates that vary from one staffing process to another and that actually was never awarded to her.

[78] While one could accept that those inconsistent entries could be explained by extreme carelessness, the claim that she held a bachelor's degree in software engineering from Carleton University is more troubling. In that case, the advertised position was a CS-01 IT infrastructure support analyst, and Ms. Gauthier's submission that she held such a bachelor's degree was supported by a copy of a diploma bearing her name and purported to have been issued by Carleton University. The diploma was proven not genuine. She admitted to never obtaining a bachelor's degree from Carleton University. Her explanations as to the origin of and how she obtained the diploma were vague and confused and not very credible.

[79] I can conclude only that those false entries were intended to mislead the employer with respect to her academic credentials, so she would be seen as meeting the requirements to be considered for the advertised positions. She did so on several occasions over an extended period between 2005 and 2012. Those actions can hardly be characterized as momentary aberrations.

[80] For all those reasons, I find that the employer has proven on a balance of probabilities the grounds set out in its letter of October 4, 2013, and that it has established that Ms. Gauthier's actions, for reasons best known to her, constituted

serious misconduct.

[81] The grievor's representative tried to downplay the importance of those infractions by pointing out that in the final analysis, the grievor actually gained no benefit from either the unauthorized access to the system or the inconsistent statements in her job applications. In my view, this argument would bear more weight were this a case of isolated instances of dishonesty or a momentary lapse of judgement. On the contrary, it was established that the grievor's actions spanned several years and reflected complete disregard for the importance of showing trustworthy conduct at all times, which I consider quite fundamental for an employee in her position.

[82] The second question is whether termination was appropriate in the circumstances.

[83] The grievor's actions fall under the category of serious misconduct and are at the higher end of the scale in terms of their seriousness, as reflected in the "Table of Suggested Disciplinary Measures" appended to the employer's Disciplinary Policy. While I am not bound by the employer's policies in that regard, I consider that they do reflect the importance the employer places on the integrity of the tax system for which it is responsible and its expectation that its employees will be respectful of that integrity and will act with honesty and integrity at all times.

[84] The grievor's representative raised a number of mitigating factors and stated that I should consider them when assessing whether termination was appropriate. The grievor had 25 years of service and a clean disciplinary record. Her representative also invited me to consider the grievor's personal situation with respect to her health and chronic pain problems, in particular the effect of the medication she was taking, which could explain her behaviour.

[85] I am not inclined to give much weight to the grievor's explanations of the effect of her painkilling medication on her judgement and as justification for her actions. No evidence from a qualified practitioner was presented to establish that the medication she was taking could affect her state of mind to the point where she should be excused from any responsibility for her actions.

[86] I also take note of the fact that when her supervisor inquired as to whether there were medical issues that could affect her performance, she responded that there were none. Her explanations as to the impact and side effects of such medication on her cognitive abilities are obviously self-serving. Consequently, I believe that the suggestion that those problems contributed to the confidentiality breaches and the false information provided in the job applications was not satisfactorily demonstrated.

[87] While 25 years of service is an important factor in favour of a lesser penalty that would give the grievor another chance, I am of the view that it is outweighed by the other aggravating factors I have referred to throughout my reasons. Her actions, both the unauthorized access to the taxpayer database and the false academic credentials, occurred repeatedly over a considerable period. Furthermore, she was not completely forthright in explaining her actions and does not seem to appreciate their gravity and the importance of honesty and trust as a foundation of the employment relationship. In that light, she is unreliable, and the likelihood of rehabilitation is not grounded on material facts and seems quite speculative.

[88] In my view, the following excerpt from page 8 of *Ward* applies to the grievor's situation:

*I would have to find in the present case that some of the above set-out factors find serious application. The offence which precipitated the discharge was of a most serious nature and it was not a momentary aberration in that it was repeated a number of times and with regard to a number of people somehow associated with the grievor. The offence was not provoked by anyone, although the grievor gave an inadequate explanation of why she committed at least some of the offences, namely to assist another woman in distress, Rhonda Maracle. There was not, however, an acceptable explanation given for her having accessed the files of a number of other taxpayers, in various information areas of their tax returns. Although the grievor had a clean disciplinary record and recognized good work performance, these elements cannot have the effect of minimizing the seriousness of the offence involved. The employer had repeatedly brought to the attention of the grievor and her fellow employees the prohibition against accessing computers for other than official use and the seriousness of divulging to unauthorized persons any information learned from accessing taxpayers' files. There is again, no evidence that the employer attempted to single out the grievor for arbitrary and harsh treatment. Although the grievor is contrite, this is not sufficient for me to set aside her*

discharge. No medical evidence or evidence from social workers or other competent experts attested before me to the grievor's mental condition at the time of committing the offences of which she is guilty or to her present mental state which would allow me to conclude that she is any more prepared now to resist once again being involved in similar misconduct. She has in fact compromised her employment relationship by her misconduct and her discharge must, accordingly, stand.

[Emphasis added]

[89] I agree with what the adjudicator in *Yensen* stated as follows at paragraph 29:

*[29] The grievor also admits that she twice had unauthorized access to her own tax information. While this is less serious misconduct, the grievor's failure to appreciate the inappropriateness of this behaviour supports my conclusion that the penalty of discharge should be upheld.*

[90] Therefore, I must conclude that, as did the employer, Ms. Gauthier's actions injured the CRA's general reputation and constituted an important breach of the trust essential to the employment relationship. While one could consider reinstating the grievor in her position out of sympathy for her situation, I am of the view that in the final analysis, the termination was neither an excessive nor unreasonable sanction in the circumstances.

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

*(The Order appears on the next page)*

**V. Order**

[92] The grievance is denied.

[93] The parties must prepare a redacted copy of the exhibits in which any information that would identify any taxpayers whose accounts were accessed by the grievor will have been redacted. The parties must also redact from the exhibits all information regarding the grievor's PRI, SIN, home address and home phone number. The parties must provide the redacted version of the exhibits to the Board, within two weeks from the date of this decision.

[94] When the parties provide the redacted versions of those documents to the Board, the Board's Registry will contact counsel and determine whether the versions of those documents already in the Board's possession should be returned to the parties or destroyed.

[95] The file and exhibits are sealed for a period of one month from the date of the decision.

May 23, 2017.

**Michael F. McNamara,  
A panel of the Public Service Labour Labour  
Relations and Employment Board**