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*Federal Public Sector
Labour Relations and
Employment Board Act and
Federal Public Sector
Labour Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations
and Employment Board

BETWEEN

NATHALIE LACROIX

Grievor

and

**DEPUTY HEAD
(Shared Services Canada)**

Respondent

Indexed as
Lacroix v. Deputy Head (Shared Services Canada)

In the matter of an individual grievance referred to adjudication

Before: Chantal Homier-Nehmé, a panel of the Federal Public Sector Labour Relations
and Employment Board

For the Grievor: Émilie Laplante, counsel

For the Respondent: Kétia Calix, counsel

Heard at Ottawa, Ontario,
July 18 and 19, 2016, and January 24 to 26, 2017.
(FPSLREB Translation)

I. Individual grievance referred to adjudication

[1] On August 20, 2015, Nathalie Lacroix (“the grievor”) was terminated from her telecommunications technician position with Voice Telecommunications Services at Shared Services Canada (SSC or “the employer”). Following an administrative investigation, SSC found that she had fraudulently used cell phones, spent public funds for personal purposes, deliberately hindered the investigation, and breached the *Values and Ethics Code for the Public Sector*.

[2] The grievor admitted to sharing her departmental cell phone with her spouse and to giving him her passwords. However, she maintained that she did not spend any public funds for personal purposes. For several months, her spouse used the cell phones without her knowledge. She was unaware of his gaming problem. She denied deliberately hindering the investigation.

[3] To determine the issues before me, the following three questions must be asked. Did the grievor’s conduct justify imposing a disciplinary measure? If so, was the discipline that the employer imposed excessive in the circumstances? If it was excessive, what other measure would be appropriate in the circumstances?

[4] For the following reasons, I dismiss the grievance. My view is that on a balance of probabilities, the employer demonstrated that the grievor’s conduct justified the termination. She provided her passwords and shared a departmental cell phone with her spouse for personal purposes. The evidence established that she did not responsibly manage the public resources entrusted to her. Her negligence allowed an unauthorized person to spend public funds. The evidence showed that she deliberately hindered the investigation by deleting all data from the devices in her possession after her manager had asked her to return them intact. In addition, she admitted to her conduct only at the end of the investigation. Her actions were incompatible with the responsibilities and expectations of her position and were serious enough that the bond of trust was irreparably broken. Therefore, the termination was appropriate in the circumstances.

[5] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the titles of

the *Public Service Labour Relations and Employment Board Act*, the *Public Service Labour Relations Act*, and the *Public Service Labour Relations Regulations* to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, the *Federal Public Sector Labour Relations Act* (“the Act”), and the *Federal Public Sector Labour Relations Regulations* (“the Regulations”).

II. Background

[6] In 2011, the Governor General in Council enacted the *Public Service Rearrangement and Transfer of Duties Act*, transferring responsibility to SSC for the following services in the sectors of the federal public administration: email services, data and network centres, and information technology support services for each department or sector of the federal public administration. Like many other employees working in information technology in the departments, the grievor was a former Environment Canada employee and was transferred to SSC.

III. Analysis

A. Did the grievor’s conduct justify discipline?

1. The investigation

[7] Fred Schrie, Manager, Transformation Liaison and Issues Management, Corporate Services Branch, Environment Canada, explained that his responsibilities encompassed everything related to telecommunications, data networks, office phones, and videoconferences. He received a copy of a report indicating significant usage by 20 main users of wireless devices at Environment Canada. The report on the 20 main users, issued by SSC, involved 43 departments, 17 of which the Telecommunications Division supported. It was a single report on BlackBerrys and cell phones. It presents invoices in descending order, from the highest to the lowest. The report was presented by SSC’s ministerial division. Departments are responsible for all significant cell phone costs. In some cases, deputy ministers who travel abroad professionally can incur high roaming charges, which are deemed acceptable. As SSC is responsible for paying invoices for the use of wireless devices, departments are responsible for monitoring costs. Mr. Schrie was responsible for examining and explaining why costs were so high at Environment Canada.

[8] The grievor’s name was in the report. When Mr. Schrie saw the report for the first

time, he assumed that she had left her name assigned to a device by mistake. Sometimes, telecommunications officers assign devices to themselves to speed up the assignment process. At the time, Mr. Schrie did not know that she was in possession of three devices. After receiving the report, he accessed the online Rogers and Bell portals. He produced individual reports for each device indicated in the list of high-volume users. The reports covered a minimum of one year.

[9] On reviewing the grievor's monthly invoices, he discovered costs invoiced by a third-party provider that according to him, were related to online gaming. All the devices were owned by SSC's Telecommunications Division, and the 17 other invoices were related to legitimate expenses incurred by ministers or other government executives for business purposes.

[10] Mr. Schrie contacted Alan King, who at the time was the team leader of SSC's National Telecommunications Team (Voice Telecommunications Services, Science Portfolio) in Ottawa. His duties and responsibilities included providing telecommunications services, including distributing cell phones, BlackBerrys, modems, VOIP services, PCs, and phone systems, as well as landline phones for employees in 17 government departments. As a telecommunications technician, the grievor reported directly to Mr. King and was primarily responsible for wireless devices. His office was on Colonnade Road in Ottawa, while hers was in Gatineau.

[11] On April 8, 2015, Mr. King emailed Karl Primmer, Labour Relations Team Leader at Environment Canada, and Isabelle Rossignol, Senior Human Resources Advisor at SSC, to advise them of the total costs incurred between September 2014 and February 2015 for three cell phones associated with the following numbers: ***-***-4151 ("device 4151"), ***-***-5563 ("device 5563"), and ***-***-3515 ("device 3515"). A table was prepared of all costs for the three devices. Immediate measures were taken to suspend their use and to investigate the costs.

[12] Anik Marion, a telecommunications officer with SSC since January 2010, explained that she noted a phone number that she did not recognize, 4151, on the invoice for her cell phone. Her manager, Mr. King, asked her to call the number to find out who was using the phone. He suspected someone not working for the public service had used it.

[13] Ms. Marion called the number the first time on April 8, 2015, but there was no

answer. The second time, a man answered and told her his name was Pascal Sauvé and that he did not work at SSC but that he had worked for Environment Canada. Ms. Marion asked him who had given him the phone, and he replied that it had been Nathalie Lacroix; in other words, the grievor.

[14] At Mr. King's request, Heather Martin, a telecommunications officer in the Telecommunications Division, Science Portfolio, at SSC in Dartmouth, Nova Scotia, intervened. She and Mr. King reviewed all the invoices associated with the three cell phone numbers over the last 18 months on the Rogers portal. The invoices covered a period of a month-and-a-half to two months. They noted the first three accounts and retrieved the invoices for the last three months for review. Ms. Martin printed the Rogers invoices for device 3515, assigned to the grievor, and devices 4151 and 5563, identified as replacement devices, for November 1, 2013, to April 1, 2015. She tried to determine the source of the third-party provider costs, such as Facebook and BOKU Mobile Co.

[15] According to Mr. King, the amounts invoiced were exorbitant for a telecommunications officer. The maximum invoice amount for a device is \$300. The detailed invoices indicated all costs from Facebook and BOKU Mobile Co. Mr. King noted that authentication tokens from BOKU Mobile Co. had been purchased through Facebook for gaming. The Rogers invoices were manually analyzed for each device number for each month and were attached to the spreadsheet.

[16] Ms. Martin recorded all noted anomalies in a document that she created in April 2015 (Exhibit E-2). The grievor had been on maternity leave from January 13, 2014, to January 7, 2015. Ms. Martin did not know if the grievor had obtained permission from her immediate supervisor at Environment Canada, Joanne Durand, to use the cell phone that had been assigned to her during that period.

[17] On April 9, 2015, Mr. King called the grievor to inform her that she was the subject of an investigation. The same day, Mr. Schrie informed her in writing that he would investigate the incurred costs. During that period, the grievor tried to use the devices to make purchases but was unable to because their use had been suspended.

[18] Mr. King asked the grievor to work from home until she was temporarily reassigned to another group. That shocked her, but she knew that something was going on because she had tried to contact Mr. Schrie and Rogers customer service. At

that moment, no mention was made of the fact that she was responsible for a third device. Only two devices were at issue. She was never directly informed of the use of the third device.

[19] Once informed that she was the subject of an investigation, the grievor asked Mr. King why Mr. Schrie was now handling the list of the 20 heaviest users, as he did not have the information or access to the data tape. Mr. King replied that she would not need to create the list, as someone else was now handling it.

[20] On April 9, 2015, the grievor called the voice telecommunications projects division to find out who had requested suspending the devices, and why. She was informed that it had been Mr. King. She then asked him why her account had been suspended, and he replied that he was not yet free to discuss it with her. He told her that anomalies had been identified with the use of her work BlackBerry and a replacement device. He told her to be patient and that he would share any new information with her as soon as possible.

[21] On April 9, 2015, Mr. Schrie emailed the grievor, asking her whom device 3515 was assigned to. She confirmed that it was her BlackBerry number. She added that at home, she used a replacement cell phone for diagnostic purposes, the number of which was 4151. She also informed Mr. Schrie that she had asked to transfer her replacement device 4151 to her personal account because she wanted to keep that number for herself. Ms. Martin found that request unusual and suspect. Mr. Schrie asked the grievor whom device 5563 was assigned to, as the report mentioned only the replacement device. She replied that replacement device 4151 and device 3515 had been suspended. She did not provide any other information on replacement device 5563. The same day, she informed Mr. Schrie that she was not feeling well and that she would take time off.

[22] During a conference call with Mr. Primmer from Labour Relations and Ms. Rossignol, the labour relations advisor, Mr. King informed the grievor that he would send a courier to her home to retrieve the cell phones and the laptop. He told her to return the devices as-is and ordered her to not manipulate them. She replied conciliatorily and said that she would remit them.

[23] On April 13, 2015, Mr. King emailed the grievor to confirm that he would send a courier to retrieve all the cell phones and the laptop in her possession and issued by

the Government of Canada. She replied that the laptop was the property of Environment Canada, not SSC, and that she would send only the two cell phones, hers and the one on which she had reinstalled the operating system. Mr. King asked her to send the devices as-is and to not modify them. Ms. Martin noted that when the operating system is reinstalled, a device's usage history is deleted.

[24] Mr. King contacted the Rogers customer services representative to determine the upgrades that had been effected on each device, namely, device 3515 (the grievor's cell phone), device 5563 (a replacement device), and device 4151 (a replacement device). Mr. King also asked Rogers to provide more information on the costs from BOKU Mobile Co. and Facebook, to find a way to determine the transactions that had been done via Facebook and by IT security services.

[25] In an email on April 14, 2015, Mr. King informed the grievor that she was to report to support services at SSC's call centre in Gatineau, the new team to which she was assigned, as of April 21, 2015. He told her not to discuss the investigation with anyone. She did not follow those instructions; she called her colleagues and had them send her information.

[26] On receiving the devices, Mr. King did not open the sealed parcel, as requested by IT security services. He did not know which devices were in the package. He sent the sealed package to Marc Primeau, Director of Security, SSC. He also asked Human Resources to trace all sites visited using the laptop computer and to verify the server itself.

[27] On April 14, 2015, the two devices were delivered to SSC corporate security services for a forensic analysis. The same day, Eric Paul, an information management investigator with SSC's Corporate Services Branch, received a meeting request from Labour Relations to take possession of the cellular devices and to discuss the case. Mr. Paul's primary duties were to offer computer support for any investigation underway at SSC. Thirty-one were underway at the time.

[28] On April 15, 2015, Mr. King and Ms. Martin had a conference call with Mr. Paul and other members of SSC security services to discuss the situation and the analysis of the laptop and the three cellular devices. At that meeting, forensic analysis services took possession of the three cellular devices — the Q5, the Q10, and the Torch 9810 — and the laptop. Mr. Paul recorded the devices on an evidence tracking sheet and

formalized the document at the meeting with Mr. King, Ms. Martin, and Ms. Rossignol. On a preliminary examination of the devices, he noted that they had been reset. He then placed them in a secure cabinet.

[29] The Q10 was an active phone with a SIM card. In an interview with Mr. Paul in June 2015, the grievor explained that she had assigned that phone to herself, to become familiar with it. The Q10 was assigned to the 3515 number. The Q5 had no SIM card, and no phone number was assigned to it. The two devices had been reset, and so, it was impossible to retrieve data from them. The numbers and descriptions of the devices were not consistent with the phones that had been received. Mr. Paul tried to understand what was going on. He could not say how the devices' operating systems had been reinstalled, but he knew that it could be done from the BlackBerry menu or by entering the wrong password several times.

[30] On April 16, 2015, Rogers emailed Ms. Martin, detailing the history of the grievor's three cellular devices. According to that history, device 3515, assigned to her, had been updated on January 14, 2015, two days after her return from maternity leave, and the SIM card for device 4151 had been transferred to a new BlackBerry Q10, serial number IMEI *****9792, which was the grievor's phone, device 3515. Ms. Martin noted that the original device assigned number 4151, the replacement device, had been exchanged for a BlackBerry Torch 9810, serial number *****7624, on May 2, 2013. A device assigned number 5563, a replacement device, had been exchanged for a BlackBerry Torch 9810, which was assigned number 4151 as a replacement device.

[31] On April 20, 2015, due to the discovery of additional information, Mr. King advised the grievor that she was to stay home, on paid leave. On April 22, 2015, a Rogers representative contacted Ms. Martin to advise her of all the transactions for the three cellular devices. With that information, Mr. King was able to determine the parameters of his searches. Rogers provided him all the invoices related to the three devices, which listed all costs. Using that information, Ms. Martin was able to access the Rogers portal and retrieve all the invoices that were to be reviewed. Most of the costs were from BOKU Mobile Co. and Facebook and were related to games such as Casino Royale and Texas Hold 'Em. When she found the required dates, Ms. Martin was able to print the invoices she needed. She submitted an analysis of the Rogers invoices and the usage of the three cell phones to Mr. King and Mr. Schrie (Exhibit E-5).

a. Allegation: public funds were spent for personal purposes

[32] Ms. Martin examined all the invoices associated with phone number 3515, which was assigned to the grievor, for November 2013 to May 2015. The only invoices associated with phone number 3515 that contained anomalies were as follows: the invoice dated February 1, 2014, for 99 cents; the invoice dated September 2014, for \$172.64 for the purchase of authentication tokens through Facebook and BOKU Mobile Co.; and the invoice for October 2014, for \$80.61. In November 2014, \$245.62 was invoiced to phone number 3515 by Facebook and BOKU Mobile Co. That amount was similar to the amount invoiced for December 2014 and January to May 2015; the phone number was suspended in April 2015.

[33] As for replacement device 4151, Ms. Martin printed the invoices for November 2013 to May 2015. The anomalies began in December 2013 and ended in April 2014. They were primarily related to Gameloft Guild, and most were for \$5. There were no anomalies in June, July, or August 2014. In September 2014, the anomalies increased to \$249.16 for the use of Facebook and BOKU Mobile Co. The relative amounts of the costs incurred for the use of Facebook and BOKU Mobile Co. from October 2014 to February 2015 varied from \$231.78 to \$247.73 monthly. In March 2015, the costs incurred for the use of Facebook and BOKU Mobile Co. totalled \$171.96, and in April 2015, they were \$197.34. In May 2015, they were \$126.66. Only gaming costs were evaluated as part of the research of the facts.

[34] No clarification was available for device 5563. Ms. Martin determined the call history by examining the phone details to see if the three devices were synchronized. It was the only device for which Rogers could not provide clarification. However, the company was able to find details through text messages. Rogers could not confirm whether any special request had been made to not disclose invoicing details. Reading the details was difficult because all the information had been sent by text.

[35] A search of Canada 411 revealed the grievor's home phone number, which corresponded to the address where the cellular devices had been couriered. By examining the clarifications on calls files as evidence (Exhibit E-7) for device 3515, which was assigned to the grievor, it was possible to determine that calls had been placed between the three phone numbers — replacement device 4151, device 3515, and replacement device 5563 — and the grievor's home number. Ms. Martin explained that Rogers imposed a maximum limit of \$300 on each device. An examination of all

the invoices applicable to all the wireless devices showed that all costs incurred totalled \$300, which corresponded to Rogers' limit.

[36] In cross-examination, Ms. Martin confirmed that in her opinion, transferring a government account to a private personal account is prohibited. She agreed that to some extent, a device can be used for personal purposes but that the costs incurred for the devices in the grievor's possession exceeded those of acceptable personal use. Ms. Martin also confirmed that even though she was not there at the time, she knew that Mr. King had asked the grievor to return all the Government of Canada devices intact, which the grievor did not do. Once all the devices were returned, none of their data could be retrieved because it had been deleted following multiple SIM card changes. Ms. Martin agreed that it was impossible to know who was using the devices when the costs were incurred. However, SSC was able to link the use of the devices to the grievor and her spouse, Mr. Sauvé.

[37] On May 11, 2015, Mr. Paul met with Mr. King, Ms. Rossignol, and James Walker, an information technology security specialist with SSC's Corporate Services Branch, to turn over a Toshiba Portégé laptop and a Z10 cell phone. Mr. Paul took them to forensic analysis services and installed a device to protect the integrity of the computer's hard drive. Similarly, he conducted a preliminary examination of the Z10 phone and its SIM card and then stored them in a secure place.

b. Reinstalling the cellular devices' operating systems

[38] The Z10 seems to be the only device on which the operating system was not reinstalled. The BlackBerry's identification code was associated with the telecommunications account ***@EC.CA. It was a phone for corporate use that was not of a type that Mr. Paul needed to verify. He explained that the phone was linked to an Environment Canada account that the grievor might have activated manually or by inserting a SIM card from another phone. The Z10 was her personal phone. Mr. Paul gave it back to her.

[39] In the email to Mr. King dated May 11, 2015, Mr. Walker, Ms. Martin, and Ms. Rossignol listed the information gathered from the laptop computer and the Z10, which coincided with the evidence tracking sheet. On May 12, 2015, Mr. Paul informed Ms. Rossignol of the dates on which the devices' operating systems had been reinstalled, which were January 10, 2015, for the Torch 9810, and April 13, 2015, for

the Q10 and the Q5. Mr. Paul was able to determine the date on which the operating systems were reinstalled based on the display date for the automatic welcome message. He could not carry out an in-depth analysis because they had all been reset, except the Z10.

[40] SSC's security services noted that the operating systems on the cellular devices returned by the grievor had all been reinstalled. It was unable to recover any data. None of the wireless devices corresponded to the verified invoices, namely, a Q5, Q10, Z10, or Torch 9810 model. And all the SIM cards had been transferred to different devices. The SIM card for device 5563 was in a new device. The history confirmed by Rogers in an email (Exhibit E-3) indicated that the number 3515 had been used with several devices.

[41] Mr. Paul's analysis primarily examined the available data, and the three accounts implicated in the analysis had been linked. Had the devices' operating systems not been reinstalled, they and the activities with the provider could have been analyzed. In addition, the identification numbers of the devices received differed from the IMEI numbers of the devices linked to the forensic analysis request, with the exception of the Q10. The transactions were linked to the accounts, not the devices. Device 5563 could not be located.

[42] Device 4151, dating from 2012, was made by Samsung and had been assigned to another employee. Ms. Martin discovered that the SIM card in it had been used since May 2013. Before that, the SIM card had been assigned to another employee. That card was now used in device 4151, the Q10, which was updated on January 16, 2015. The SIM card from device 4151 had been transferred to device 3515. That is why the grievor asked to have the number transferred to a personal account. However, each time the SIM card was transferred, it became more difficult to analyze.

[43] On April 27, 2015, Mr. King emailed the grievor, summoning her to a meeting on May 4, 2015; she could be accompanied by the representative of her choice. On April 29, 2015, Ms. Rossignol wrote to Patrice Desrochers, Acting Manager of Security Operations — Information Management and Information Technology, Corporate Services Branch, Environment Canada, asking for an internet usage report for September 1, 2014, to April 1, 2015. On May 1, 2015, Mr. Desrochers sent the logs from the two systems that the grievor used. Mr. King explained that the connection

requests for the laptop with IP address *****.***.***.53** were from the grievor. He added that the computer was used to access Facebook several times per day. At least once, on November 28, 2014, the computer was used to play games of chance, and it was used on September 15, 2014, to play simulation games.

[44] On May 4, 2015, Mr. King, Ms. Rossignol, the grievor, and Marie-Claude Chartier, her union representative, had a meeting. The grievor was asked several questions about phone numbers 3515, 4151, and 5563, and she was presented with a summary of transactions. She stated that she had a Facebook account but that she was not familiar with the games identified in the summary. She mentioned that all the devices provided by the government had a password, which she had shared with her spouse, Mr. Sauvé.

[45] Ms. Rossignol prepared a list of questions to ask the grievor to establish the facts. Based on that information, she created a table summarizing the expenses linked to the three accounts. Ms. Rossignol's questions and handwritten notes from the meeting were filed as evidence (Exhibits E-43 and E-63). The grievor acknowledged possessing three cellular devices during her maternity leave, which Ms. Durand had approved. She was the grievor's immediate supervisor at the time. According to the grievor, the costs for using her personal phone did not exceed \$10 per month. According to Ms. Rossignol's notes, the grievor admitted to recently accessing the Rogers BlackBerry portal on which accounts can be created and modified and monthly invoices can be accessed.

[46] The grievor confirmed that she shared device 4151 with her spouse so he could contact only her. She also used that phone as a work tool for conducting her diagnostics. When she learned that the account had been suspended, she tried to find out why. Thus, on April 9, 2015, she asked Rogers to transfer the account to her personal account. She used that phone to text and to make personal calls. She used device 5563 for synchronization.

[47] The grievor admitted to sharing all her passwords with her spouse to make their life easier and to have a Facebook account. However, she stated that she did not play games on that account. Her spouse had three Facebook accounts, and the three phone numbers appeared on them. Ms. Rossignol analyzed the Rogers accounts and indicated the total of all amounts incurred for each device. From November 2013 to April 2015,

the Rogers invoices for account 3515 totalled \$1727.27. For the same period, the invoices for account 4151 totalled \$1872.54 and those for account 5563 totalled \$987.13.

[48] When Ms. Rossignol and Mr. King presented her the table with all the costs that had been incurred, the grievor stated that her spouse played games and that in her opinion, it was a case of hacking. At the end of the meeting, Ms. Rossignol and her union representative asked her why the devices' operating systems had been reinstalled before turning them over to SSC. The grievor replied that she did not know and shrugged her shoulders.

[49] On May 5, 2015, Ms. Rossignol wrote to Ms. Durand to check which devices had been assigned to the grievor during her maternity leave and the conditions associated with their use. Ms. Durand informed Ms. Rossignol that she had asked the grievor and other employees to work from home to ensure service continuity. The grievor's position was not filled during her maternity leave, and she offered to continue working on certain files and to help her colleague. The grievor wanted to be aware of changes occurring in the wireless section while she was on maternity leave. So, Ms. Durand allowed the grievor to keep her devices. She did not know that the grievor had a laptop. Mr. King indicated that Ms. Durand was not entitled to authorize the use of devices during a maternity leave. The usual protocol is to suspend the use of devices during maternity leaves. Ms. Durand reported to Mr. King, who had not authorized it.

[50] On May 6, 2015, Ms. Rossignol wrote to the grievor to confirm whether the data on her personal phone, the Z10, was intact and whether she would permit an analysis of that device. She asked the grievor to submit the device for analysis to Jean Duquette, Manager of Operations, SSC. On May 7, 2015, Mr. King spoke with the grievor to arrange to turn over the Z10 phone.

[51] On May 12, 2015, Mr. King wrote to the Rogers representative to ask for clarification on the three phone numbers under investigation: 3515, 5563, and 4151. He wanted to obtain detailed information to link purchases from a specific Facebook account. Rogers replied that it could not provide that information without a court order. The same day, by email, Mr. King summoned the grievor and her union representative to a second meeting, on May 19, 2015.

[52] Ms. Rossignol contacted customer service at BOKU Mobile Co. to determine the

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costs incurred in November and December 2014 for device 5563. She wanted to know why there were nine payment identifiers and eight transactions ranging in value from \$1.45 to \$119.24. Customer service at BOKU Mobile Co. confirmed that a confirmation message had been sent to approve each transaction. All the transactions had to be accepted by text message before being approved.

[53] On May 19, 2015, the second meeting was held with Mr. King, Ms. Rossignol, and the grievor and her union representative. Its purpose was to obtain additional information about the grievor's theory that the devices had been hacked. According to Mr. King, she refused to acknowledge the truth. She denied being aware of the games that the employer was able to identify in the history of the websites visited via the government electronic devices for which she had been responsible (Exhibit E-48). She also denied any knowledge of the activities and games discovered on the three wireless devices. It was clear that the situation was difficult for her emotionally. She denied having sent and received text messages approving gaming costs. She confirmed that she and her spouse had used device 4151.

c. Cellular devices not associated with the investigation

[54] Mr. King and Ms. Rossignol wanted to know why the grievor had returned devices that were in no way related to the investigation. The devices returned to SSC did not bear the serial numbers assigned to the accounts. Only at the second meeting did the grievor admit to giving her spouse a cellular device for his personal use. She admitted that she and he had used account 4151 for five years. She acknowledged that "[translation] it was not right". At that time, Mr. King and Ms. Rossignol learned that her spouse had acquired his own device with Vidéotron.

[55] Mr. King and the grievor discussed the models of cellular devices that she had returned to SSC and disagreed about the types of models returned. Asked if she had closed her Facebook account, the grievor replied that she had not. Ms. Rossignol asked her about her Facebook account and the recent applications and games that she had "liked", including Casino Star. Mr. King wanted to know why she had returned a Q5 device. She maintained that she had returned a BB5 device. With that new information, the hacking theory became less relevant. After speaking with the Information Technology section and Mr. King, it was concluded that the hacking theory was not very likely, particularly after the grievor's tacit acknowledgement that she had reinstalled the devices' operating systems and had changed the SIM cards.

d. The grievor's apology letter

[56] On May 20, 2015, the grievor emailed Ms. Rossignol, copying Mr. King and her union representative, from her spouse's messenger account. In it, she acknowledged having lacked judgment and stated that she was profoundly sorry for having given her spouse access to her three government phone numbers. She stated that she had been afraid of losing her job before her maternity leave and that thus she made decisions that she greatly regretted. She admitted that she should never have shared device 4151 and should not have made so many personal calls. She asked that she be given the opportunity to show that she has integrity and is honest and that she has learned from her mistakes. She stated that she was prepared to be suspended, to repay the expenses incurred, to change sections, and to no longer work with cellular devices. She stated that she was prepared to accept all the consequences but that she did not want to lose her job. Based on recommendations from Labour Relations, Mr. King chose to not respond to her.

e. The hacking theory

[57] During the security services investigation interview in June 2015, the grievor claimed that the costs that had been incurred had not been voluntary and that hacking had occurred. The security officers conducted all possible checks to establish a trend to see if the costs had been voluntary, and they noted that the costs had been too structured to constitute hacking. Following his interview in June 2015 with the grievor and her union representative, Mr. Paul prepared a table of all transactions for all the phone numbers, with all related costs.

[58] In cross-examination, Mr. Paul acknowledged that he did not know how the devices' operating systems had been reinstalled. However, he could state that that had been done because they displayed welcome messages. He acknowledged receiving a copy of the table that Ms. Martin had prepared for each account associated with the phones in question. Nevertheless, he conducted his own investigation to verify their reliability. He considered the possibility that hacking had occurred before preparing his table (Exhibit E-26).

[59] According to Mr. Paul, the grievor was surprised when she saw the table with all the costs that had been incurred. She acknowledged that it was too structured to be hacking. She was visibly unsettled and surprised by the dates. She was shocked to see

the evidence that showed that the costs had clearly been voluntary. She did not admit that her spouse had had the phones and had incurred the costs. Mr. Paul's meeting with the grievor focused on the fact that she was responsible for the devices.

2. The grievor's testimony

[60] The grievor testified that she worked in the public service from March 2007 to August 20, 2015. She was the only telecommunications technician classified at the CS-01 group and level who handled problem resolution (servers, email, and BlackBerrys). She handled BlackBerry repairs. She changed parts if needed to repair them and offered training on the different BlackBerrys.

[61] The number 4151 and the Torch device were assigned to her in 2010 or 2011. During her maternity leave, her immediate supervisor, Ms. Durand, approved the use of the three cellular devices and the laptop. Environment Canada was still using the BlackBerry Q5, while other departments were using new technology, the BlackBerry Q10. So, she had a BlackBerry Q5, her Z10 cell phone for speaking with clients, and a BlackBerry Q10, to become familiar with the new technology, particularly the structural changes planned at the department. According to her, number 5563 was associated with the BlackBerry Q5.

[62] Personal calls were to not exceed \$10 per month at Environment Canada. Beyond that amount, the employee in question had to reimburse the department by a cheque made out to the Receiver General. Both the employer and the employees accepted that practice. Some of the grievor's colleagues took their BlackBerrys with them when travelling and then had to reimburse the Receiver General.

[63] The grievor lent her cell to her spouse, Mr. Sauvé. At the start of her pregnancy in 2013, she was not doing well. She feared losing her child. Her entire world revolved around her unborn child, which is why she decided to lend the cell phone to her spouse. He worked at Environment Canada, at the help desk, and he did not have a direct line. In that way, it was comforting for her to be able to reach him at any time. He worked on contract until the end of April 2014. He began working in the federal public service again in October 2014, and the loan of the cell phone continued, so that she would be able to contact him if the need arose. According to her, she did not assign the cell phone to him but lent him hers. The only device that she lent him was the one associated with the number 4151.

[64] Her spouse had suggested the hacking theory to her. He was an information technology expert. In her view, it was a plausible explanation. She had no idea that he had used the cell phones that she kept in her handbag. He told her that after 15 years of a shared life, she should believe him. She had doubts but never told him of them. On August 28, 2015, he broke down and told her that he had incurred gaming costs. He explained to her how he had done it. They argued several times. He did not believe that she would lose her job, but she was terminated.

[65] Device 4151 did not have a password. According to SSC protocol, only devices that could access protected information had to have a password. She kept the three devices in her handbag, protected from third parties. She used device 4151 quite a bit. In March 2014, she reimbursed a sum to the Receiver General for personal calls.

[66] When the grievor was advised that she was the subject of an investigation, she believed that it was for the cost of personal calls incurred during her maternity leave. She knew that SSC kept client accounts and that Environment Canada no longer did.

[67] On April 13, 2015, she contacted her colleague to ask him to access her account. She found out that costs had been incurred on her devices only after reinstalling the operating systems and returning them to SSC. Had she known, she would not have reinstalled the devices' operating systems.

[68] The grievor explained that she had reinstalled the operating system on another employee's BlackBerry Q5 to synchronize Environment Canada and SSC email addresses. A password was needed for the reinstall. No date or time was recorded for the reinstall, as there was no network connection. The grievor did not understand why Mr. King had asked her to return the devices intact, as he had access to all the accounts and invoices containing the personal call details. Had she known that there had been significant charges, she would not have deleted them.

[69] The grievor suggested returning her personal Z10 phone to the employer so that it could verify her emails with clients and synchronize it. She sincerely believed that she could simply reimburse the Receiver General for the amounts incurred for personal calls.

[70] At the May 19, 2015, meeting, when she was shown the excessive costs, the grievor believed that it was due to hacking. She carried out some Internet research and

sent the results to Mr. King. When she saw the Excel document, she told herself that all kinds of things could have happened. After speaking with her spouse, she adopted his hacking theory, given his information technology experience. He lied to her. Only at the second meeting in May 2015 was she convinced that he had lied to her.

[71] During the security services investigation in June 2015, Mr. Paul gave the grievor the official document detailing all the online gaming costs. She then confronted her spouse and eliminated the hacking theory. He admitted to her that he had incurred gaming costs only after her employment was terminated. He told her that he had had gambling problems during his 20s. He had put them behind him and had registered for a self-exclusion program with the Société des casinos du Québec, which is why she handled their finances and why Mr. Sauvé agreed to have his finances controlled. She placed a lot of trust in him, and he had never given her any reason to doubt him. Had she known that he had a gaming problem, she would never have lent him a cell phone. As for her Facebook account and the “likes”, her spouse had accessed her account and had sent himself free lives for Facebook games, which is not illegal.

[72] In cross-examination, she acknowledged that device 4151 was her cell and that she had lent it to her spouse during and after her pregnancy. In 2012, she did that only occasionally. In 2013, her spouse used it independently. She admitted to consulting her invoices just before the preliminary meeting with Mr. King and Ms. Rossignol and that at that time, she thought she was a fraud victim. Only at the security services investigation interview in June 2015 was she convinced that it had not been a hack. Once she obtained the document from security services, she was able to confront her spouse. She did not understand how he had done it.

3. Mr. Sauvé's testimony

[73] In his testimony, Mr. Sauvé stated that he had been a computer technician at the Department of National Defence from 2012 to 2015. His duties included first-level computer troubleshooting, both via software and at the physical level. From 2012 to 2015, he did not have a cell phone or a direct line at work. He could be reached only at his unit's toll-free number (1-800). The grievor did not have any means of reaching him directly, which is why she lent him device 4151. At the start of her pregnancy, she encountered complications and was afraid of a miscarriage. During her maternity leave, Mr. Sauvé did not use the phone as often as he had lost his job and was staying at home.

[74] Mr. Sauvé began incurring gaming costs in August or September 2014. He explained that the devices had not been kept in a safe but instead in the grievor's handbag. While she slept, he took care to delete all the text messages confirming the purchases. He used the devices without her knowledge. She had no reason to doubt him. He knew what he was doing. She believed the hacking theory that he had proposed because he claimed it was plausible.

[75] During the security services investigation in June 2015, the grievor told him that the investigators had given her a document detailing all the costs that had been incurred. When she came home, she confronted him, which upset him. He felt sick. The costs were excessive. He took out a personal loan to reimburse the entire amount due the Receiver General, which he was still paying as of the hearing.

[76] He stated that he played games on Facebook to help him channel his anger. From November 2014 to March 2015, he used his credit card to gamble online without the grievor's knowledge. Eventually, she realized it, and they paid off the credit card and closed the account.

[77] Mr. Sauvé mentioned that he used the grievor's devices for online gambling. As the costs that could be incurred on those devices were limited to \$300, he sometimes had to use the other devices. He was unemployed because he was no longer able to focus on work. His boss told him that he had to take care of himself. He registered at his local community services centre and saw a psychologist once per week. He tried to return to work but was unsuccessful. He had to return to work in February, while continuing his therapy with the psychologist. The grievor is currently handling their finances. He is working hard to recover and to return to work.

[78] In cross-examination, Mr. Sauvé specified that he had not seen the documents given to the grievor during the security services investigation in June 2015. He remembered admitting to his conduct to her only after they had a serious argument after she had been shown the Rogers invoices. Before then, he had denied everything to her. In June 2015, after the meeting with security services, he admitted to her that he had incurred the gaming costs. She did not give him any documents but told him that she had seen everything, including the text messages, the times when the costs were incurred, etc. He had been cornered, and he admitted to everything.

[79] After the investigation concluded, Pankaj Sehgal, Assistant Deputy Minister,

*Federal Public Sector Labour Relations and Employment Board Act and
Federal Public Sector Labour Relations Act*

Networks and End Users, SSC, decided to terminate the grievor's employment for the fraudulent use of mobile phone devices and for spending public funds for personal purposes. His opinion was that she had breached the *Values and Ethics Code for the Public Sector* by failing to responsibly manage and use the public resources entrusted to her. He was convinced that she had abused the employer's trust by assigning a departmental cell phone to her spouse for personal use, by incurring significant third-party costs for the three phone accounts for which she was responsible, by providing her spouse with the password to her departmental cell phone, and by deliberately hindering the investigation. In his view, her actions were of sufficient gravity that the bond of trust was irreparably broken.

4. Mr. Sehgal's testimony

[80] Before deciding to terminate the grievor's employment, Mr. Sehgal considered the investigation results. He spoke with her director at the time and with Labour Relations representatives. At his request, and to determine the appropriate penalty, he was given a binder containing email exchanges. He considered her performance record, her years of service, and the remorse she expressed for her actions once the administrative investigation concluded. Despite those mitigating factors, he found that she should be terminated. She was responsible for adequately protecting and distributing government assets. She lost her employer's trust by intentionally hindering the investigation. She had numerous opportunities to be honest and to explain the reasons behind the costs. Instead, she deliberately deleted data from the devices. Those aggravating factors were much more serious than the mitigating circumstances. Therefore, terminating her was justified.

[81] At the final-level grievance hearing, the employer allowed the grievor's request to hear her spouse, Mr. Sauvé, about the fact that she had assigned him a phone and provided him with her passwords. Both her observations and those of her spouse were heard. She explained the circumstances of what took place. Essentially, she did not know about the costs, which were incurred without her knowledge. Her spouse admitted that he had a gaming addiction and that he had intentionally hidden it from her. He assumed full responsibility and admitted that the hacking theory was his idea and that he had encouraged her to present it as a cover story.

[82] Mr. Sehgal upheld the decision to terminate the grievor despite the remorse that she expressed. She could have avoided being in that situation and putting the

department in it. She had been responsible for government assets and, ultimately, taxpayer money. As a public servant, she had been responsible for managing government resources, not personally benefitting from them. Her conduct during the investigation of providing the wrong devices and deleting data played a key role in the assessment of the disciplinary measure.

B. Conclusion

[83] According to the grievor's representative, it was clearly established that the excessive costs were incurred by her spouse due to his gaming problem and that he used the wireless devices without her knowledge. She was not aware of the gaming problem. She never would have agreed to incur the costs and never imagined that her spouse could do such a thing. She had blind trust in him. They had been living together for 15 years, and he was the father of her unborn child. She could not imagine that she needed to lock up her devices. For a couple, trust is necessary. Whether or not she provided access to a device, she never approved of the gaming costs. She can be held responsible only for lending device 4151. Her spouse used a ploy and acted secretly. She cannot be held responsible for his actions.

[84] However, the evidence clearly established that the grievor failed her duty to responsibly manage and use the public resources entrusted to her. Under the *Value and Ethics Code for the Public Sector*, public servants serve the public interest and must effectively and efficiently use the goods and resources that they are responsible for. Article 3.2 states that public servants must never use their official roles to inappropriately obtain an advantage for themselves or for others. As public servants uphold the public trust, they must act at all times with integrity and in a manner that will bear the closest public scrutiny. As indicated in the *Values and Ethics Code for the Public Sector*, this obligation is not fully satisfied by simply acting within the law. They must act in such a way as to maintain their employer's trust.

[85] The grievor completed a values and ethics course on September 23, 2009. She was aware of her obligations and of her employer's expectations. She was responsible for SSC assets. By her admission, she lent her spouse device 4151 for his personal use, before and after her pregnancy. Even though she trusted him, she was responsible for that device, and it was reserved for professional use. She did not have the authority to share that device with him, regardless of the reason. If she needed to reach him at all times, he could have acquired a phone for himself. The only conclusion that I can

reach is that she intended to lend him a departmental phone for his personal use.

[86] She also admitted to sharing all her passwords with her spouse to make their life easier. No acceptable evidence or explanation was presented to justify her decision. Although she did not personally incur the gaming costs on Facebook and BOKU Mobile Co., she was responsible for ensuring the wise management and use of the devices for which she was entrusted. She held an asset support technician position. She was bound by a duty of integrity as set out in the *Values and Ethics Code for the Public Sector*. Her decision to share her passwords with her spouse and to lend him one of the devices for which she was responsible showed a complete disregard for SSC property. At the first investigation meeting, she admitted that all the cell phone numbers appeared on her spouse's Facebook accounts and that he had played games. In my view, her explanation that she did not suspect that her husband had incurred the gaming costs and that it was hacking is not credible.

[87] Mr. Paul explained that the devices that the grievor remitted had no link to the client accounts. She did not understand why Mr. King had asked her to return the devices intact, as he had access to all the accounts and invoices, which included the details of all personal calls. In my view, the part of the grievor's testimony indicating that she would not have deleted the content from the devices had she known that there were significant charges, is not credible. By her own admission, as Ms. Rossignol wrote in her May 4, 2015, notes, the grievor accessed the Rogers BlackBerry accounts to see the invoices after she learned that she was the subject of an investigation. Thus, she was aware of the amounts incurred. On the contrary, my view is that she reinstalled the devices' operating systems because she had something to hide.

[88] To determine witness credibility issues, adjudicators often refer to the British Columbia Court of Appeal's decision in *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354. To determine if a witness is really telling the truth, it must be determined whether his or her version is compatible with what a practical and informed person would readily recognize as a reasonable version, on the balance of probabilities. Given the testimonies of Mr. King, Ms. Rossignol, Ms. Martin, Mr. Paul, and Mr. Sauvé, the grievor's testimony about her conduct as alleged by the employer was not credible.

[89] The testimonies of the grievor and her spouse had major contradictions. In her testimony, the grievor stated that after the security meeting in June 2015, she had the

documentary evidence needed to confront her spouse. However, only after her employment was terminated did he admit to using the devices without her knowledge. According to the grievor's testimony, her spouse admitted to everything in June 2015, even though she had not presented documentary evidence to him. Those major contradictions show a lack of credibility on the grievor's part. Additionally, her tacit admissions during the investigation about reinstalling the devices' operating systems, exchanging SIM cards, and lending a departmental phone to her spouse for more than five years were not consistent with her testimony at the hearing.

[90] The grievor's testimony on the use of the laptop and the access to Facebook defies common sense. The evidence clearly indicates that Facebook was accessed several times, along with activities on it. The logs show that gaming sites were visited on Facebook in April 2014. In May 2015, in the first meeting during the investigation, the grievor denied it, indicated that she had used the laptop only for professional reasons, and that she did not play games on Facebook.

[91] I also disagree with the grievor's claim that she wanted to be transparent by returning her personal phone, the Z10. From the moment she learned that she was the subject of an investigation, her conduct showed that she had something to hide. According to her admission in the first meeting during the investigation, she contacted Rogers to have the account transferred to a personal account after being informed that she was the subject of an investigation, on April 9, 2015. Despite specific instructions from Mr. King, she contacted her colleagues to obtain information about the accounts under investigation (Exhibit G-1).

[92] In addition, in the first meeting during the investigation, she indicated in a non-verbal way that she had reinstalled the devices' operating systems before returning them to SSC, for which she provided no explanation. However, at the hearing, she provided Exhibit G-1 to explain reinstalling the operating system on another employee's Q5 device to synchronize Environment Canada and SSC email addresses. I find that that document provides no convincing explanation. The email sent to Mr. Prévost on April 13, 2015, was inconclusive; it indicates that she had been able to reinstall the software on the Q5 device. The complainant sent the email 11 days after the last contact with the client. I prefer Mr. Paul's testimony; he confirmed that the devices' operating systems were reinstalled on April 13, 2015, the same day that Mr. King informed the grievor that he would send a courier to her home to pick up all

the devices she possessed. The only device on which the operating system was not reinstalled was her personal phone, the Z10 device, which contained no useful data.

[93] The employer demonstrated on a balance of probabilities that the grievor's conduct justified discipline. There is no doubt that in her actions, she did not responsibly manage and use the public resources for which she was responsible and that she deliberately hindered the investigation.

C. Was the discipline that the employer imposed excessive in the circumstances?

[94] In my view, the termination was not excessive under the circumstances. Most labour relations jurisprudence maintains that termination is a typical sanction for dishonesty, if there are no major mitigating factors. Despite her good performance record, her years of service, and the remorse expressed at the end of the investigation, it remains that the grievor acted in a way that was irreconcilable with the duties and responsibilities of her support technician position. The main duties of her position included being responsible for maintaining an up-to-date inventory of SSC materiel and software and for providing technical support related to developing, integrating, implementing, and maintaining IT infrastructure components. She was responsible for ordering cellular devices and related cellular services. She was also responsible for managing phone accounts, answering client questions, and repairing devices. She was the only specialist in her field. She held a position of trust and of responsibility at SSC and was responsible for protecting those assets and for ensuring their appropriate use.

[95] As set out in the *Values and Ethics Code for the Public Sector*, integrity is the cornerstone of good governance and democracy. By upholding the highest ethical standards, public servants conserve and enhance public confidence in the honesty, fairness, and impartiality of the federal public sector. Therefore, SSC was entitled to expect a high level of integrity from the grievor. The evidence demonstrated that she deliberately hindered the investigation, not only by reinstalling the devices' operating systems but also by failing to return the SIM cards for the accounts for which she was responsible. The aggravating factors outweigh the mitigating factors.

1. The grievor's arguments

[96] According to the grievor, the only actions that she can be accused of are lending a device to her spouse and reinstalling the devices' operating systems. Those two actions do not justify termination. In several Board decisions, adjudicators overturned

terminations when mitigating circumstances justified doing so. When they can outweigh and explain alleged conduct, adjudicators tend to reinstate grievors.

[97] In *Douglas v. Treasury Board (Human Resources Development Canada)*, 2004 PSSRB 60, Ms. Douglas was terminated for granting preferential treatment to a member of the public whom she knew and with whom she was in a romantic relationship. She falsified documents, released confidential information, and attempted to fraudulently obtain employment benefits. The employer found that her actions were entirely incompatible with the responsibilities of her program officer position. Given her age, more than 20 years of service, and clean disciplinary record, and given that she admitted to her employer that she had put herself in a conflict of interest and had expressed remorse not only during the investigation but also at the hearing, the adjudicator overturned the termination. As in the circumstances of that case, the grievor in this case knew that what she was doing was wrong, but not to what extent.

[98] In *Millar v. Treasury Board (Human Resources Development Canada)*, 2001 PSSRB 120, the adjudicator substituted for the termination a suspension without pay in light of mitigating factors. Ms. Millar had received an overpayment on her salary for more than one year. She believed that there was a legitimate reason for the payment and did not pay much attention to her finances. She paid her bills and spent the rest and more. She considered the money a gift from heaven. The adjudicator was not satisfied on a balance of probabilities that Ms. Millar had fully understood the significant extent of the overpayment. She expressed surprise and concern at the early meetings. She began to be concerned by the overpayment in May, which was when she failed in her responsibility to her employer to bring the matter to its attention. At paragraph 55 of the decision, the adjudicator found that “[w]hile this type of self-deception or neglect, is not as dishonest as her failure to bring the matter to the employer’s attention in May once she acknowledged to herself there was a problem, it was nevertheless below the standard her employer of twenty-nine years should have been able to expect ...”. For those reasons, the termination was justified.

[99] However, again in *Millar*, the adjudicator determined that the mitigating circumstances justified reinstating the grievor. Weighing mitigating circumstances to determine whether a termination should be upheld or modified requires reviewing the following specific factors — all facts and circumstances, including personal qualities

and personal circumstances; any admission of responsibility for the alleged conduct and the risk of it being repeated; and the existence of a disciplinary record. The second step is to consider all those facts and considerations from the employer's perspective, including the nature of its business and its operations, which casts more light on the consequences of the alleged conduct, not to mention the role of the position in the employer's operations.

[100] In *Millar*, the adjudicator reinstated Ms. Millar based on the following mitigating factors: there was no direct relationship between the alleged conduct and the nature of her work, she obtained help for her compulsive gambling problem and seemed to have it under control, her conduct did not cause substantial or irreparable harm, the employer could have monitored the potential of another overpayment incident, and some additional conditions could be imposed on Ms. Millar to ensure her successful reintegration and to protect the employer (see paragraph 61).

[101] In *Spawn v. Parks Canada Agency*, 2004 PSSRB 25, Mr. Spawn grieved the Agency's decision to demote him from his full-time firefighter/security person position to a seasonal groundskeeper position for disciplinary reasons. He acknowledged stealing gasoline from the Agency several times, more than what the investigation was able to identify. He expressed remorse. He suffered from major depression, which affected his judgement. Although he understood the difference between right and wrong, his actions had been those of an individual with a diminished capacity. The adjudicator submitted that the demotion to a lower pay scale and to a seasonal position, equal to 40% of the earlier full-time position, was an excessive sanction that was akin to a discharge. Since Mr. Spawn's conduct had occurred during a period of great stress, his performance at work had been entirely satisfactory until then, he had never tried to deceive the Agency or anyone, and he had been punished more severely than the other two firefighters who had been found guilty of stealing gas, the adjudicator reinstated Mr. Spawn to an indeterminate full-time position.

[102] In this case, the grievor claimed to have admitted to her wrongdoings at the first opportunity. On lending the cell phone, she told Ms. Rossignol that "[translation] it was not right". She admitted to her wrongdoings in a letter she wrote to her manager. She did not expect lending the device to her husband would have such repercussions. She wanted to reimburse her personal calls, and she expressed remorse. She displayed

good performance during her eight years of service, and she was a dedicated employee. She even offered to work during her maternity leave.

[103] Considering all the mitigating facts, the fault of simply lending a cell phone to her spouse, and reinstalling the operating system on a single device, termination was clearly excessive. The bond of trust has not been irreparably broken. The grievor was right to trust her spouse, and she was in no way responsible for the costs incurred. For all those reasons, she must be reinstated.

2. The employer's arguments

[104] The employer maintained that the grievor's actions were serious enough that the trust needed to maintain the employment relationship in an SSC position was irreparably broken. Termination was not excessive under the circumstances. She was responsible for ordering cellular devices and related cellular services. She was also responsible for managing phone accounts, answering client questions, and repairing devices. She was the only specialist in her field. She held a position of trust and of responsibility at SSC and was responsible for protecting those assets and for ensuring their appropriate use.

[105] The representative for SSC referred me to *Horne v. Parks Canada Agency*, 2014 PSLRB 30 at para. 200 and those that follow, in which the adjudicator recognized that termination is a typical sanction for dishonesty, absent serious mitigating factors. The facts in that decision are similar to the circumstances of this case. The Parks Canada Agency had entrusted Mr. Horne with purchasing powers, and he had been dishonest by purchasing Cooper tires for himself. He lied during the investigation, and therefore, the Agency conducted a more detailed and lengthy investigation than was necessary. He admitted to his error only about a month after he was presented with indisputable facts, which was many months after his theft. Dishonesty is a serious employment offence. The dishonesty in that case, as in this case, involves a fundamental part of the employment relationship — the purchase of and responsibility for government property. The employer must trust the grievor. There is no room for dishonesty.

[106] In support of her claim, SSC's representative referred me to *Gangasingh v. Deputy Head (Canadian Dairy Commission)*, 2012 PSLRB 113, in which the adjudicator upheld a termination for a violation of the *Values and Ethics Code for*

the Public Service, which is a condition of employment in the public service. In that case, Ms. Gangasingh provided advice to a company under audit on methods to delay or impede the audit process. The adjudicator considered the mitigating circumstances — the economic consequences of the termination, the nine years of unblemished service, and the fact that it was an isolated incident. Although Ms. Gangasingh acknowledged responsibility for her actions, she did so only once she was presented with the transcript of one of her phone conversations. The adjudicator found that Ms. Gangasingh's actions were inconsistent with the nature of her duties and that the mitigating circumstances did not outweigh the nature of her conduct.

[107] In *Kelly v. Treasury Board (Correctional Service Canada)*, 2002 PSSRB 74, the adjudicator upheld a correctional officer's termination for having had inappropriate relations with an inmate as part of a money-laundering operation. The adjudicator submitted that Mr. Kelly's conduct, although an isolated incident, was serious and incompatible with a correctional officer's duties. For that reason, the adjudicator was satisfied that the bond of trust between Mr. Kelly and his employer had been irreparably broken.

[108] In *Rahim v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 121, the Board had to determine whether a termination was excessive under the circumstances. It was upheld on the grounds that Mr. Rahim had received a benefit related to the sale of a property that he did not own and in which he held no financial interest, contrary to the National Joint Council's Relocation Directive. He argued that he was unaware of his entitlements. He did not attend relocation sessions and never consulted the policies and directives to determine what he was entitled to. He took no steps to determine his rights, despite being provided with the necessary tools. The Board questioned whether an ordinary person would think it would be excessive to claim a benefit related to a sale of a property that a person did not own or have a financial interest in. Would that same person not see the degree to which the grievor went to obtain the funds, knowing full well that he was not entitled to them, as an aggravating factor when determining whether the bond of trust between the employer and the grievor had been broken? The Board submitted that common sense dictates that actively pursuing a payment as Mr. Rahim did is an aggravating factor when determining discipline. Therefore, the grievor's defence of being unaware of her spouse's gaming problem must be rejected.

[109] The employer also referred me to the following decisions: *Pagé v. Deputy Head (Service Canada)*, 2009 PSLRB 26, *Dhanipersad v. Canadian Food Inspection Agency*, 2001 PSSRB 72, and *Ayangma v. Treasury Board of Canada (Department of Health)*, 2006 PSLRB 64. In all those decisions, the adjudicators upheld terminations for the reasons raised earlier; the bonds of trust were irreparably broken, and the terminations were justified.

IV. Conclusion

[110] For the following reasons, I agree with the employer's arguments. It is true that the grievor's years of service, her clean disciplinary record, and the remorse she expressed at the investigation's conclusion are mitigating factors. However, she abused her duties and privileges. The fact that she shared her password and gave her spouse a cell phone showed that she did not responsibly manage the public resources for which she was responsible. She contravened the *Values and Ethics Code for the Public Sector*. The evidence demonstrated that she deliberately hindered the investigation not only by reinstalling the devices' operating systems but also by failing to return the SIM cards for the accounts for which she was responsible. Except for the Z10 device, the only one that contained a SIM card, no returned devices corresponded to the Rogers accounts, and no other SIM cards were returned to the employer.

[111] Clearly, the termination had an impact on the grievor and her family, and I am sympathetic to those personal circumstances. However, the aggravating factors outweigh the mitigating factors. She expressed remorse only once the investigation concluded. I agree with SSC's position that she had every opportunity before the investigation ended to tell the employer what had happened, but she did not. She did not present any credible explanations to help understand why she took so long to admit that she had allowed her spouse to use her departmental cell phone for personal purposes. She disobeyed her manager's instructions to return the devices intact and to not discuss the investigation with anyone.

[112] The grievor was responsible for ordering cellular devices and their related cellular services. She was also responsible for managing phone accounts, answering client questions, and repairing devices. By her own admission, she was the only specialist in her field. She held a position of trust and responsibility at SSC and was responsible for protecting those assets and for ensuring their appropriate use. Her actions were entirely incompatible with the nature of the duties and expectations of

her position.

[113] The grievor's lack of integrity during the investigation hindered the investigators' work and is an aggravating factor that eliminated the trust behind any employment relationship. In this case, her conduct irreparably broke the trust that SSC was entitled to expect of her, in terms of both the investigation and managing the devices for which she was responsible.

[114] I find that the grievor's termination was not excessive. Clearly, her conduct irreparably broke the bond of trust required for the employment relationship. Therefore, there is no need to determine whether another disciplinary measure would be appropriate.

[115] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

V. Order

[116] The grievance is dismissed.

September 6, 2018.

FPSLREB Translation

**Chantal Homier-Nehmé,
a panel of the Federal Public Sector
Labour Relations and Employment Board**