

**Date:** 20220331

**File:** 566-34-13722

**Citation:** 2022 FPSLREB 25

*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

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BETWEEN

**JULIA STILLER**

Grievor

and

**CANADA REVENUE AGENCY**

Employer

Indexed as

*Stiller v. Canada Revenue Agency*

In the matter of an individual grievance referred to adjudication

**Before:** John G. Jaworski, a panel of the Federal Public Sector Labour Relations and Employment Board

**For the Grievor:** Dayna Steinfeld, counsel

**For the Employer:** Jena Montgomery, counsel

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Heard via videoconference,  
September 13 to 16, 2021.

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**REASONS FOR DECISION**

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**I. Individual grievance referred to adjudication**

[1] Julia Stiller (“the grievor”) was employed as a full-time indeterminate senior assessments, accounts, benefits processing, and resource officer at the Service and Program Group 5 (SP-05) group and level with the Canada Revenue Agency (CRA or “the employer”) in its Business Returns Division at the Winnipeg Tax Centre in Winnipeg, Manitoba.

[2] By letter dated August 23, 2016 (“the letter of termination”), she was terminated from her position, effective that day. The relevant portions of the letter of termination state as follows:

...

*This letter is further to the Internal Affairs and Fraud Control Division (IAFCD) investigation regarding unauthorized accesses and conflict of interest.*

*The IAFCD final investigation report dated July 8, 2016 concluded that you contravened: the Canada Revenue Agency’s (CRA) Code of integrity and professional conduct (the Code) when by your own admission you made an unauthorized access to an acquaintance’s tax information; the Directive on conflict of interest, gifts and hospitality and post-employment when by your own admission you conducted your outside activities on agency premises using agency equipment or resources to do so during your scheduled hours of work and used the CRA’s electronic networks to conduct your outside activity; the Storage, Disposal, Transmittal and Transport of Protected and Classified Information and Assets Directive when you failed to protect and safeguard the CRA’s protected and confidential information from compromise when you sent protected information to your personal email address; and Internal Fraud Control Policy when you fraudulently claimed time under medical/dental appointment and family related time to participate in your outside activities. The investigation report also stated that you were deceitful during the investigation and in your communications with your team leader*

*A copy of the final investigation report was provided to you on July 26, 2016. You and your representative were provided the opportunity to respond to the investigation findings at the disciplinary hearing on July 28, 2016. At the disciplinary hearing you acknowledged that the report was ‘fairly accurate’, you expressed remorse for your actions, requested that your years of service with CRA and your performance are considered.*

*I find that your unauthorized access; use of agency time, resources and equipment; and your fraudulent reporting of leave are serious*

*violations of the CRA Code of integrity and professional conduct and its underlying policies as well as the CRA values.*

*The guidelines on the expected standards of conduct and the consequences for contravention of these standards are fully explained in the Code and its underlying policies. You read and signed the Code when you were hired as an employee with the Agency and you have also received annual reminders. My response dated October 28, 2014 to your Confidential Disclosure specifically provided clear direction regarding the requirement that you were not to perform work related to your private interests and/or outside activities during CRA work time, or through the use of the CRA network, systems, or assets. Accordingly, I find that you are, or should be fully aware your actions are in violation of the Code and its underlying policies.*

*In determination of appropriate discipline, I have fully considered the information provided by you and your union representative at the disciplinary hearing and the absence of prior discipline. As aggravating factors, I have considered with your years of service and position that you are familiar with the employer's policy regarding unauthorized access, you were provided with specific direction which you confirmed understanding of regarding your outside activities and that you failed to protect and safeguard CRA protected information. The deliberateness in your efforts to further conceal your misconduct during the investigation and the deceitfulness you continued to display must be considered. This behavior coupled with the serious violations of the CRA's Code of integrity and professional conduct has irreparably damaged the essential bond of trust between the employer and the employee.*

*Therefore, by the authority granted to me under Section 51.1(f) of the Canada Revenue Agency Act, it is my decision to terminate your employment with the Canada Revenue Agency effective immediately. My decision is based on the serious violations of the CRA's Code of integrity and professional conduct, and that the relationship and trust between yourself and the CRA have been irreparably damaged.*

...

[Sic throughout]

[3] On September 9, 2016, she grieved her termination, and as relief, she requested as follows that:

- she be reinstated as a full-time indeterminate employee at her substantive level;
- she receive all her pay and related benefits from the date of the termination;
- any sick leave and vacation leave be reinstated to the date of the termination;
- all records of the termination be destroyed; and
- she be made whole.

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

[5] The parties submitted an agreed statement of facts (ASF).

[6] Due to the COVID-19 pandemic, the matter was heard by videoconference.

## **II. Summary of the evidence**

### **A. Background**

[7] At the time she was terminated from her position, the grievor had 30 years of discipline-free service.

[8] At the time of the hearing and since July of 2020, Carroll Sukich was retired. At the times relevant to the matters in the grievance, she was the director of the Winnipeg Tax Centre, which at that time employed about 3000 people, all of whom reported, either directly or indirectly, to her.

[9] At the time of the hearing and since January of 2021, Karen Small was the assistant director responsible for individual returns at the Winnipeg Tax Centre. At the times relevant to the matters in the grievance, she was the acting assistant director for the Business Returns Division. She reported directly to Ms. Sukich.

[10] At the time of the hearing and at the times relevant to the matters in the grievance, Greg Pulak was a manager with the CRA in the Winnipeg Tax Centre. He reported directly to Ms. Small. He did not testify.

[11] At the time of the hearing and at the times relevant to the matters in the grievance, Barbara Chanas was a team leader with the CRA in the Winnipeg Tax Centre. At the times relevant to the matters in the grievance, she was the grievor’s team leader (“TL”), and the grievor reported directly to her. She, in turn, reported to Mr. Pulak.

[12] At the time of the hearing and since January of 2021, Nadia Zinck was the acting assistant director for the Internal Affairs and Fraud Control Division of the CRA. At the times relevant to the matters in the grievance, she was an investigator in the Internal Affairs and Fraud Control Division of the CRA.

[13] Entered into evidence were the grievor's performance appraisals for the years 2013-2014 and 2014-2015. In both those years, the grievor's performance was rated as level 5, or "exceeds" — the highest possible rating. Also during this time frame, from time to time, the longest term being approximately 2 months, the grievor acted in a TL position with approximately 12 people reporting to her.

[14] The evidence of the grievor's immediate supervisor, Ms. Chanas, was that she respected the grievor, as did the grievor's colleagues. Ms. Chanas also said that she had no concerns about the grievor's capabilities or work performance.

## **B. Policies and directives**

[15] Entered into evidence was a copy of the CRA's *Directive on Conflict of Interest and Post-employment* ("the COI policy") that was in effect at the time relevant to this matter. The relevant portions are as follows:

...

### **2. Application**

*This directive applies to all **employees** of the Canada Revenue Agency (CRA).*

*The **Code of Ethics and Conduct** highlights for all CRA employees the expected standard of conduct and the required adherence to CRA policy instruments. Compliance with CRA corporate policies is mandatory.*

...

### **3. Related corporate policy instruments (also see References)**

*This directive flows from the Conflict of Interest Policy and is supplemented by the CRA Procedures for Assessing and Managing Confidential Disclosures. It should be read in conjunction with the CRA **Code of Ethics and Conduct** and the **Values and Ethics Code for the Public Sector**.*

*The Conflict of Interest Policy and the Directive on Conflict of Interest and Post-employment are core instruments within the **CRA Integrity Framework**. They help to protect CRA integrity by enhancing the Agency's ability to **prevent, identify, disclose** and **manage** conflict of interest situations in a way that maintains the public trust.*

...

## 6. Requirements

The requirements listed in this directive and the Conflict of Interest Policy are conditions of employment at the CRA.

This directive must be applied in conjunction with the legislation and policy instruments listed in the **References** section.

Each year, employees are expected to review their ongoing obligations under this directive, the Conflict of Interest Policy, the **CRA Code of Ethics and Conduct** and the **Values and Ethics Code for the Public Sector** to ensure that they continue to adhere to the conditions therein.

To achieve the objective and outcomes of the directive, the following requirements must be met:

...

**6.2 Confidential disclosure form:** This document must be submitted when an employee has **private interests** and/or **outside activities**, as outlined in **Appendix A**. If an employee has private interests or outside activities that are not specifically listed in Appendix A but that could or will place him or her in a conflict, the employee is expected to disclose the details in a confidential disclosure form. The delegated manager will evaluate the disclosure to determine whether or not there is a conflict of interest and if required, will determine the appropriate compliance measure(s).

A confidential disclosure form **must** be submitted:

- within 60 working days of an employee's initial appointment (including but not limited to indeterminate and temporary appointments, student employment, and **Interchange Canada** agreements);
- any time there is a change in an employee's private interests and/or outside activities (see **Appendix A**), including during periods of leave with or without pay;

...

## 7. Roles and responsibilities

### 7.1 Employees:

CRA employees have an obligation to **prevent, identify, disclose, and manage** any conflict of interest that arises between their official duties and their private interests and/or outside activities and must:

(a) Perform their duties in a manner that upholds the public trust, and avoid situations that could or will place them in a **real, apparent, or potential** conflict of interest.

(b) Arrange their **private interests** and/or **outside activities** in a way that will bear the closest public scrutiny. It is not enough to simply act within the law.

(c) Submit a confidential disclosure form to their delegated manager if they have:

- any **private** interests and/or **outside activities** as outlined in **Appendix A**.
- any private interests and/or outside activities that are not specifically listed in Appendix A, but that could or will place the employee in a conflict of interest.
- experienced any change or addition to their **private interests** and/or **outside activities** as outlined in Appendix A.

...

(e) Not advertise or make it known that they work for the CRA in order to generate or enhance their **private interests** and/or **outside activities**, for personal gain, or for the gain of any other person or entity.

...

(g) Not allow their private interests and/or outside activities to impair their availability, capacity, or ability to perform their CRA duties.

(h) Not perform work related to their **private interests** and/or **outside activities** during CRA work time or through the use of the CRA network, systems, or assets. For more information, please see the **Monitoring of the Electronic Networks' Usage Policy**.

...

**7.3 All leaders, manager, supervisors, and team leaders are required to:**

- (a) Foster a culture of integrity by acting in accordance with CRA's **values**.
- (b) Communicate with employees to reinforce awareness and understanding of the subject of conflict of interest.
- (c) Direct an employee to submit a confidential disclosure form to the delegated manager if they observe, suspect, or are informed that the employee is, or may be, in a **real, apparent, or potential** conflict of interest situation.

...

## **8. Failure to agree and recourse**

Where an employee and the delegated manager disagree with respect to the arrangements necessary to manage a conflict of interest, the employee will comply with the direction and has the right to file a grievance on the matter.

## **9. Failure to comply**

*Failure to comply with the provisions in the Conflict of Interest Policy and the Directive on Conflict of Interest and Post-employment may result in disciplinary measures up to and including termination of employment, and/or possible referral to the appropriate law enforcement agency. For more information, please see the CRA **Discipline Policy and Procedures for addressing employee misconduct.***

...

## **11. Definitions**

**Conflict of Interest:** *A conflict of interest arises whenever an employee's **private interests** and/or **outside activities** impair, or could be perceived to impair, their ability to make decisions with integrity, impartiality, honesty, and in the best interests of the CRA and the Government of Canada.*

**i. Real conflict of interest:** *A conflict exists between an employee's CRA duties and their private interests and/or outside activities.*

**ii. Apparent conflict of interest:** *A conflict between an employee's CRA duties and their private interests and/or outside activities that could be perceived to exist by a reasonable observer, whether or not this is the case.*

**iii. Potential conflict of interest:** *A conflict between an employee's CRA duties and their private interests and/or outside activities that could reasonably be foreseen to exist.*

...

[Emphasis in the original]

[16] Entered into evidence were copies of the CRA's *Code of Ethics and Conduct* ("the 2013 code") and *Code of integrity and professional conduct* ("the 2015 code"). The 2013 code was in effect until December of 2015, when it was replaced by the 2015 code. The facts relevant to the misconduct alleged to have taken place bridge the time frame covered by both codes. The relevant portions of both codes are as follows:

[The 2013 code:]

### **1. YOUR ACCOUNTABILITY AS AN EMPLOYEE**

*The CRA Code of Ethics and Conduct (the Code) and the **Values and Ethics Code for the Public Sector (VECPS)** require employees to behave at all times in a way that upholds the integrity of our organization and maintains our excellent reputation. The Code and the VECPS apply to all employees, including term employees and students.*

*As a public servant, and an employee of the CRA, there are times when you are faced with questions of what is right or wrong, and how to conduct yourself.*



...

*It is your responsibility to become familiar with the contents of the CRA Code and the VECPS, to abide by them, and to conduct yourself in a way that reflects their overall spirit.*

...

## **2. OUR MISSION, VISION, AND VALUES**

...

### **CRA values**

*We have four enduring values that guide our organization:*

- **Integrity** is the foundation of our administration. It means treating people fairly and applying the law fairly.
- **Professionalism** is the key to success in achieving our mission. It means being committed to the highest standards of achievement.
- **Respect** is the basis for our dealings with employees, colleagues, and clients. It means being sensitive and responsive to the rights of individuals.
- **Co-operation** is the foundation for meeting the challenges of the future. It means building partnerships and working together toward common goals.

*When contributing your part to our mission, please keep in mind that the key to ethical decision-making and good conduct is to abide by the CRA's values, Code of Ethics and Conduct, the policy instruments referenced in this Code, as well as laws affecting the CRA ....*

...

*As a public servant you are also required to become familiar with the **Values and Ethics Code for the Public Sector (VECPS)**. It is the compass that guides the values and expected behaviours of the broader federal public sector....*

...

## **3. YOUR EXPECTED STANDARD OF CONDUCT**

...

*As an employee of the CRA, you are accountable to your employer and to the public for the way you conduct yourself. You are expected to carry out your assigned duties conscientiously and in accordance with instructions and with CRA policy instruments. Your conduct also involves thinking through the possible impact of your actions and decisions on all interested parties - the public and clients you serve, co-workers, subordinates, and others - in terms of what is right or wrong, even when legal and regulatory decisions do not require it.*

...

*You have a duty to report **any** violations of this Code, the VECPS, or any CRA policies. You must not conceal or condone misconduct.*

*Misconduct must be reported in accordance with the Discipline Policy and the Internal Investigation into Alleged or Suspected Employee Misconduct Policy.*

...

***b) Care and use of government property or valuables, and taxpayer property held by the CRA***

...

***Property*** *This includes, but is not restricted to, computers (including laptops), software, electronic and paper files, documents and data, office equipment and supplies, video equipment ....*

...

*You may only use government owned or leased property, or valuables, for **official purposes**, unless you have pre-authorization for personal use.*

***Use of CRA identification***

*You cannot use your job title or any official identification to influence or obtain any privilege or favour for yourself or others, or to do anything that is illegal, improper or against the best interests of the CRA.*

...

***c) Care and use of Agency information (confidentiality)***

*Protecting privacy rights is central to the integrity of the CRA. All personal or proprietary information of taxpayers, other clients, third-party providers (for example, contractors and suppliers) and CRA employees, that you have or use, must be protected and kept in strictest confidence. Your swear or affirmed you would do so when you were first hired as a federal public servant and took your **Oath or Affirmation**.*

...

*You may only use, process, store, or handle personal or proprietary information for work-related purposes (for example, to conduct an audit, take a collections action, or manage a staffing process) and in the way specified by the CRA (for example, respecting the security designation on the file such as “confidential”, or “protected”)....*

*If you have any questions about how to treat any CRA information, you are expected to consult your manager.*

***You must never:***

- ***access any information that is not part of your officially assigned workload;***

...

*To do so would compromise the integrity of the tax system and the protection of taxpayer information. It could also place you in a serious conflict of interest situation, which could attract a severe disciplinary measure including termination of employment, and could lead to criminal charges.*

...

**d) Conflict of interest**

*As an employee, a conflict of interest arises whenever your private interests and/or outside activities impair, or could be perceived to impair, your ability to make decisions with integrity and honesty in the best interests of the CRA and the Public Service of Canada. You must always act in a way that is not damaging or potentially damaging to the CRA.*

*Where a conflict of interest does arise between your private interests and/or outside activities and your official duties, it will be resolved in favour of the public interest.*

*It is your responsibility, and a condition of your employment, to avoid situations that could lead to a potential, apparent, or real conflict of interest. Even if you do not consider something to be a conflict of interest, others observing the situation may. You are strongly encouraged to consult the Conflict of Interest Policy and Guidelines, and to consult with your manager or other advisor to ensure that you have not inadvertently placed yourself in an apparent conflict of interest situation.*

...

**g) Electronic networks access and use**

*You must only use the CRA's primary computer systems and databases, such as [name of a system], for **authorized business purposes**, that is, for carrying out tasks that form part of your assigned workload.*

...

*You are reminded, each time you sign on, that CRA computer systems and electronic networks are for **authorized business purposes only**, except for the very limited personal use provided for, under certain conditions, in the **Monitoring of the Electronic Networks' Usage Policy**.*

*Examples of acceptable limited personal use, when permitted after hours or during an authorized break, including reading or writing a brief email message to/from a family member or friend, or checking the weather forecast on-line [sic]. To be considered as limited personal use, such use:*

- **must** comply with all related legislation, and policy instruments;
- **must not** interfere with users' performance and/or productivity; and

- **must not** impose a performance or storage burden on the Agency's electronic networks.

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

...

**CRA electronic networks:**

...

- engaging in private business, or political activities;

...

**k) Hours of work and attendance**

As a CRA employee, you are expected to adhere to your scheduled hours of work and to follow established processes for the approval of leave, as allowed under your collective agreement and/or terms and conditions of employment. In this way, you can contribute to the efficient operation of your work unit.

...

**4. FAILURE TO COMPLY AND CONSEQUENCES**

**A great deal of trust is placed on you in the performance of your duties.** We expect that you will adhere to the values and principles in the CRA Code and the VECPS.

If you suspect or discover that you are not in compliance with this Code and/or the VECPS, consult with your manager. Depending on the circumstances, your manager may need to determine whether any breach warrants action. Procedures are in place to make sure that all cases of employee misconduct or wrongdoing are handled fairly.

...

[The 2015 code:]

**We are federal public servants**

**The Values and Ethics Code for the Public Sector (VECPS)** applies to all CRA employees. It describes the values, and guides the conduct of all federal public servants. The full VECPS, featuring the values of respect for democracy, respect for people, integrity, stewardship, and excellence, forms part of this CRA Code of integrity and professional conduct (Code).

**We are CRA employees**

Employment at the CRA requires that we become familiar with this Code, the VECPS, and the **Directive on conflict of interest, gifts and hospitality, and post-employment**, and abide by them — both in letter and in spirit. These terms and conditions of employment support us in doing the right thing.

No code can be all encompassing, and situations may arise that are not addressed specifically in the Code. If you find yourself in a

dilemma, or have a question about what to do, or how to act, you do not have to face such situations on your own. Start by reviewing this Code. It links to a number of integrity resources, including relevant laws and policy instruments, as well as a CRA-specific Model for integrity-based decision making. Then discuss the issue with your manager.

...

### **Consequences of misconduct**

Few things erode public trust faster than employee misconduct, or the perception that employee misconduct has not been managed appropriately. Consequences and corrective actions play an important role in safeguarding CRA integrity.

The Agency takes misconduct very seriously. Consequences of misconduct are based on the severity of the incident, and its impact on trust both inside and outside the Agency. **Misconduct can result in disciplinary measures up to and including termination of employment.** For more information, refer to the Directive on Discipline and the Table of Disciplinary Measures.

### **We are committed to fostering a culture of integrity**

Every day we affect the lives and well-being of others through how we interact, and make decisions. We enhance public trust when we deliver results, behave ethically, go the extra mile, ask questions, create, and innovate. Public trust strongly influences the voluntary compliance on which our tax administration is built, helping us to achieve our mission in a sustainable way.

We work together to foster a culture of integrity. We build trust from the inside out, starting with each other. We balance clear rules with strong values, and align our decision-making and our actions with those rules and values. Our culture is about everything we do, and **how** we do it, bringing out the best in our organization, the best in us, and in our work, practices, and relationships. It is vital to our success as an organization.

...

### **We Protect Information**

Access to any CRA or taxpayer information, assets, or property is a privilege, not a right. This access is determined on a need-to-know basis, and can therefore vary even among individuals who work in the same program area, or who perform the same duties. When you are granted a reliability status and/or a security clearance, you accept responsibility for using, handling, processing, protecting, and disposing of sensitive information, assets, or property.

In order to achieve our mandate, taxpayers and benefit recipients must trust that we will protect their private information, and that we carry out our work in the public interest. We must also protect employee information, CRA proprietary information, government

property or valuables, and any taxpayer property that is in our possession or control.

We all agree to uphold the public trust when we swear or affirm the **Oath or affirmation**. This affirmed commitment continues even after an employee leaves the CRA....

...

You must **never**:

- access any information that is not part of your officially assigned workload, **including your own information**;

...

### **Privacy and confidentiality of taxpayer information**

We are committed to respecting the privacy and protecting the confidentiality of all information held by the CRA.

The CRA takes steps to prevent, and detect any **unauthorized access or unauthorized disclosure** of taxpayer information, and we take this responsibility very seriously. You must only access, process, store, modify, or handle taxpayer information for work-related purposes, and in the way specified by the CRA.

Unauthorized access and/or disclosure of taxpayer information by an employee or former employee may be a breach of **Section 241** of the Income Tax Act, **Section 295** of the Excise Tax Act or **Section 211** of the Excise Act, 2001, and the **Privacy Act**. Accessing and/or disclosing taxpayer information without authorization will attract disciplinary measures up to and including termination of employment, and possible referral to the Royal Canadian Mounted Police (RCMP)....

...

### **CRA and Government of Canada property, assets, valuables, and equipment**

You may only use government owned or leased property, assets, valuables, and equipment for official purposes, unless you have pre-authorization for **personal use**. If any items are lost, stolen, or damaged, advise your manager right away. Also, if you leave your position, are transferred, reassigned, on a long-term absence (such as a maternity leave), or when a request to do so is made by an authorized person, you must return the property or valuables....

...

### **CRA computer systems and electronic networks**

You are granted access to the systems and information required to perform your job. If you have system access permissions that are not required for your official duties, inform your manager immediately. You must **never disclose your password** for any CRA system to anyone, under any circumstance....

...

You must **only** use the CRA's primary systems and databases, such as Rapid and Corporate Administration System (CAS), for **authorized business purposes**, that is, for carrying out tasks that form part of your assigned workload.

Limited personal use of other CRA computer systems is allowed as outlined in the Monitoring of the Electronic Networks' Usage Directive.

**Find out what "limited personal use" means**

Personal use of other CRA computer systems and networks is permitted under certain conditions. For example, you can write a personal email, view internet news, or consult a weather site during an authorized break, or before or after your scheduled work hours.

Remember that when using CRA systems and networks for your personal use, you must:

- comply with all related legislation, and policy instruments;
- not interfere with users' performance and/or productivity;
- and
- not impose a performance or storage burden on the Agency's electronic networks.

...

Below are some examples of misconduct related to the use of CRA computers and electronic networks:

- unauthorized access or disclosure of tax or other confidential information, including your own;

...

- sending work documents to your home computer or personal device;

...

**Financial management and fraud**

Acts of fraud, and/or the mismanagement of public funds, will not be tolerated. Any employee who commits such an act will be subject to administrative measures (for example, reassessment, and/or revocation of reliability status and security clearance) and/or disciplinary measures, up to and including termination of employment. Fraudulent actions that contravene legislation such as the Criminal Code of Canada or the Financial Administration Act can also lead to criminal investigations and prosecution.

Fraud is defined as any intentional act, or intentional omission, by an employee for personal enrichment, or for the enrichment of a third party, through the deliberate misuse or misapplication of CRA resources, revenues, information, assets, or authority.

...

Some examples of fraudulent activities include:

- *abuse of authority, including improper or excessive use of your authority to obtain or provide a benefit;*
- *use of insider knowledge of policies, programs, processes, or systems to obtain or provide an unwarranted benefit;*
- ...
- *falsifying attendance, leave, travel time, overtime, and anything else that results in receiving pay for time not worked;*

### ***Penalties for fraud***

*Fraud is a serious offence and is subject to disciplinary measures up to and including termination of employment.*

### ***Annual affirmation, conflict of interest, post-employment, and gifts***

*Each year, employees receive a system-generated email reminding them to review their obligations under this Code and the conflict of interest instruments.*

*You are responsible for ensuring that you do not place yourself in a **real, apparent, or potential** conflict of interest. A conflict of interest arises when your **private interests and/or outside activities** impair, or could be perceived to impair, your ability to perform your duties in an objective, loyal, and impartial way. You are also responsible for adhering to the specific CRA **requirements** concerning the offer and acceptance of gifts, hospitality, and other benefits.*

[Emphasis in the original]

[17] Entered into evidence was a copy of the CRA's *Monitoring of Employee Electronic Access to Taxpayer Information Directive* ("the monitoring directive") that was in force at the times relevant to the facts in the grievance. The relevant portions are as follows:

### ***2. Application***

*This directive applies to employees of the Canada Revenue Agency (CRA) and to any other individuals required to comply with CRA policy by virtue of a contract or a memorandum of understanding (MOU).*

*The **Code of Integrity and Professional Conduct** highlights for all CRA employees the expected standard of conduct and the required adherence to CRA policy instruments. Compliance with CRA corporate directives is mandatory....*



...

**7.9 Employees**

*7.9.1 Access taxpayer information only for the purpose of performing their authorized and assigned workload and duties.*

*7.9.2 Never access their own taxpayer information or that of their relatives or acquaintances.*

*7.9.3 Safeguard taxpayer information and assets by following the proper security requirements as stipulated in CRA security corporate policy instruments.*

...

[Emphasis in the original]

[18] Entered into evidence was a copy of the CRA's *Internal Fraud Control Policy*. Ms. Zinck identified it as being in effect at the time relevant to the incidents related to the grievance. The relevant portions of it state as follows:

...

**2. Application**

*This policy applies to employees of the Canada Revenue Agency (CRA).*

*The policy pertains to internal fraud, which at its most basic is the act of an employee dishonestly obtaining or providing an advantage by deception or other means.*

*Compliance with CRA corporate policies is mandatory....*

...

**4. Introduction**

...

*The CRA is committed to maintaining a workforce that upholds the highest standards of honesty, integrity and ethical conduct. Internal fraud will not be tolerated and can give rise to serious consequences. Employees who commit an act of fraud are subject to disciplinary action, up to and including termination of employment and reassessment of their reliability status....*

...

**7. Responsibilities and accountabilities**

...

**7.9 All Employees must:**

- *accept individual responsibility for behaving ethically and with good conduct when acting in their professional capacity on behalf of the CRA;*

- *understand the risks of internal fraud, and be vigilant for possible fraudulent activity in their surroundings;*
- *report any detected or suspected fraudulent activity involving CRA employees, including any offer of a bribe or significant advantage offered to an employee. Employees can report suspected fraud directly to their manager or when that is not feasible, to the Internal Affairs and Fraud Prevention Division. Employees can also make a protected internal disclosure to the CRA's Senior Officer for Internal Disclosures, or to the Public Sector Integrity Commissioner under the Public Servants Disclosure Protection Act;*
- *report any processes that appear to be vulnerable to fraud; and*
- *cooperate and assist with the conduct of an investigation.*

...

### **11. Appendix A — Definition of internal fraud**

*For the purpose of this policy, internal fraud is defined as any intentional act or intentional omission by an employee for personal enrichment, or for the enrichment of a third party, through the deliberate misuse or misapplication of the Canada Revenue Agency's resources, revenues, information, assets, or authority.*

*An act of fraud normally exhibits all the following characteristics:*

- *It involves deception and concealment;*
- *It is committed for the purpose of direct or indirect financial benefit to the employee or a third party;*
- *It violates the employee's fiduciary duties to the CRA; and*
- *The CRA suffers, or there is a risk of, loss of assets or revenues.*

...

*Actions constituting fraud for the purpose of this policy may include, but are not limited to:*

...

- *falsified claims for overtime or leave, and any other action that results in receiving remuneration for time not worked.*

...

[Emphasis in the original]

[19] Entered into evidence was a copy of the CRA's *Storage, Disposal, Transmittal and Transport of Protected and Classified Information and Assets Directive* ("the 2013 CRA storage directive") and a copy of the CRA's *Transmittal and Transport of Protected and Classified Information and Assets Standards* ("the 2015 CRA storage directive"). Ms.

Zinck identified these directives as being in effect at the times relevant to the incidents related to the grievance. The relevant portions of them state as follows:

[The 2013 CRA storage directive:]

...

## **2. Application**

*This directive applies to employees of the Canada Revenue Agency (CRA) and to any other individuals required to comply with CRA policy by virtue of a contract or a memorandum of understanding (MOU).*

...

## **7. Roles and responsibilities**

...

### **7.8 Employees**

*7.8.1 Comply with the requirements of this directive and all related corporate policy instruments.*

*7.8.2 Assume responsibility for safeguarding CRA information and assets under their control whether working inside or outside of the workplace.*

*7.8.3 Report any suspected security breaches or violations to the manager associated to his directive or related corporate policy instruments.*

*7.8.4 Attend the appropriate security of information awareness training.*

...

[The 2015 CRA storage directive:]

...

## **2. Application**

*These standards apply to employees of the Canada Revenue Agency (CRA) and to any other individuals required to comply with CRA policy by virtue of a contract or a memorandum of understanding (MOU).*

...

## **4. Introduction**

*These standards describe CRA's mandatory requirements to transmit and transport protected and classified information and assets. All electronic communication of protected and/or classified information must adhere to the CRA approved safeguards to ensure the confidentiality, integrity and availability of the information being transmitted and transported.*

## **5. Transmittal of protected and classified information and assets**

---

***Employees must ensure that protected and classified information and assets are transmitted in accordance with the following security standards.***

...

***5.2 Wireless technology, including cell phones***

...

- ***5.2.2 Protected or classified information must not be communicated by voice over wireless or any other radio frequency technology unless CRA approved end-to-end encryption software or encryption devices are used....***
- ***5.2.3 Protected A or Protected B data must not be transmitted over wireless or any other radio frequency technology unless CRA approved end-to-end encryption software or encryption devices are used....***
- ***5.2.4 Protected C or classified information must never be conducted over wireless or any other radio frequency technology.***

...

***6. Transport of protected and classified information and assets***

***Employees must ensure that protected and classified information and assets are transported in accordance with the following security standards.***

- ***6.1 All electronic copies of protected and classified information must be transported on CRA approved encrypted electronic media....***

...

- ***6.8 Employees must exercise good judgment and ensure that every reasonable effort has been made to safeguard protected and classified information and assets at all times. When in doubt, consult your immediate supervisor for guidance.***

...

[Emphasis in the original]

**C. Outside activities**

[20] On October 10, 2014, the grievor submitted a confidential disclosure form to management reporting outside activities as follows:

- she was a volunteer chairperson and director of an independent parochial high school in Winnipeg (school board chair);
- she was a paid part-time employee of her church; and
- she was preparing tax returns for family and friends (but not for compensation).

[21] In October and November of 2014, the grievor and management corresponded about the nature of the grievor's outside activities, and on October 28, 2014, Ms. Sukich wrote to the grievor ("the Oct. 28 letter"), stating as follows:

...

*I have reviewed your Confidential Disclosure Form which you submitted pursuant to the Canada Revenue Agency's (CRA) Conflict of Interest Policy and the Directive on Conflict of Interest and Post-employment. In the report you disclosed that you are chair person [sic] and director for the school board for [name deleted], have a part-time job at the [name deleted] Church as the coordinator of the Catechism program for children, and prepare tax returns for your family and 2 very close friends of the family.*

...

*Your disclosure has been reviewed in conjunction with the Conflict of Interest Policy, the Directive on Conflict of Interest and Post-employment, as well as your present duties as a SP05, Senior Assessment, Accounts, Benefits Processing and Resource Officer. On the basis of this review, there does not appear to be a conflict of interest between the disclosed outside activities, outside employment, and your present duties with the Agency.*

*However, I am of the opinion that your involvement in the preparation or filing of any CRA-related documents, including signing the audited financial statement for the [name deleted] school board and preparing your mother's return which includes self-employed business income, would constitute a real, apparent, or perceived conflict of interest. Any financial statements you have a part in preparing for the school board should be used only for internal purposes and not used in the preparation of returns or any other filing requirement with the CRA.*

*Accordingly, I cannot approve your signing of the audited financial statements for the [name deleted] school board or the preparing and filing of your mother's income tax return.*

*Please confirm to me in writing November 04, 2014 that:*

*1) you will not sign any documents, including audited financial statements, used in the preparation and filing of CRA-related documents on behalf of the school board for [name deleted]; and*

*2) you will not prepare your mother's income tax return if it includes income related to a business, including self-employment income, or any other income tax returns that report business income or expenses,*

*while you are employed by the Canada Revenue Agency. If you are unwilling to provide me with this confirmation you must provide your resignation from the CRA.*

*I would like to take this opportunity to impress upon you the seriousness of this situation. A great deal of trust is placed on you in the performance of your duties; you are expected to adhere to the values and principles in the CRA Code of Ethics and its underlying policies. If you contravene the CRA's Code of Ethics and Conduct, the Values and Ethics Code for the Public Sector, or any of their underlying laws, policies or policy instruments, you could be subject to disciplinary action up to, and including, termination of employment.*

*Furthermore, it is incumbent upon you to manage your affairs in a way that can withstand the closest public scrutiny. You must perform your official duties and arrange your private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of the government and the agency are conserved and enhanced. Any official information that you have obtained through your duties and responsibilities at the CRA must be kept strictly confidential. You are also reminded that at no time are you to portray yourself as a representative of the CRA or provide any information that a person would not normally receive from a CRA office.*

*In addition, your outside employment and outside activities must not impair your availability, capacity, or efficiency for performing your official duties. Any activities related to your outside employment and outside activities must not transpire on agency premises, involve the use of agency equipment or resources, or occur during your scheduled hours of work.*

...

[22] On October 29, 2014, the grievor emailed Ms. Sukich and confirmed to her that she would not sign any documents, including financial statements, used in the preparation and filing of CRA-related documents on behalf of the school board and that she would not prepare her mother's income tax return if it included income related to a business, including self-employment income. On November 6, 2014, the grievor confirmed in writing to Ms. Sukich that in her capacity as the chair of the school board at issue, she would not sign any documents that would be filed with or relate to the CRA.

[23] Entered into evidence was a copy of an investigation report of the Internal Affairs and Fraud Control Division, designated HAN 1922-13/15168, issued after an investigation carried out by Ms. Zinck with respect to alleged misconduct by the grievor ("the investigation report"). It was submitted by Ms. Zinck to her superiors on July 8, 2016. The alleged misconduct that the grievor had engaged in was that she had conducted her private business during work hours and had used the CRA's networks

and resources for non-CRA business. The investigation report concluded that the grievor had done the following:

- made an unauthorized access to the CRA account of an acquaintance of hers;
- conducted her outside activities on CRA premises and used CRA equipment or resources during her scheduled hours of work, including the CRA's electronic networks;
- failed to protect and safeguard the CRA's protected and confidential information when she sent protected information to her personal email address;
- fraudulently claimed that she was taking medical or dental appointment leave;
- claimed 2.0 hours of family related leave (FRL) when in fact, the amount of leave should have been 1.25 hours; and
- fraudulently claimed FRL and leave for medical or dental appointments when she was going to attend the high school board meetings.

[24] The evidence disclosed that as part of the investigation, Ms. Zinck interviewed the grievor on May 20, 2016 ("the May 20 interview"). In addition to the investigation report being entered into evidence, Ms. Zinck's handwritten notes of the grievor's interview were also identified by Ms. Zinck and entered into evidence ("the May 20 notes"). The evidence disclosed that the notes were reviewed by the grievor at the time of the interview as confirmed by her initials that were identified as appearing at the bottom of each page of the notes. The initialling of the notes certified that the grievor agreed that at the time these notes were made and initialled, they accurately reflected what was said by her.

[25] The evidence disclosed that the grievor acknowledged her receipt of the reminder of obligations under both the 2013 code and the 2015 code, as well as the COI policy. It further disclosed that in 2015 and 2016, she completed the affirmation that she had read and understood the COI policy and advised that her disclosure form was valid. In addition, the grievor's training history with the CRA was entered into evidence, which disclosed that she received training with respect to whatever CRA codes of conduct were in effect in 2001, 2010, and 2013. The evidence further disclosed that the grievor was familiar with and understood whichever CRA code of conduct was in effect at any given time.

[26] The grievor testified that her child attended a parochial or diocesan high school operated by the Catholic diocese of St. Boniface. As the parent of an enrolled student, the grievor said that she was required to participate (or assist) in some way with the operation and function of the school. The grievor chose to do so by becoming a

member of the school board for the school. For the first three years of her child's attendance, she was merely a board member; however, in or about 2014, she was elected its chairperson.

[27] The evidence of the grievor was that there were school-board meetings once a month, and it also appeared that at times, she would be required to attend at the school to deal with administrative matters due to her position as the chairperson. The details and reasons for these other meetings are not germane to the issues that I have to decide. The grievor also testified that as the board's chairperson, she would receive school-board-related emails in her CRA email account and would also send emails from her CRA email account with respect to school-board issues.

[28] The grievor was also employed in a paid part-time position at her church, running a catechism program.

#### **D. The internal investigation and allegations of misconduct**

##### **1. The grievor's unauthorized access to the CRA account of an acquaintance**

[29] Ms. Zinck testified and the investigation report set out that the grievor stated during her interview that she did not remember accessing anyone's account that she should not have accessed. However, during the interview, she was presented with evidence that she had done a particular type of search for "individual A", an acquaintance of hers. The type of search that the grievor had conducted provides information about taxpayers, including but not limited to their marital statuses, social insurance numbers, current and previous mailing addresses, telephone numbers, spouses' names and social insurance numbers, and tax benefits.

[30] As noted in the ASF, the grievor conceded that on January 21, 2014, she had accessed the CRA account of individual A to obtain that person's contact information, which was in contravention of the monitoring directive and the 2013 code, as individual A was not part of the grievor's assigned workload and was listed as a friend on her Facebook account.

[31] On May 30, 2016, the grievor emailed Ms. Zinck and provided her with a note ("the May 30 note") in which she addressed a number of different issues that arose as part of the May 20 interview. With respect to this issue, the grievor stated as follows:

---

...



*With regards to the unauthorized access. As I stated to you, I have no recollection of accessing the account of [individual A] but I know you have evidence that I did so will not dispute it. I know it was wrong. In searching my desk for some details to write this information, I did come across a post it note with [individual A]'s phone number. This leads me to believe that I may have accessed the account to get the phone number. Regardless of my action or memory, I know that it was the wrong thing to do and what makes it worse is that I didn't need to do that since I had [individual A]'s contact information at home... The only defence I have is that I did not use my access to gain any personal tax information and did not share the information with anyone.*

...

[32] In her evidence before me, the grievor stated that she had accessed individual A's account in 2010, when she should not have, and that she brought it to her team leader's attention at that time. The individual had had a business in the Winnipeg area and had subsequently moved to British Columbia.

[33] She said that her intent in 2014 was to contact this individual on behalf of the school board to see if that person would be amenable to an advertisement for the school being placed on the business property that the individual still owned in the Winnipeg area. She stated that she did not know why she would have accessed the account in January of 2014, since she had the contact information at her home.

[34] In cross-examination, the grievor was asked how she could explain the details of how she used individual A's phone number but could not explain why she accessed the account to get it, since she already had the number. Her answer was that she had been scared and overwhelmed and did not recall accessing it. She then said this: "once I was presented with the evidence I did recall." This, however, is not what the May 30 note stated, and when counsel for the employer put this contradiction to her, the grievor then said this: "all I can say is I was stressed and scared and not in the frame of mind and not up front." Counsel for the employer then suggested to the grievor that in fact she had recalled and that she had not wanted to tell Ms. Zinck that she had recalled, to which the grievor said, "it could be yes". Counsel then asked "Is it, it could be yes; or, is it yes", to which the grievor replied that it was "Yes."

**2. The grievor conducted outside activities on CRA premises and used CRA equipment and resources for her outside activities during her CRA work hours**

[35] During the course of the May 20 interview, the grievor was asked a number of questions with respect to her outside activities and her carrying out of these activities during CRA work hours and the use of CRA equipment to do so.

[36] As noted in the ASF, the grievor conceded that she conducted her outside volunteer work for the school board and some of her part-time work activities for the church on CRA premises using the CRA's equipment and resources, including the electronic network. In doing so, the grievor admitted that she would have contravened the 2013 code, the 2015 code, and the monitoring directive.

[37] The ASF stated that between January 2, 2015, and January 11, 2016, 2990 emails were exchanged between the grievor's CRA email address and her external email addresses and that 864 of them pertained to her outside activities at the school board and the church. The grievor used 2 different email signatures when emailing school-board members that included one that associated to her position at the CRA. There were 50 documents on the grievor's CRA network drive related to her outside activities.

[38] Ms. Zinck identified a list of emails and documents that she compiled as part of her investigation and that were found on the CRA's network. Most of the documents were emails. The documents were identified by a date and time, subject line, and size, in kilobytes. While most appeared to be emails, they were not further identified as having been either sent or received. Ms. Zinck further broke down the emails by identifying the email addresses of those who they were either sent to or received from and the number sent to or received from. She further broke them down by identifying those in which the grievor's CRA email signature (title) was used. Finally, Ms. Zinck also provided a sample of the emails showing that the grievor had sent emails using her CRA email address, some of which contained her CRA title. The emails were sent and received at different times during the day.

[39] The grievor admitted to printing a document on the CRA's printer related to her outside activities. She testified that she did not recall printing it and that she thought that it might have been printed by mistake, as she had had no reason to print it.

[40] In her evidence before me, the grievor admitted that she would have received emails related to her outside activities and would have sent emails using the CRA's electronic network. The grievor testified that she often would work longer hours to compensate for the time she used during a workday when she was engaged in doing tasks related to her outside activities, which she carried out during lunch and break times, among other times. She stated that she understood that if she exceeded her allotted lunch and break times, she would make up the time by working late.

[41] The grievor testified that other employees conducted non-CRA-related business on the CRA's premises, which included the sale of Avon products, Pampered Chef services, and chocolates.

[42] In her examination-in-chief, the grievor was taken to the Oct. 28 letter and asked what her understanding was of what Ms. Sukich had said in it with respect to her outside activities. She said that she thought that it meant that she could not do it during work time, meaning that she could do it on break time. She said that after it was explained to her by Ms. Zinck, she said that she thought it was clearer. In cross-examination, the grievor was brought back to the Oct. 28 letter and had read aloud to her the following portion of the letter: "Any activities related to your outside employment and outside activities must not transpire on agency premises, involve the use of agency equipment or resources, or occur during your scheduled hours of work."

[43] The grievor was then asked what portion of this paragraph was confusing or unclear. The grievor answered as follows: "It is clear. It is clearer now. At the time I felt I was following the letter. In my mind I felt it was okay." It was then put to the grievor that it was not that the Oct. 28 letter was unclear but that other things she was thinking justified her actions, to which she admitted that the letter was clear.

[44] During the May 20 interview, Ms. Zinck asked the grievor what her understanding was of the Oct. 28 letter. The response of the grievor as recorded in the May 20 notes was as follows: "She understood the letter, specifically the financial part. She tried to use her break time, lunch & has taken vacation to off set [*sic*] any time above break/lunch."

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**3. The grievor failed to safeguard protected and confidential CRA information by sending protected and confidential CRA information to her personal email address**

[45] During the course of the May 20 interview, Ms. Zinck showed the grievor an email dated November 10, 2015, which had attached a scanned CRA directive from 1987. The email went from the grievor's CRA email address to her personal email address. The May 20 notes and the investigation report state that the grievor told Ms. Zinck that she had sent it to her home by mistake. She said that she deleted the email from her personal account. She also said that she meant to tell Ms. Chanas about this but that she forgot. She said that she understood that she was not to send any protected information to her personal email account. In the ASF, the grievor confirms that what is set out in the investigation report on the page that contains these statements about this issue is accurate.

**4. The grievor's fraudulent use of leave**

[46] As part of the investigation, Ms. Zinck reviewed the grievor's time sheets, calendar entries, emails, and leave records. She testified that her review disclosed some discrepancies with leave taken and absences from work and that it appeared to her that the grievor was improperly using leave that was supposed to be used for medical or dental appointments or FRL to attend to school-board matters. The dates that were identified by Ms. Zinck as issues and the reasons she believed there might be issues are as follows:

1. September 21, 2015: There was an email identifying a school-board meeting on that date, and previous minutes of school-board meetings disclosed that the meetings started at 16:45. As such, the grievor would have had to leave work to get to the meeting. There was leave recorded for 1 hour for medical or dental appointments on this day.
2. October 14, 2015: There was an email sent by the grievor to Ms. Chanas that she had to take her child to a medical appointment and that she would be leaving at 15:45. A calendar entry showed a school-board meeting on that date, and an email reminder about the meeting disclosed that the meeting was to start at 16:45. There were 2 hours of FRL leave recorded on this day.
3. October 15, 2015: There was an email disclosing an auditors' meeting at 14:00 (not related to her CRA work). There was leave recorded for 3.5 hours for medical or dental appointments.
4. November 12, 2015: There was an email sent by the grievor to Ms. Chanas, stating that she had to take her child to a dental appointment and that she would be leaving at 13:00. The grievor's calendar disclosed meetings not

related to work, one at 14:00, and one at 16:30. There was leave recorded for 3.5 hours for medical or dental appointments on this day.

5. January 13, 2016: There was an email sent by the grievor to Ms. Chanas, stating that she had a dental appointment at 16:00 that day and that she would be leaving at 15:30. She apologized for the short notice. Her calendar listed a school-board meeting for 16:45 that day, and an email she had sent indicated that she would be leaving work at 15:30 to attend the school by 16:00, to sign a form. There was also an email the grievor sent 2 days earlier confirming her attendance at the meeting. There was leave recorded for 1.5 hours for medical or dental appointments on this day.

[47] In the May 20 interview, the grievor was asked if she ever took paid leave for medical or dental appointments that was not used for that purpose. The May 20 notes indicate that the grievor said the following: “She doesn’t think so. Sometimes she would have an appt., but would stop at the school to sign a cheque but she wouldn’t use it for that purpose.”

[48] In her May 20 interview, the grievor was asked if she ever took FRL that was not used for that purpose. The May 20 notes indicate that the grievor said the following: “No, usually it’s for her daughter’s appt, dad or mom.” She was also asked if she ever took sick leave with pay that was not for the purpose intended, to which she said, “No.”

[49] Ms. Zinck then asked about certain specific leave that the grievor had taken, to which the May 20 notes reflect the grievor stating as follows:

- September 21, 2015: She had an appointment and went to the school-board meeting afterward. She had to drop off a medical form with the doctor.
- October 14, 2015: She dropped off her daughter at a medical appointment and went to the school-board meeting.
- October 15, 2015: The auditors’ meeting was cancelled. She had a doctor’s appointment. It was a conflict, and she asked for the meeting to be rescheduled.
- November 12, 2015: Her daughter had problems with her tooth, and the grievor took her to a dentist appointment.
- January 13, 2016: She had a dentist appointment. She stopped at the school to sign a form. The school was about 10 or 15 minutes away. She then went to her dentist appointment. It was only a 15-minute appointment, and she was a late arrival at the school-board meeting.

[50] With respect to the issues of leave raised at the May 20 interview, the May 30 note (from the grievor) stated the following:

...

*You asked me to support my medical leave for some dates. In particular the following dates:*

*Sept 21, 2015 for 1 hr      Oct 14, 2015 for 2 hrs    Oct 15, 2015 3.5 hrs;  
Nov 12, 2015 for 3.5 hrs    Jan 13, 2016 for 1.5 hrs.*

*I have obtained medical history of all the places I could think of and also reviewed my home calendar for these dates and can now confirm the following details for you.*

*Sept 21, 2015 I met at the school for a short time then picked up my mother from her medical appointment*

*Oct 14, 2015 I met at the school to discuss aid for [her child] (Provincial access-ability program) for after high school. During this meeting we may have discussed some school/board business. My sister changed her work date so she could attend an appointment with my mother.*

*Oct 15, 2015 I met at the school with the Auditors and finance executive for about 1.5 hours after that I took my mother to her medical appointment.*

***November 12, 2015** I was to take my mother to a medical appointment, however, my sister called to advise that she would attend to my mother's needs and I used the extra time to attended a meeting at the school followed by a meeting in the early evening with the Archbishop*

*January 13, 2016 I picked up my mother from her medical appointment and we were to meet at the nursing home to assess my father's care needs, however on the way they contacted me to advise that the meeting was cancelled as not all staff was able to attend. The meeting was reset for early February.*

*I know that I used time for **personal appointments and for my daughter** for the above. Why I said that I don't know. I guess I felt that I was taking too much time for my mother, who does not drive and my sister and I try to time share her appointments. Many times my sister would take our mother to the appointments but sometimes she would ask me to step in with either the pick up or drop off for these appointments. I do have a note from my mother's doctor confirming her visits on the dates you requested (please let me know if you would like a copy of this letter). I know that I should have been honest with the appointments and the fact that I added time for school business does not reflect positively toward my actions. However I didn't feel that I was "stealing" time since I had put in more time then I was taking (as indicated above). After our meeting, I had a chance to reflect how my actions (as justified as they may have seemed at the time) could be perceived as unauthorized time. I am now taking steps to ensure that I only work the 7.5 hours required and have not taken part in any school business during work time....*

...

[Sic throughout]

[Emphasis in the original]

[51] On May 31, 2016, the grievor emailed Ms. Zinck a copy of the letter she referred to in her May 30 note from her mother's physician. Entered into evidence was a copy of a letter dated May 26, 2016, from the grievor's mother's doctor ("the May 26 Dr.'s letter") that appears to be signed by him. This letter states that the grievor's mother "... was seen for medical appointments of [sic] the following dates: September 21st, 2015, October 14th and 15th, 2015, November 12th, 2015 and January 13th, 2016."

[52] On June 28, 2016, Ms. Zinck sent a fax to the grievor's mother's doctor, asking him to confirm the information in the May 26 Dr.'s letter and that the grievor's mother had attended appointments on the dates set out in it.

[53] Entered into evidence was a document identified as "INTERNAL AFFAIRS DIVISION RECORD OF TELEPHONE CONVERSATION" dated July 5, 2016, which Ms. Zinck identified as her notes of a telephone conversation she had with the grievor's mother's doctor at 13:41 that day. Ms. Zinck testified and her record of the telephone conversation stated that the grievor's mother had not been seen by the doctor on the dates identified in the May 26 Dr.'s letter but that she had been seen on different dates. Ms. Zinck further testified and it is recorded in the July 5, 2016, record of the telephone conversation that the doctor told her that the grievor had presented him with the dates that appear in the May 26 Dr.'s letter and that because he trusted that the dates she provided to him were accurate, he signed the May 26 Dr.'s letter.

[54] Before me, in her examination-in-chief, the grievor was asked to what degree the explanations she gave to Ms. Zinck were truthful. She said that they were not. When she was asked why she told Ms. Zinck that she never misused leave, she answered by stating that she had been scared and had tried to protect her job. She said that she had been completely overwhelmed and stressed out. She admitted that the explanations were untruthful.

[55] When she was asked about what she did (about the leave taken) after the May 20 interview, the grievor said that she recalled going home and speaking to her husband and her sister. She said that a few days later, her sister said to her that perhaps the dates she talked about to the investigator coincided with the dates on which her mother had attended medical appointments. When asked to what degree she was being truthful when she provided the May 26 Dr.'s letter, she stated that she was not and

continued by stating that she thought it would be a quick solution to saving her job. She said that she suspected that it was wrong. When she was asked about her state of mind, she said as follows: “My stress level was over the top; I don’t think I was functioning; I was in a state of shock. I was told to provide the truth; I didn’t know how to provide the truth. I was in complete turmoil.”

[56] The grievor stated that she felt horrible about deceiving Ms. Chanas and that if she were given the opportunity, she would apologize to her. She said that she had a large amount of vacation leave that she could have taken. When she was asked why she did not take vacation leave, she did not answer why but instead stated that she had been stupid not to. When she was asked about any other considerations involved, she stated that she had not been taking her medication.

[57] When she was cross-examined on this subject, the grievor stated that it was her sister who obtained the May 26 Dr.’s letter but that she had provided her sister with the dates. She admitted that when she gave her sister the dates to provide to the doctor, she knew that she had not attended the doctor’s office on those dates with her mother.

[58] As for the dates that the grievor provided with respect to attending appointments with her daughter, in cross-examination, it was put to the grievor that she did not provide anything to verify those appointments, to which she agreed. When she was asked if on October 24, 2015, a dental appointment took place, she said that she did not verify any dates. Counsel for the employer asked her again if she went to the dentist with her daughter on that date, to which she said this: “I don’t believe so.” When she was asked if she provided any proof to Ms. Zinck about the November 12, 2015, alleged appointment for her daughter, the grievor said that she did not. When it was put to her that she did not attend an appointment with her daughter on that date, she acknowledged that there was no appointment.

#### **E. Other**

[59] The grievor produced into evidence a document identified by her as her prescription history, which she obtained from her pharmacy. The employer objected to this document as it was not a document prepared by her, and it could not be established to be a business record. I allowed the document to be identified and



entered into evidence but reserved on the issue of the weight that I would attach to it and the evidence related to it.

[60] The prescription history document sets out a list of different medications that had been filled by a particular local pharmacy. The earliest date shown was November 29, 2013, and the last date recorded was August 4, 2016. The list sets out the medication name, the name of the doctor who prescribed it, a dispensed quantity, a column showing the remaining quantity allowed, a first date on which each specific drug prescription was filled, and a heading entitled, "Fill Date Status". However there are at times several entries for the same particular type of drug.

[61] There are 4 listed doctors who appear on the prescription history document as prescribing medication for the grievor. None of these doctors testified. There are 12 different medications listed. No pharmacist testified.

[62] The grievor identified one of the drugs as an antidepressant. She said that her recollection of taking it was not consistent and that she would take herself off it. When asked what her symptoms were, she said that she would feel herself going into a depression and that during a deep depression, she would not take care of herself, which included not taking medication. This particular medication that the grievor identified was listed 12 times, was prescribed by the same doctor, and had different first-fill dates and fill-date status entries.

[63] The grievor testified that if she could speak with Meses. Chanas and Small, she would apologize, as she was extremely sorry for her actions. She stated that she had made wrong choices and that it was out of character. She said that she acknowledged that she cannot do it all and that she is not flawless. She said that she would do everything possible to not do it again. She said that these things happened during a dark period of her life.

[64] The grievor provided evidence of her employment situation subsequent to her termination of employment, including what steps she took to obtain employment, when and where she was employed, and the income she received from both her employment and pension.

[65] The grievor testified that at the time of the events, she was experiencing some difficult personal issues, one of which was that her marriage was breaking down, and others involved the health issues of her parents.

### III. Summary of the arguments

#### A. For the employer

[66] The employer referred me to *Apenteng v. Deputy Head (Canada Border Services Agency)*, 2017 PSLREB 58, *Bahniuk v. Canada Revenue Agency*, 2012 PSLRB 107, *Basra v. Canada (Attorney General)*, 2010 FCA 24, *Basra v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 28, *Bassett v. Treasury Board (Correctional Service of Canada)*, 2017 PSLREB 60, *Canada (Attorney General) v. Bétournay*, 2018 FCA 230, *Canada (Attorney General) v. Féthière*, 2017 FCA 66, *Canada (Attorney General) v. Grant*, 2017 FCA 10, *Canada (Attorney General) v. Heyser*, 2017 FCA 113, *Brazeau v. Deputy Head (Department of Public Works and Government Services)*, 2008 PSLRB 62, *Campbell v. Canada Revenue Agency*, 2016 PSLREB 66, *Chatfield v. Deputy Head (Correctional Service Canada)*, 2017 PSLREB 2, *D’Cunha v. Deputy Head (Correctional Service of Canada)*, 2019 FPSLREB 78, *Brown and Beatty, Canadian Labour Arbitration*, 5th edition, Chapter 2, “Duty to Mitigate”, at 2:1512, *Dodd v. Canada Revenue Agency*, 2015 PSLREB 8, *Finlay v. Deputy Head (Correctional Service of Canada)*, 2013 PSLRB 59, *Gannon v. Treasury Board (National Defence)*, 2002 PSSRB 32 (reversed in 2004 FCA 417), *Girard v. Canada Revenue Agency*, 2019 FPSLREB 37, *Gravelle v. Deputy Head (Department of Justice)*, 2014 PSLRB 61, *Iammarrone v. Canada Revenue Agency*, 2016 PSLREB 20, *Legere v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 65, *McKenzie v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 26, *McNulty v. Canada Revenue Agency*, 2016 PSLREB 105, *Red Deer College v. Michaels*, [1976] 2 S.C.R. 324, *Morrow v. Treasury Board (Correctional Service of Canada)*, 2006 PSLRB 43, *Pouliot v. Deputy Head (Canadian Forces Grievance Board)*, 2014 PSLRB 94, *Shaver v. Deputy Head (Department of Human Resources and Skills Development)*, 2011 PSLRB 43, *Stokaluk v. Deputy Head (Canada Border Services Agency)*, 2015 PSLREB 24, *Tobin v. Canada (Attorney General)*, 2009 FCA 254, and *University Health Network v. Ontario Nurses’ Association* (2012), 219 L.A.C. (4th) 237.

[67] The employer submitted that the grievance should be dismissed.

[68] In the alternative, the employer submitted that if I reinstate the grievor, it should be without any damages with respect to the difference in salary between the date of her termination of employment and the reinstatement, as she did not mitigate her damages.

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

[69] The grievor also referred me to *Heyser*, as well as to *McGoldrick v. Treasury Board (Revenue Canada -- Customs and Excise)*, P.S.S.R.B. File No. 166-02-25796 (19941003), [1994] C.P.S.S.R.B. No. 121 (QL), *Douglas v. Canada (Treasury Board)*, 2004 PSSRB 60, *Peel (Regional Municipality) v CUPE, Local 966*, 2016 CarswellOnt 20834, *UNITE HERE, Local 75 v. Fairmont Royal York Hotel*, 2012 CarswellOnt 4830, *Hughes v. Parks Canada Agency*, 2015 PSLREB 75, *Roberts v. Deputy Head (Correctional Service of Canada)*, 2007 PSLRB 28, and *IUOE, Local 904 and Atlantic Minerals Ltd. (LaSaga)*, Re 2018 CarswellNfld 96.

[70] As remedy, the grievor requested that the grievance be allowed, that the termination of employment be set aside and replaced with a six-month suspension without pay, and that she be reimbursed lost salary for the difference between the salary she would have earned in her position with the employer and the salary she earned from employment after her termination.

[71] The grievor also submitted that should I have concerns about reinstating her, she is prepared to consent to a last-chance agreement with the employer.

#### **IV. Reasons**

[72] Adjudication hearings with respect to discipline under s. 209(1)(b) of the *Act* are hearings *de novo*, and the burden of proof is on the employer.

[73] The usual basis for adjudicating discipline issues is by considering the following three questions (see *Wm. Scott & Company Ltd. v. Canada Food and Allied Workers Union, Local P-162*, [1977] 1 Can. LRBR 1): Was there misconduct by the grievor? If so, was the discipline imposed by the employer excessive in the circumstances? If it was excessive, what alternate penalty is just and equitable in the circumstances?

[74] For the reasons that follow, the grievance is dismissed.

**1. Was there misconduct by the grievor?**

[75] In the letter of termination, the employer determined that as a result of a disciplinary investigation, certain actions of the grievor breached policies and directives of the CRA, more specifically as follows.

**i. The unauthorized access of the CRA account of an acquaintance**

[76] The investigation disclosed that on January 21, 2014, the grievor accessed the CRA account of individual A, who was an acquaintance of hers. She admitted in the ASF that she had done this to obtain contact information. She later stated that she could not understand why she would have done this, since she had this information at home. As she should not have done this and as the access was not for legitimate CRA business, she was in breach of both the 2013 CRA code, which was in existence at the time of the incident, and the 2015 CRA code, which was in effect at the time of the discovery of the incident, and the monitoring directive. In addition, the accessing of taxpayer information for the purpose she intended to use it, which was related to her outside activity as a member of the school board, would be considered a conflict of interest, an apparent conflict of interest, or a potential conflict of interest under the COI policy.

**ii. The conduct of outside activities on CRA premises and the use of CRA equipment and resources for outside activities during CRA work hours**

[77] The grievor declared her outside activities as required and received the green light from the Winnipeg Tax Centre's director, Ms. Sukich, to be able to be involved in those activities, albeit with certain conditions that were set out in the Oct. 28 letter. The conditions attached to that approval that are relevant to the issues in this grievance were specifically and clearly spelled out in that letter as follows:

...

*... it is incumbent upon you to manage your affairs in a way that can withstand the closest public scrutiny. You must perform your official duties and arrange your private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of the government and the agency are conserved and enhanced... You are also reminded that at no time are you to portray yourself as a representative of the CRA or provide any information that a person would not normally receive from a CRA office.*

*In addition, your outside employment and outside activities must not impair your availability, capacity, or efficiency for performing*

*your official duties. Any activities related to your outside employment and outside activities must not transpire on agency premises, involve the use of agency equipment or resources, or occur during your scheduled hours of work.*

...

[78] The evidence from the investigation and the evidence before me clearly disclosed that the grievor failed to abide by the conditions she agreed to with respect to the conduct of her outside activities. It was not the fact that she was on the school board, was its chairperson, or carried out related duties. It was the fact that she carried out these duties on CRA premises and using CRA resources. In addition, some of the emails sent by the grievor contained her CRA signature, and on one occasion, she printed a non-work-related document on the CRA's printer.

[79] However, I am not convinced that the activities she carried out were necessarily done on work time. The evidence disclosed that emails were sent and received during the workday; however, the grievor did have a lunch break and two other breaks during the day, which was not work time. The grievor also indicated that at times, she stayed late if her outside activities might have impeded on time during the workday. The grievor's performance appraisals for the two fiscal years before the termination of her employment disclosed that her performance was at the highest level. Her immediate supervisor, Ms. Chanas, stated that she never had any difficulties with the grievor's work performance.

[80] By conducting her outside activities on CRA premises and with its resources, the grievor was in violation of the Oct. 28 letter that cleared her to carry out these activities. This constituted a breach of the COI policy, the 2015 CRA code, and the 2015 CRA storage directive.

**iii. The failure to safeguard protected and confidential CRA information by sending protected and confidential CRA information to her personal email account**

[81] The investigation disclosed that on November 10, 2015, the grievor sent to her home email account a protected document. In the ASF, the grievor admitted this had occurred, although she maintained before me that it must have been inadvertent. This action constituted a breach of both the 2013 and 2015 CRA storage directives.

**iv. The grievor's fraudulent use of leave**

[82] It is clear and obvious based on the evidence presented that the grievor had breached the CRA's *Internal Fraud Control Policy* by submitting for and receiving leave either for medical or dental appointments or FRL on September 21, October 14 and 15, and November 12, 2015, and on January 13, 2016. The evidence disclosed that on those occasions, she had meetings or business related to her outside activity as the school board's chairperson.

[83] The documentary evidence that existed at the time the leave was requested and granted disclosed that during the same time frame as the leave was supposed to be used for either the grievor to attend a medical or dental appointment or to bring her child to one, she was scheduled to be attending a school-board meeting or other meeting related to her work as the school-board chairperson, as follows:

- On September 21, 2015, she requested and received an hour of leave for medical or dental appointments, and she had a school-board meeting scheduled for 16:45 that day. There is no evidence of any medical or dental appointment on that day.
- On October 14, 2015, she requested and received 2 hours of FRL, as she had told her supervisor that she had to take her daughter to an appointment and that she would be leaving at 15:45. There was a school-board meeting scheduled for 16:45 that day.
- On October 15, 2015, she requested and received 3.5 hours of leave for medical or dental appointments, yet the documents maintained on the CRA's electronic network disclosed that she had a meeting relating to her outside activities at 14:00 that day.
- On November 12, 2015, she requested and received 3.5 hours of leave to take her child to a dental appointment, yet the documents maintained on the CRA's electronic network disclosed that she had meetings not related to the CRA, and not medical or dental appointments, at 14:00 and 16:30.
- On January 13, 2016, she requested and received 1.5 hours of leave for a dental appointment, which she disclosed to Ms. Chanas was at 16:00 and would require her to leave at 15:30. Yet, the documents on the CRA's electronic network disclosed that she had a school-board meeting that started at 16:45, and there were emails with respect to that meeting stating that she would be leaving work at 15:30 such that she could arrive at the school by 16:00, to sign a form. In addition, there was an email from her 2 days prior confirming her attendance at the school-board meeting.

[84] The grievor's use of either of these types of leave (medical or dental appointments or FRL) for purposes related to her outside activities was further exacerbated by her covering up and misrepresenting her use of the leave during the investigation. Her first responses to the investigator, when she was asked if she ever misused either type of leave, was that she did not. After the interview, on May 31,

2016, she forwarded the investigator a note, the May 30 note, in which she told the investigator as follows: she "... obtained medical history of all the places I could think of and also reviewed my home calendar for these dates ..." in question. She went on to say that on the dates at issue, September 21, October 14 and 15, and November 12, 2015, and January 13, 2016, she either attended medical appointments with her mother, or on November 12, 2015, she was supposed to attend one with her mother but her sister took this on, and she used the time to attend a meeting at the school.

[85] This information contained in the May 30 note was in direct contrast to much of the evidence that Ms. Zinck found on the grievor's CRA work computer. The differences are as follows.

#### **September 21, 2015**

[86] The documentation found by Ms. Zinck indicated that the grievor requested and received leave for medical or dental appointments and that there was a school-board meeting that would have started at 16:45. The May 30 note states that she met with the school board for a short time and then went to pick up her mother from her medical appointment. Assuming that the school-board meeting ran for only 15 or 30 minutes, this would have brought the time to 17:00 or 17:15. The grievor would have had to then travel to pick up her mother from the doctor after this. This certainly does not fall under leave for medical or dental appointments or even FRL. Her mother's appointment was not mentioned anywhere before the May 30 note.

#### **October 14, 2015**

[87] The documentation found by Ms. Zinck indicated that the grievor requested and received two hours of FRL to take her daughter to a dental appointment, and the documentation found indicated a school-board meeting that day at 16:45. The May 30 note states that she met with the school to discuss aid for her daughter for after high school and then perhaps she discussed some school-board business, and she states that her sister changed her work schedule to pick up her mother. Her mother's appointment was not mentioned anywhere previous to the May 30 note. There is no mention of the daughter's dental appointment in the May 30 note.

#### **October 15, 2015**

[88] The documentation found by Ms. Zinck indicated that the grievor requested and received 3.5 hours of leave for medical or dental appointments but also that the grievor had scheduled meetings outside the office at 14:00 that day. The May 30 note states that she met with the school auditors for an hour-and-a-half and then took her mother to her medical appointment. There was no indication before the May 30 note that the grievor's mother had a medical appointment that day.

**November 12, 2015**

[89] The documentation found by Ms. Zinck indicated that the grievor requested and received 3.5 hours of leave for medical or dental appointments but also that the grievor had scheduled meetings outside the office at 14:00 and 16:45 that day. There was no mention of the grievor's mother requiring assistance for a medical appointment. The May 30 note states that her sister was able to attend to her mother's needs, so she used the time to attend at the school for a meeting and a later meeting in the evening with the Archbishop.

**January 13, 2016**

[90] The documentation found by Ms. Zinck indicated that the grievor requested and received 1.5 hours of leave for a dental appointment that she told Ms. Chanas was at 16:00, for which she had to leave at 15:00. However, Ms. Zinck also found documents indicating a school-board meeting for 16:45 that day and emails from the grievor indicating that she would be leaving her work at 15:30 so that she could be at the school for 16:00 to sign some documentation before the board meeting. There was no mention of the grievor's mother requiring assistance for a medical appointment. The May 30 note states that she picked up her mother from a medical appointment and was on her way to a nursing-home appointment, which was subsequently cancelled.

[91] In fact, there were no medical appointments for the grievor's mother on the dates in question. This was concocted by the grievor, and according to the grievor, her sister, to fraudulently validate the absences from work on the days in question on which she had fraudulently obtained leave.

[92] The grievor compounded the problem by either providing the doctor's office with the dates in question and asking it to provide a false letter or by co-opting her sister in this deceit by having her contact the doctor's office and provide it with the false information. The doctor's office took the grievor or her sister at her word and



provided the May 26 Dr.'s letter, which the grievor then took, knowing that it was completely false, incorporated with the May 30 note, and provided to the investigator to cover up her earlier lie with respect to the leave she had fraudulently taken on the dates brought to her attention by Ms. Zinck.

[93] This lie came to the fore when, on July 5, 2016, Ms. Zinck contacted the grievor's mother's doctor to verify the information contained in the May 26 Dr.'s letter, which the doctor stated was in fact false. In her evidence in front of me, the grievor admitted that the information provided during the investigation was false.

[94] I am satisfied that the misconduct alleged by the employer of the grievor with respect to her leave is founded and that it constitutes a breach of the CRA's *Internal Fraud Control Policy*, the 2013 CRA code, the 2015 CRA code, and the COI policy. The grievor clearly, on several occasions, fraudulently obtained leave, citing either a medical or dental appointment requirement or FRL, such that she could attend and carry out her outside activities, largely those related to her position as the school-board chair of the diocesan school.

[95] I am satisfied that the grievor further conducted herself in a manner that breached the 2015 CRA code and the CRA's *Internal Fraud Control Policy* by not only lying about her activities to the investigator but also by co-opting both her sister and her mother's doctor, either knowingly in the case of her sister or unwittingly in the case of the doctor, in this fraud.

## **2. Was the discipline excessive in the circumstances?**

[96] As the employer has proved the allegations, I now turn to whether the penalty, termination, was excessive. For the reasons that follow, I am satisfied that is not and decline to set it aside.

[97] The appropriateness of the penalty in discipline matters in the federal public sector was set out at paragraphs 179 and 180 of *Brazeau*, where the Board's predecessor stated as follows:

*179 Brown and Beatty, Canadian Labour Arbitration, 4th ed., discusses the arbitrator's role in assessing the fairness of a particular penalty imposed as follows:*

...

*The purpose of their review is to determine for themselves that a sanction is just and reasonable in all the circumstances - that the penalty "fits the crime" (page 7-129)*

...

*It is now understood that testing the reasonableness of a disciplinary sanction involves a wide-ranging review of a broad set of circumstances concerning the employee, the employer and the incident itself. (page 7-144)*

...

*Consideration is invariably given to the nature of the misconduct, the personal circumstances of the employee, the way in which the employer has managed the situation or a combination of all three. The employment context and the employee's occupational and professional status often play important roles as well.*

*In an effort to give employers and employees a better sense of the analytic framework they employ, arbitrators have provided checklists of the most important factors that typically organize their deliberations. In an early and often-quoted award, one arbitrator summarized in the following terms those factors that, other things being equal, can offset the gravity of the misconduct:*

It has been held, however, that where an arbitration board has the power to mitigate the penalty imposed on the grievor, the board should take into considerations in arriving at its decision the following factors:

1. The previous record of the grievor
2. The long service of the grievor
3. Whether or not the offence was an isolated incident in the employment history of the grievor
4. Provocation
5. Whether the offence was committed on the spur of the moment as a result of a momentary aberration, due to strong emotional impulses, or whether the offence was premeditated.
6. Whether the penalty imposed has created a special economic hardship for the grievor in the light of his particular circumstances
7. Evidence that the company rules of conduct, either unwritten or posted, have not been uniformly enforced, thus constituting a form of discrimination
8. Circumstances negating intent, e.g., likelihood that the grievor misunderstood the nature or intent of an order given to him, and as a result disobeyed it

9. The seriousness of the offence in terms of company policy and company obligations

10. Any other circumstances which the board should properly take into consideration (page7-153)

...

*180 Discussing rehabilitative potential and the corrective approach, Brown and Beatty write as follows:*

*The critical question for arbitrators using a corrective approach is the grievor's capacity to conform to acceptable standards of behaviour in the future. To answer this question requires an assessment of the grievor's ability and willingness to reform and rehabilitate himself or herself so that a satisfactory employment relationship can be re-established. In a word, an arbitrator must decide whether the person is "redeemable". On this view, as one arbitrator pointed out, the checklist of mitigating factors "are but general circumstances of general considerations which bear upon the employee's future prospects for acceptable behaviour, which is the essence of the whole corrective approach to discipline.*

*In assessing whether a viable employment relationship can be re-established, arbitrators put great weight on whether the employee has tendered a sincere apology and/or expressed real remorse. The assumption is that employees who do so recognized the impropriety of their behaviour and are likely to be able to meet the employer's legitimate expectations.*

...

[Sic throughout]

[98] The actions of the grievor of printing one document that was not related to work and of transmitting one, very old, protected document, while they amount to misconduct, would not, based on a review of the jurisprudence, warrant discipline that would amount to a termination of employment and likely would merit only some minor discipline.

[99] I am also inclined to state that her ill-advised search and retrieval of information on one occasion of taxpayer information, while a much more serious incident of misconduct, would likely have fetched perhaps at best a suspension of some duration.

[100] What is extremely troubling is the grievor's blatant disregard for the rules relating to the serious issue of conflict of interest coupled with her fraudulent actions

to obtain leave. The grievor's outside activities related to the school board and her fraudulent actions to obtain leave are inextricably linked. The grievor was specifically and clearly told what the rules were with respect to her outside activities. There was no mystery whatsoever. The language in the Oct. 28 letter from Ms. Sukich was simple language. It clearly spelled out that she could not carry out these activities on CRA premises or using CRA resources. The grievor clearly breached this condition.

[101] What makes this even more troubling is that in her testimony before me, she suggested that the Oct. 28. letter was in some way unclear or perhaps confusing. Yet, during the course of the May 20 interview with Ms. Zinck, as recorded in the May 20 notes, she stated that she understood the letter. After suggesting in her examination-in-chief that she was unclear about or confused by the restrictions in the Oct. 28 letter, the grievor was brought to the specific wording and was asked what part was confusing or unclear. Her answer was, "It is clear. It is clearer now." Her answer made no sense. When counsel for the employer suggested to her that in fact that she was making these comments to justify her actions, she admitted that the letter was clear.

[102] This is but one example of what the more serious problem was involving the grievor. She appeared to know and understand the rules and chose not to follow them. She not only chose not to follow them, but also, she engaged in series of lies to cover them up. The lies were hardly made at spur of the moment; they were premeditated and carried out by her to not only mislead but also to evade the consequences of her actions. Nowhere was this more pervasive than with respect to her actions in the fraudulent obtaining of leave on five separate occasions. She obtained the leave fraudulently in the initial five instances. She then compounded the fraud by lying about it to the investigator. This was further compounded by perpetrating a fraud on her mother's doctor to obtain, by false pretences, the May 26 Dr.'s letter. Finally, she then knowingly provided to Ms. Zinck further false information with respect to the leave in the May 30 note and supported this lie by providing to her the May 26 Dr.'s letter.

[103] What is also very revealing about the grievor's behaviour and actions in these respects is the statement she made in her evidence when she said, "I was told to provide the truth; I didn't know how to provide the truth. I was in complete turmoil." One certainly does not tell the truth by making up blatant lies and then constantly compounding the lies by adding more lies.

[104] The grievor testified about personal issues and stressors that existed at the time: troubles in her marriage, and her ill parents. She also said that she suffered from depression, for which she took medication, which she also said she often stopped taking. In this respect, the grievor provided a list of medications. Without the assistance of healthcare professionals, it is difficult to give this evidence any weight whatsoever. There is no evidence that the fact that the grievor suffered from depression or that she stopped taking medication caused her to act in the way that she did — fraudulently taking leave, and then covering it up in the manner in which she did.

[105] In *Horne v. Parks Canada Agency*, 2014 PSLRB 30 at para. 204, the Board's predecessor stated that dishonesty in an investigation is a serious employment offence. The dishonesty that the grievor exhibited in this matter is extreme in that there are layers upon layers of dishonesty.

[106] In *D'Cunha*, at paras. 276 and 277, I stated as follows:

*[276] While Ms. de Laat did not hold a position with much, if any, contact with inmates, in many respects her behaviour was more egregious than that of Mr. D'Cunha. Not only did she purchase drugs 19 times, on 6 of those times, but [sic] also, she was AWOL and yet collected her pay. This was time theft. It amounts to fraud. As I stated in Murdoch, it strikes at the very core of the employment relationship, which is the exchange of labour for remuneration.*

*[277] Pinto v. Treasury Board (Revenue Canada, Customs and Excise), PSSRB File No. 166-02-16802 (19880411), [1988] C.P.S.S.R.B. No. 95 (QL) at 18, states as follows:*

I concur with the reasoning of my colleague, Mr. J.M. Cantin, Vice-Chairman, in **Bristow** (supra), when he states:

Fraud, as is known, is a very serious act of misconduct. It must be likened to theft which is, according to Brown and Beatty, "one of the gravest if not the gravest, charges of misconduct in an employment relationship" (see *Canadian Labour Arbitration*, ed 1, no 7:3310, page 387). As such, fraud usually leads to discharge, unless there are extenuating or mitigating circumstances (p.34)

[Emphasis in the original]

...

[107] While the grievor did not have any instances of previous discipline on her record and was a long-standing employee, having 30 years of service by the time she

was terminated from her position, and these are both factors in her favour, the character of the grievor's conduct is so egregious that the mitigating factors do not outweigh the seriousness of her behaviour. When her misconduct was found out, rather than acting honestly, truthfully, and remorsefully, she engaged in a further course of premeditated deception, to continue to mislead her employer.

[108] The misconduct of the grievor justified the penalty imposed, and I conclude that there is no reason to interfere with the employer's decision.

### **3. Sealing order**

[109] At the outset of the hearing, the parties requested that the name of the taxpayer whose account was accessed, as well the name of the grievor's mother, be anonymized. That request was granted. The parties also requested that the documents be redacted by removing those person's names, if they appeared. The parties are to review the documents submitted and, within 30 days of the date of this decision, provide replacement, redacted copies of the exhibits that have either individual A's name or the grievor's mother's name in them. In addition, those documents that may contain the grievor's home address shall also be exchanged with redacted copies that have the grievor's address removed.

[110] The grievor also submitted copies of her T4 slips for the tax years 2015 through 2020 (Exhibit G-1, Tab 7) and a copy of a pay stub for 2021 with respect to her employment at her church (Exhibit G-1, Tab 8). In addition, as set out earlier in this decision, she provided a list of her prescriptions that covered a certain period (Exhibit G-1, Tab 9).

[111] I find that all these documents (Exhibit G-1, Tabs 7, 8, and 9) should not be in the public domain, and they shall be sealed, as they meet the test set out in *Basic v. Canadian Association of Professional Employees*, 2012 PSLRB 120 at paras. 9 to 11, where the Public Service Labour Relations Board stated as follows:

*9 The sealing of documents and records filed in judicial and quasi-judicial hearings is inconsistent with the fundamental principle enshrined in our system of justice that hearings are public and accessible. The Supreme Court of Canada has ruled that public access to exhibits and other documents filed in legal proceedings is a constitutionally protected right under the "freedom of expression" provisions of the Canadian Charter of Rights and Freedoms; for example, see Canadian Broadcasting Corp. v. New*

Brunswick (Attorney General), [1996] 3 S.C.R. 480; Dagenais v. Canadian Broadcasting Corp., [1994] 3 S.C.R. 835; R. v. Mentuck, 2001 SCC 76, Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 (CanLII).

*10 However, occasions arise where freedom of expression and the principle of open and public access to judicial and quasi-judicial hearings must be balanced against other important rights, including the right to a fair hearing. While courts and administrative tribunals have the discretion to grant requests for confidentiality orders, publication bans and the sealing of exhibits, it is circumscribed by the requirement to balance these competing rights and interests. The Supreme Court of Canada articulated the sum of the considerations that should come into play when considering requests to limit accessibility to judicial proceedings or to the documents filed in such proceedings, in decisions such as Dagenais and Mentuck. These decisions gave rise to what is now known as the Dagenais/Mentuck test.*

*11 The Dagenais/Mentuck test was developed in the context of requests for publication bans in criminal proceedings. In Sierra Club of Canada, the Supreme Court of Canada refined the test in response to a request for a confidentiality order in the context of a civil proceeding. As adapted, the test is as follows:*

...

- 1. such an order is 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*
- 2. the salutary effects of the confidentiality 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.*

...

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

*(The Order appears on the next page)*

**V. Order**

[113] The grievance is dismissed.

[114] Tabs 7, 8, and 9 of the book of documents that is Exhibit G-1 shall be removed from the book of documents and are ordered sealed.

[115] Exhibits E-1 and G-1 are ordered sealed for 30 days from the date of this decision to allow the parties to provide any necessary redactions as necessary with respect to the documents bearing the name of the grievor's mother, individual A, and the home address of the grievor.

March 31, 2022.

**John G. Jaworski,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**