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



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

BETWEEN

ROGER KLOUVI

Grievor

and

**DEPUTY HEAD
(Department of Employment and Social Development)**

Respondent

Indexed as

Klouvi v. Deputy Head (Department of Employment and Social Development)

In the matter of an individual grievance referred to adjudication

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

For the Grievor: Baidy Mbaye, counsel

For the Respondent: Geneviève Ruel and Pierre Marc Champagne, counsel

Heard at Montréal, Quebec,
August 1, 3, and 4, 2017, and January 9 to 11 and February 6 and 7, 2018.
(Written arguments filed June 23, August 20, and September 14, 2020.)
[FPSLREB Translation]

REASONS FOR DECISION**FPSLREB TRANSLATION**

I. Individual grievance before the Board

[1] On April 18, 2013, Roger Klouvi (“the grievor”) was terminated from his position as a PM-04 program officer, Citizen Services, Service Canada (Human Resources and Skills Development Canada; “the employer” or “Service Canada”), retroactively to the date of a suspension without pay for breaching the *Values and Ethics Code for the Public Sector* (“the *Values and Ethics Code*”), snooping in the Employment Insurance databases, and participating in a fraud of several hundred thousand dollars under the New Horizons for Seniors Program (“the Seniors Program”).

[2] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the former Public Service Labour Relations Board (PSLRB) and the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to s. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*) before November 1, 2014, is to be taken up and continue under and in conformity with the *PSLRA* as amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[3] 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 PSLREB and the titles of the *PSLREBA*, the *PSLRA*, and the *Public Service Labour Relations Regulations* to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, the *Federal Public Sector Labour Relations Act*, and the *Federal Public Sector Labour Relations Regulations*.

[4] In the termination letter, the employer alleged that among other things, the grievor was involved in the creation of shell organizations and grant projects for which Government of Canada funding was provided but that did not carry out any legitimate activities. According to Service Canada, the facts gathered indicate that the grievor was

involved in the management of just over 15 grant projects for the Seniors Program from April 2007 to April 2011, the period during which the employer identified suspicious files. The employer maintains that the repetitive and prolonged nature of the grievor's actions justifies the termination.

[5] The grievor contends that the employer's decision to terminate him is *ultra vires* (beyond the employer's powers) as the employer obtained evidence, including the list of witnesses, from the Royal Canadian Mounted Police (RCMP). He alleges that the employer abused its powers and that it was biased in the investigation, in violation of his rights as set out in s. 7 of the *Canadian Charter of Rights and Freedoms* ("the *Charter*"). He seeks to be reinstated in his position, not to suffer any loss or benefit, and to have his integrity restored.

II. The decision of the Court of Québec's Criminal and Penal Division

[6] As of the hearing, the grievor was charged with the following six criminal charges: three counts of fraud, two counts of conspiracy, and one count of fraud against the federal government. The facts underlying the criminal charges of fraud under the Seniors Program are the same ones that led to the termination of his employment. On November 12, 2019, the Court of Québec's Criminal and Penal Division orally pronounced the grievor guilty on all counts.

[7] On May 25, 2020, the employer sent the Board the decision of the Court of Québec's Criminal and Penal Division. On May 27, 2020, the Board asked the parties to provide their positions on the impact of that decision on the outcome of the grievor's grievance. The employer provided its position in writing on June 23, 2020, stating that in the absence of a request from the grievor for a stay of the Board's decision, the Criminal and Penal Division of the Court of Québec's finding that the grievor was guilty should not be questioned through this adjudication and should instead confirm the employer's position on the misconduct alleged against the grievor that led to his termination.

[8] The employer referred me to *Watson v. Canada*, 2003 FC 1377, in which the Federal Court of Canada recognized and applied the principle that convictions that are proven beyond a reasonable doubt and the essential findings on which they are based require a high level of deference and restraint. Therefore, an adjudicator placed in such circumstances should legally give full effect to the conviction. A decision contrary

to that of the Court of Québec's Criminal and Penal Division would undermine the principles of economy, consistency, and finality of proceedings and the integrity of the administration of justice because that would be tantamount to saying that contrary to the criminal trial judge, the grievor did not commit fraud, all the while ignoring the principles that the Supreme Court of Canada established in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63.

[9] The grievor contends that the decision of the Court of Québec's Criminal and Penal Division has no bearing on the outcome of his grievance. He maintains that that decision should be ignored. He argues that his grievance raises two fundamental points: the issue of procedural fairness, and contesting the acts of which he is accused. The grievance and the issues it raises are completely excluded from the record of the decision of the Court of Québec's Criminal and Penal Division and therefore from the judge's analysis. The grievor argues that the employer's failure of procedural fairness is a substantive defect that would invalidate the termination, regardless of the truth of the acts that the employer accuses him of. To him, this is a fatal error that taints the termination's validity. The Board must consider this point solely in the light of the evidence before it on this matter while accounting for the legal and factual constraints specific to the context of the termination.

[10] The grievor contends that the decision of the Court of Québec's Criminal and Penal Division is not admissible in evidence because the evidence of the grievance before the Board is closed. To support his claim, the grievor referred me to *Fraternité des policiers et policières de Gatineau v. Moro*, 2020 QCCS 2272. To him, the Superior Court of Quebec judge in that decision unequivocally addressed and set aside the principle of the stability of judicial and administrative tribunal decisions, which is the *stare decisis* rule, and the principle of consistency in decision making. The Board must ignore the decision of the Court of Québec's Criminal and Penal Division by considering the issue of procedural fairness.

[11] In reply, the employer stated that a careful reading of the decision that the grievor cited shows that instead, it supports the employer's position. At paragraphs 58, 61, and 152 of *Moro*, the Superior Court of Québec recognized that that decision constituted a legal fact that the arbitrator could not ignore. The reasons that the arbitration tribunal in *Moro* deviated from the Ethics Committee's conclusions differ

greatly from the factual and legal situation in this case and do not apply to the grievor's termination.

[12] At the hearing, when he made his opening remarks, the grievor stated that he would present evidence that the employer had breached its duty of procedural fairness during the administrative investigation, which was a substantive defect that would invalidate the termination. I drew his attention to *Tipple v. Canada (Treasury Board)*, [1985] F.C.J. No. 818 (C.A.)(QL), which holds that such defects be remedied by a hearing *de novo* before an adjudicator. His representative replied that while he was aware of that judgment, nevertheless, he stood by his representations.

[13] For the following reasons, the grievance is denied, and the termination is maintained. I carefully read the decision of the Court of Québec's Criminal and Penal Division and the parties' arguments with respect to its bearing on the outcome of the grievance, and I find that regardless of the findings of the Court of Québec's Criminal and Penal Division, the preponderance of the evidence established that the grievor committed the acts alleged in the termination letter. He presented no evidence and no legal argument that would justify the Board's intervention to rescind the termination or reduce the disciplinary action.

III. The background, and the undisputed facts

[14] The Seniors Program is a Service Canada grant program with a mandate to assist organizations that support seniors. It has two components: community involvement and leadership, and capital assistance.

[15] The community involvement and leadership component is intended to develop new activities that encourage seniors to share their skills, experience, and wisdom with the community and to reduce the risk of seniors being isolated by encouraging them to take an active role in society. The capital assistance component is intended to help not-for-profit organizations improve their facilities or replace the furniture and equipment they need to continue to offer activities and programs for seniors.

[16] When an application is made under the Seniors Program, a Service Canada program officer screens it; it is analyzed, and an assessment note is assigned. After the screening, the application is submitted to a panel for approval. The *Values and Ethics*

Code and Service Canada's internal rules provide that employees who know an applicant should not assess the application.

[17] The grievor began his employment with Service Canada in October 2006. In March 2007, he was appointed as a program officer and was responsible for the Seniors Program until he was transferred to the borough office in Anjou, Quebec, in July 2007. At that location, he was not responsible for analyzing Seniors Program applications. He was transferred to Gatineau, Quebec, in July 2008 and then to Montréal, Quebec, at the end of December 2008. In January 2009, he was appointed to a regional advisor, service delivery, position at the Guy-Favreau Complex in Montréal.

[18] On April 5, 2012, Denis Boulianne, Assistant Deputy Minister, Senior Manager's Office, Services Management, informed the grievor that he had mandated the Security, Investigations, and Emergency Measures Division of Service Canada's Integrity Services Branch for the Quebec Region to conduct an administrative investigation. The grievor was suspended without pay pending the outcome of the administrative investigation. After the internal investigation and the RCMP's investigation, Service Canada terminated the grievor's employment on April 18, 2013, retroactively to the date of the suspension without pay.

IV. Summary of the evidence

[19] The employer called Messan Nagode Ayité Zonnon, Nadia Tabiou, and Jean De Dieu Randah Koutou to testify about their involvement in the grant applications under the Seniors Program.

[20] Mr. Zonnon is of Togolese descent. He has known the grievor through the Togolese community since about 2003. Mr. Zonnon was involved with the grievor in the Togolese community's activities. He was the president of the Togolese association and organized parties and activities for the community. The grievor and his family were involved. He and the grievor appreciated and had a certain affinity for each other.

[21] Ms. Tabiou met the grievor at the École des Hautes Études Commerciales (HEC) in Montréal. Both are of Togolese descent and were friends. They had classes together and were civil and friendly. She emigrated from France to Montréal in 2003, where she met Iya Sowé Kobana and her spouse, Mr. Zonnon. She studied international law and was interested in humanitarian issues in Africa. She wanted to help Africa develop.

[22] Mr. Zonnon testified that in 2007, the grievor spoke to him about the Seniors Program. The grievor worked for Service Canada at that time, and he explained to Mr. Zonnon that the Seniors Program was a Service Canada grant program. The grievor explained to Mr. Zonnon that if an association qualifies, it could receive grants without necessarily doing the planned activities, and that they could share the money.

[23] Mr. Zonnon founded the Development and Recreation Association (“the Association”) to provide activities for the Togolese community and to promote seniors’ personal development. That is why Ms. Tabiou became involved in the Association. She volunteered for the church, and Mr. Zonnon asked her whether she wanted to be the Association’s treasurer. He was the Association’s president, and Valère Agbazé was its vice-president. On December 19, 2007, Mr. Zonnon, Mr. Agbazé, and Ms. Tabiou established the Association. Together, they opened a bank account. Only one signature was sufficient to make a bank withdrawal. It was all done on the grievor’s advice.

[24] The grievor objected to adducing Mr. Koutou’s sworn statement in evidence. Lynn Bisson, a Service Canada investigator, wrote it at her interview with François Dussault, Internal Investigations Investigator, Emergency Measures, Investigations and Departmental Security Division, Service Canada. He signed the document set out in Appendix 4 of the investigation report. The grievor demanded that Mr. Koutou be present to be cross-examined. I upheld the grievor’s objection and informed the employer that if it wished to adduce that document in evidence, it would have to allow Mr. Koutou to be cross-examined. At the hearing, I signed a summons for Mr. Koutou to appear.

A. Grant project No. 1 - Development and Recreation Association, no. 7260169

[25] On June 6, 2008, a first grant application was made on behalf of the Association. Mr. Zonnon stated that the grievor provided the required information and completed the grant application. Ms. Tabiou testified that she and Mr. Agbazé were unaware that the application had been made.

[26] Mr. Zonnon stated that the grant application had two letters of support: one from the Association of Retirees from Cultural Communities of Montréal East, and the other from Diastode-Canada. Mr. Zonnon admitted that he forged the letter from the Association of Retirees from Cultural Communities of Montréal East with the grievor’s assistance. The second letter, from Diastode-Canada, was obtained and signed by

Clément Gedu, a member of the board of directors. Mr. Gedu is a friend of the grievor whom Mr. Zonnon knew.

[27] The grievor informed Mr. Zonnon that the application had been accepted. Two weeks after the grievor informed Mr. Zonnon that the application had been approved, Mr. Zonnon received written confirmation from Service Canada, accompanied with a cheque in the amount of \$18 000. The grievor informed Mr. Zonnon that the people who had supported the application should be rewarded.

[28] On January 20, 2009, Mr. Zonnon met with Mr. Agbazé and Ms. Tabiou to tell them that the grant application had been accepted and to explain to them the need to reward those who had worked to advance the grant application. Ms. Tabiou disagreed and insisted that the activities be carried out as planned, without rewarding the individuals involved. This version of Mr. Zonnon is inconsistent with that of Ms. Tabiou, in which she testified that she was unaware of this grant application. Ms. Tabiou confirmed that Mr. Zonnon made all contacts with Service Canada.

[29] Mr. Zonnon explained to the grievor that Ms. Tabiou and Mr. Agbazé disagreed. Again, this version of the facts reported by Mr. Zonnon is inconsistent with the version by Ms. Tabiou. The grievor was not pleased that Ms. Tabiou and Mr. Agbazé did not want to cooperate. At that moment, Mr. Zonnon and the grievor decided to make Mr. Agbazé and Ms. Tabiou believe that the grant had been cancelled and that the cheque had to be returned to Service Canada.

[30] Mr. Zonnon knew that the grievor had asked Mr. Koutou to help him open a bank account. In the meantime, the grievor and Mr. Zonnon had decided to open a second bank account on behalf of the Association to deposit the \$18 000 cheque, unbeknownst to Ms. Tabiou and Mr. Agbazé.

[31] Mr. Zonnon, the grievor, and Mr. Koutou decided to open a third bank account at Scotiabank. For administrative reasons, Scotiabank refused to open an account on the Association's behalf.

[32] Mr. Zonnon deposited the \$18 000 cheque in the Royal Bank of Canada account on February 12, 2009, and wrote a cheque for \$5000 in his name. Mr. Zonnon cashed the cheque and handed it to the grievor.

[33] On February 13, 2009, the grievor asked Mr. Zonnon to write two cheques in the amount of \$2000 each on behalf of Mr. Gedu and Mr. Koutou, to thank them for their help.

[34] In late February 2009, the grievor asked Mr. Zonnon to issue two more cheques. The first was for \$4000, and the second was for \$5000. Mr. Zonnon cashed the cheques in his name and gave the grievor \$2000 or \$3000 from the first cheque and \$5000 from the second cheque.

[35] Mr. Zonnon admitted that no activities had been organized. Mr. Zonnon and the grievor prepared Service Canada's required activity completion report. Mr. Zonnon explained that the information in the report was false and that the photographs that the grievor provided were photographs of photographs of an activity that had never occurred. On August 11, 2009, the grievor prepared the collection of multi-ethnic recipes to support the initial grant application on an employer-owned computer.

[36] Mr. Zonnon confirmed that the remainder of the \$18 000 grant money was split between him, the grievor, and their respective spouses. The Association did not conduct any of the activities set out in the completion report.

B. Grant project No. 2 - Development and Recreation Association, no. 9152208

[37] Mr. Zonnon submitted a second grant application under the Seniors Program on the Association's behalf on September 1, 2009. Mr. Zonnon testified that the second application was made with the grievor's assistance. Mr. Zonnon made the initial application, and the grievor made the necessary corrections to it before it was submitted to Service Canada.

[38] Service Canada approved this grant application on March 31, 2010, in the amount of \$24 000. The application was again accompanied by a false letter of support. This time it was on behalf of the Canadian Togolese Community (CTC) - Laval Section, and it was signed by the grievor and delivered to Mr. Zonnon.

[39] Mr. Zonnon stated that he received a cheque for \$24 000 and that that amount had been distributed as was the first one; that is, \$18 000 to the other partners, without Ms. Tabiou and Mr. Agbazé's knowledge. Given the reluctance of Ms. Tabiou and Mr. Agbazé the first time, the grievor and his spouse had asked Mr. Zonnon to create another organization among themselves. This time, the cheque for the

Association's application would be sent to Mr. Agbazé's address but shared between Mr. Zonnon, the grievor, and his spouse.

[40] Mr. Agbazé received the cheque. He had doubts, so he opened the envelope. He resealed it before handing it to Mr. Zonnon. When Mr. Zonnon opened the envelope, he saw that the grant application had been approved in the amount of \$24 000. The grievor told Mr. Zonnon to tell Mr. Agbazé that the approved amount was only \$12 000. Mr. Agbazé admitted to Mr. Zonnon and the grievor that he knew that the cheque was in the amount of \$24 000.

[41] That was when Mr. Zonnon and the grievor planned a way to deceive Mr. Agbazé and Ms. Tabiou. Mr. Zonnon and the grievor forged a letter on behalf of a fictitious person, Sophie Desjardins, Project Monitoring Officer, Seniors Program, Programs Branch, Agreements and Partnerships, Service Canada. The letter from Sophie Desjardins created a context that could not meet Service Canada requirements and required that the cheque be returned to Service Canada. Mr. Zonnon confirmed that the grievor signed the letter on April 26, 2010, and that it was sent to Mr. Agbazé on behalf of the Association.

[42] The grievor objected to the letter being adduced in evidence because the employer obtained it from the RCMP. According to him, it was an example of a violation of his rights under s. 7 of the *Charter*. I allowed the letter to be adduced in evidence as it was relevant to the issues before the Board. I told the grievor that I would allow him to make submissions on the merits of this evidence. I will deal with the argument about the violation of s. 7 of the *Charter* in the arguments and analysis section.

[43] According to Mr. Zonnon, Mr. Agbazé was becoming increasingly suspicious. The grievor and Mr. Zonnon forged a second letter from the same person from Service Canada. The grievor delivered it to Mr. Agbazé. This time, there was no phone number to reach the contact.

[44] Mr. Zonnon, Ms. Tabiou, and Mr. Agbazé had a meeting. Ms. Tabiou and Mr. Agbazé knew that they were being duped. They no longer had any doubt, and they did not appreciate the situation. The three of them met at Mr. Zonnon's home on a Sunday afternoon. Ms. Tabiou insisted that all the money be returned to Service Canada. She did not want to take part in any of the grant applications and insisted that all the

money be returned. Mr. Zonnon spoke to the grievor to inform him of Mr. Agbazé and Ms. Tabiou's reaction. Mr. Zonnon knew that the grievor had gone to see Mr. Agbazé in an effort to defuse the situation, but he was unaware of the extent of their discussion.

[45] After the grievor's attempt to meet with Mr. Agbazé, Mr. Zonnon and the grievor decided to meet with Ms. Tabiou at her home in Gatineau to convince her to use the \$24 000 cheque for activities. Ms. Tabiou categorically refused. She wanted the cheque returned immediately.

[46] Mr. Zonnon wrote to Ms. Tabiou because all this had affected her personally and physically. He wrote emails and apologized for deceiving her. He admitted in the letter that he had opened the account without her knowledge and that he had accepted cheques in the amounts of \$18 000 and \$24 000 without her knowledge. Ms. Tabiou repeatedly asked Mr. Zonnon to return all the money.

[47] In his email exchange with Ms. Tabiou, Mr. Zonnon agreed to return the \$24 000 cheque to Service Canada. Mr. Agbazé no longer trusted Mr. Zonnon. Mr. Zonnon and Mr. Agbazé went to Service Canada to return the cheque. They met with a Service Canada officer. Mr. Zonnon and Mr. Agbazé explained that they could no longer carry out activities because Ms. Tabiou had withdrawn from the Association. They wrote a letter explaining why they could no longer carry out the activities. A Service Canada supervisor told them that he could not take the cheque back and that if they could find a third person, they could carry out the proposed activities. They tried but to no avail.

[48] Ms. Tabiou explained that Mr. Zonnon and Mr. Agbazé had many arguments. As a result, she threatened to them that she would resign from her treasurer position. Mr. Agbazé wanted evidence and access to Service Canada's mail. Ms. Tabiou was pregnant at that time and no longer wanted to be involved. However, she wanted the planned activities to take place. Mr. Agbazé had to make the first contacts for the activities. Mr. Zonnon informed Ms. Tabiou that Mr. Agbazé had not made the contacts. In response to Ms. Tabiou's resignation, they agreed to change the Association's address.

[49] Ms. Tabiou wanted a copy of the Association's articles of incorporation. Mr. Zonnon refused, saying that he had torn up the documents. Ms. Tabiou wanted to make changes at the bank to remove her name from the account as a treasurer, but Mr. Zonnon refused. Ms. Tabiou then went to the bank for the account history. She carried

out some research and found that the Association had received two grants, one of \$18 000, and one of \$24 000. She was aware of the one in the amount of \$24 000 but not of the one in the amount of \$18 000. She went to the bank to obtain the account statements. When she arrived, Ms. Tabiou said that she wanted to take stock of the Association as a treasurer and that the president had destroyed the documents. The bank advisor printed all the documentation for her. She obtained a copy of the \$18 000 cheque in the Association's account, which had been cashed without her knowledge. She left for Montréal the next day.

[50] At a meeting of all three, Ms. Tabiou confronted Mr. Zonnon and Mr. Agbazé. Mr. Zonnon said that he did not know what he had taken from her. Ms. Tabiou said that as a treasurer, she felt that it was fraud and that she did not want to be involved. She asked Mr. Zonnon to make a sworn statement, a letter to absolve her, and Mr. Agbazé also asked for one. With that information, Ms. Tabiou asked Mr. Zonnon to return the \$24 000 cheque to Service Canada and to contact a lawyer and do what was best for him. As Mr. Zonnon was to admit his offence to Service Canada, she waited to see Service Canada's response before contacting the RCMP. After that meeting, she went home. Ms. Tabiou called Mr. Zonnon's spouse, who knew nothing about it. Mr. Zonnon's spouse denied the friendship between Mr. Zonnon and the grievor.

[51] Shortly after that meeting, the grievor called Ms. Tabiou. All these events had made her ill. The grievor wanted to meet with Ms. Tabiou, to give her an explanation and to facilitate the discussion between Mr. Zonnon, Mr. Agbazé, and Ms. Tabiou. The grievor tried again to persuade Ms. Tabiou to continue her activities with the Association. Ms. Tabiou was uncompromising; she did not want to do what the grievor suggested. Ms. Tabiou insisted that the \$24 000 cheque be returned. Ms. Tabiou told the grievor that he was in a conflict of interest with his employer and that he should inform his employer of this and step down. Before that meeting, she did not know the grievor very well. Ms. Tabiou was divided in her beliefs; she felt that it was fraud and that it could impact her life.

[52] Ms. Tabiou resigned from the Association. The grievor, Ms. Tabiou, Mr. Zonnon, and Mr. Agbazé agreed to return the \$24 000 cheque to Service Canada. The grievor emailed to Ms. Tabiou to thank her and to confirm that they were to return the cheque. She asked for confirmation that the cheque had been returned. Ms. Tabiou later learned that Mr. Zonnon and Mr. Agbazé did not return the cheque. Ms. Tabiou

contacted Service Canada to inform it. A Service Canada officer refused to speak to her. Mr. Zonnon and Mr. Agbazé had informed a Service Canada officer that Ms. Tabiou was causing problems for the Association. Ms. Tabiou left a message informing the officer that the Association did not have the means to carry out the planned activities, which would not take place. Finally, the Service Canada officer asked her to send a summary of why the activities would not take place.

[53] Mr. Zonnon, the grievor, and another individual tried to reach an agreement, but it did not work out. Therefore, they split the \$24 000. As for this grant application and any other financial activity, Ms. Tabiou did not participate in any of the Association's financial or legal activities. He signed a sworn statement to that effect on July 23, 2010.

C. Grant project No. 3 - Social Development Club, no. 8989055

[54] The grievor, Mr. Zonnon, and their spouses created the Social Development Club. Mr. Zonnon prepared grant applications under the grievor's supervision. They decided to set up the new organization because of Ms. Tabiou's reluctance. It was the grievor's idea to create a new association. The spouses created the bank account, and they each had a bank card. The grievor did not recall whether it required one or two signatures.

[55] According to Mr. Zonnon, he communicated with the grievor through the email address of the grievor's spouse. He forged a letter to support the grant application on behalf of Mr. Agbazé on August 20, 2009. On February 8, 2010, the application was accepted, and a Service Canada cheque in the amount of \$22 175 and dated March 12, 2010, was sent to Mr. Zonnon's postal address.

[56] Mr. Zonnon completed the final report in support of the grant and detailed the activities that they supposedly accomplished. He prepared the document alone based on the other documents prepared for the Development and Recreation Association. No activities took place; the grievor, Mr. Zonnon, and their spouses divided the cheque equally.

D. Grant project No. 4 - Social Development Club, no. 9097296

[57] Mr. Zonnon prepared this application without any help. He relied on the previous applications made with the grievor. He prepared the fictitious letters

according to instructions he received from the grievor. The grant application was approved and accepted in the amount of \$22 950. The money was split equally between Mr. Zonnon, the grievor, and their spouses. Mr. Zonnon completed the final report, and his spouse signed it. The application was for capital assistance funding. In fact, the application was not for any renovation. He did not recall whether this application was made with the grievor's assistance.

E. Grant project No. 5 – Seniors' Social Development Group, no. 010319622

[58] Mr. Zonnon created the Seniors' Social Development Group with a co-worker. He created it because Mr. Agbazé told him that the grievor had several other associates. He had had many problems with the Association, particularly with Ms. Tabiou and Mr. Agbazé. According to Mr. Zonnon, the grievor was not always visible, but he was always there. For this application, on August 14, 2010, Mr. Zonnon prepared the letter of support from Diastode-Canada, which was another false organization.

[59] In cross-examination, Mr. Zonnon stated that he might be wrong by a year or two about the organization's creation. He added that it was also possible that he was off by \$1000 or \$2000 as to the amount of the cheque. However, the grievor remained the organization's mastermind. He might also have the dates wrong, but it does not change the fact that the events as described took place. Mr. Zonnon confirmed that he returned the grant money personally. He stated that just because he is wrong about the date does not necessarily mean that he is wrong about what took place. The grievor was very familiar with the grant application approval system. Mr. Zonnon pleaded guilty to fraud charges in a criminal court. He did not write the statement to the Government of Canada investigators. The investigators wrote it; he read what they wrote and signed the document. He confirmed that the grievor had received money even though he could not give an exact figure. Mr. Zonnon confirmed that the grievor received approximately 40 to 50% of the amount in the first grant. The grievor was convinced that the Government of Canada would never take the time to investigate. All the grant applications in which the grievor participated were approved. The other two that he created with this information were not approved.

F. The administrative investigation

[60] On September 18, 2012, Mr. Zonnon met with Service Canada investigators. He had at least two if not three meetings with them. He signed a statement. His spouse

also signed this statement. On the day the police searched his home, Service Canada investigators returned to his home to ask him how it had all worked. He and his spouse gave their statement in writing. An arrest was made, and Mr. Zonnon pleaded guilty. He served a year under house arrest and a year of probation. He repaid \$14 000 of what he had received. Mr. Zonnon cut off all contact with the grievor.

[61] The employer called Joël Hobeila, Senior Internal Officer, Integrity and Security, Service Canada. He has held several positions with Service Canada. He has been an Employment Insurance benefit officer, a program officer, a security and investigation officer in emergency measures, a junior officer, and an internal integrity and security officer. Mr. Hobeila was also a program officer in the Seniors Program. He reported to Serge Luc Bédard, Acting Director, Labour Market and Social Development Programs Branch.

[62] Mr. Hobeila explained how grant applications were assessed and rated for approval. In April 2011, he discovered irregularities in some grant applications. Didier Guillemette, Program Officer, Seniors Program, informed him of it. Mr. Bédard authorized Mr. Guillemette to inform him of the irregularities. Mr. Guillemette explained to him that four grant applications had surprising similarities in the addresses of the directors, telephone numbers, and wording. Mr. Bédard asked him to join Mr. Guillemette to look into it and document what they found.

[63] Together, Mr. Hobeila and Mr. Guillemette compared the applications and created a correlation spreadsheet that they documented in an email and a detailed spreadsheet. They found that the organizations that supported the applications did not exist. For the capital project applications, the owners indicated in the leases could not be traced. To follow up on these discoveries, they continued documenting the situation. Any project that could cast doubt on the submitted proposal was analyzed further. They noted each grant application with the status, information obtained from the Quebec Enterprise Register, public records, specific features of the applications, and their findings. They discovered the connection between the grievor and his spouse, as his name appeared with the financial ownership role. In addition, his name appeared as a director of the [translation] Togolese Association of Canada. In this case, there appeared to be a conflict of interest, even though it was a community organization. The grievor's name appeared on the grant application while he was a Service Canada employee. All this information was communicated to Mr. Bédard and

ultimately to the RCMP for investigation. In terms of his involvement with the RCMP, Mr. Hobeila explained to it his internal investigation's findings.

[64] The grievor objected to the presentation of Mr. Hobeila's evidence and his exchanges with the RCMP. I overruled the objection and admitted the evidence as it was relevant to the issues before the Board.

[65] Hobeila had an initial meeting with the RCMP in October 2011. In December 2011, he met again with the investigator and senior analyst of the RCMP. He accompanied the investigators during the search to identify documents that could have come from Service Canada. In April 2012, the search took place at Mr. Zonnon's home. Mr. Hobeila was not involved with Integrity and Security and Emergency Measures' internal investigation. His work was strictly to document the program portion and focused on the Seniors Program's integrity. He had no role in the disciplinary process.

[66] In cross-examination, Mr. Hobeila explained the process for reviewing grant applications in general. He explained that he had discovered the name of the grievor's spouse and the grievor's name as the director of the Togolese Association of Canada in the Quebec Enterprise Register. The information and spreadsheets that he and Mr. Guillemette had made for Service Canada were provided to the RCMP investigator. The grievor asked Mr. Hobeila whether from the start he had believed that the grievor was guilty. The employer objected to Mr. Hobeila giving his opinion as to the grievor's guilt. I upheld the objection and did not allow Mr. Hobeila to answer the question. Mr. Hobeila was not qualified as an expert witness. Ordinary witnesses must answer the questions that they are asked. His role was to relate the facts as he personally knew them. It was not his role to provide his opinion on the grievor's guilt.

[67] Mr. Hobeila confirmed that the ultimate decision to award funding for a grant project was the program officer's responsibility. He was responsible only for analyzing grant applications.

[68] As the director, Mr. Bédard was responsible for the Seniors Program. He managed the program and had delegated financial authority. He authorized payments and had delegation authority to issue grant cheques. In 2011, he was responsible for delivering programs. He managed a management team for the territories of western Quebec, Laval, Montréal, the Laurentians, the Outaouais, and Abitibi. One hundred

forty employees worked on delivering the Seniors Program, including summer employment programs, the Opportunities Fund for Persons with Disabilities for skills training, and the Homelessness Partnering Strategy. In April 2011, he reported directly to Marie Germain, who was then replaced by Patrick Lefort, Acting Executive Director, Business Expertise Directorate, Citizen Services and Programs. Three managers at the PM-05 group and level were under his supervision.

[69] On his second day on the job, April 5, 2011, he heard about the Seniors Program. Mr. Guillemette visited him with two grant projects from the same organization, which had been processed separately. In one case, the program officer had rejected the application at the screening stage. She found that the letters of support were not truthful and that they did not meet the employer's requirements. For the same organization, in another grant application, the same documentation had been submitted. The officer did not look at documents' merit and simply moved the case to the next step. In one case, the assessment was favourable, but in another case, the application was rejected. That is why he asked Mr. Guillemette to conduct a thorough review, with Mr. Hobeila's help. He wanted to know whether there were any other similar situations and whether there were other organizations that had handled their applications differently. Mr. Guillemette and Mr. Hobeila quickly realized that there were irregularities in some files in cases in which the letters of support appeared false or the information submitted was incomplete. Common directors in different organizations had applied for grants for similar projects.

[70] Mr. Bédard referred to Mr. Guillemette's email dated April 11, 2011, about the correlation spreadsheet of suspicious cases, which was a first written analysis. His concern was conformity in file processing. He wanted to know whether there was a problem with the program officer. He had notified the superior of it, in case fraud was possible.

[71] Mr. Guillemette had reviewed four organizations in his email and had reported his findings. He found that the approach was similar for 10 grant projects. Ms. Tabiou, who was a co-director of one of the organizations, told a program officer that she was concerned that fraud had occurred because no activity had taken place since the foundation two years earlier despite receiving an \$18 000 grant. One project was being assessed, and four were pending payment. The cheque had not yet been issued, but a

payment was about to be made. Mr. Bédard requested that the file remain pending payment without issuing a cheque.

[72] Mr. Bédard had daily discussions with Mr. Lefort and Mr. Boulianne, the assistant deputy minister, who asked for follow-ups to inform Deputy Minister Johanne Lamothe and Mary Gardiner, who was acting on an interim basis for Ms. Lamothe. On April 13, 2011, Mr. Bédard emailed Ms. Germain. It was the first time he told her about the anomalies that he had identified in the four sensitive files. In his email, Mr. Bédard pointed out that one of the addresses of the grant applications was the grievor's address. In effect, it was the address of the grievor's spouse, who was the organization's director and who made the grant application. Mr. Bédard remembered the grievor because the grievor had worked for him in 2007 and 2008. The address of the organization applying for the grant was the first link to the grievor, who allegedly had screened in his spouse's file. The grievor's spouse was the director of the organization applying for the grant. According to the *Values and Ethics Code*, to avoid an appearance of conflict of interest, Service Canada asks employees not to interfere in files if there may be an appearance of a conflict, even if the action itself is correct.

[73] On April 15, 2011, Mr. Hobeila and Mr. Guillemette compiled the information in an Excel spreadsheet and emailed it to Mr. Bédard who then emailed it to Ms. Germain. He identified a grant project from the Association. On the surface, there seemed to be a conflict of interest involving the grievor, given the letter of support from the president of the Togolese community. It required a certain verification, even though it was possible that there was no conflict of interest.

[74] At Service Canada, fraud investigations for particular programs are conducted internally. Internal investigations are handled by the Security and Emergency Measures Division. Mr. Bédard contacted Mr. Lefort and Marie-Danielle Colas, Integrity Services, to investigate potential fraud. Mr. Bédard sent the spreadsheets that Mr. Hobeila and Mr. Guillemette had prepared. Carole Addison-Roy, the director responsible for Security and Emergency Measures, her team, and Mr. Dussault stated that fraud authority were with the RCMP. In early August, Mr. Bédard sent a letter requesting cooperation. He explained that there were other cases of fraud in the Ontario Region and that the RCMP was already involved. Mr. Hobeila and Guillemette continued to note their observations.

[75] On June 14, 2011, Mr. Bédard wrote to Mr. Lefort to inform him that Mr. Hobeila and Mr. Guillemette continued to make discoveries and that it was becoming increasingly clear that they were facing a network. He identified in detail the suspicious projects that linked Mr. Zonnon, his spouse, and the grievor. Mr. Zonnon's spouse and the grievor had worked together at Service Canada. Mr. Bédard identified their employee files and compared the signatures that appeared on the grant applications. He concluded that the signatures were the same. The signatures appeared on the 2007 letters of offer. Both Mr. Zonnon and the grievor were his employees.

[76] On July 5, 2011, Mr. Bédard informed Mr. Lefort by email that potential fraud was suspected. An employee approached Mr. Bédard to inform him that the grievor had asked her questions about the status of the Togolese organizations' applications and their files in the Seniors Program. According to Mr. Bédard, very few people knew that there were unissued cheques.

[77] On August 2, 2011, Mr. Bédard emailed Mr. Lefort and Ms. Addison-Roy the documents that he had sent to the RCMP by registered mail. Also attached was a letter addressed to Steve Foster, Commissioner, RCMP. Mr. Bédard wrote to Mr. Foster that two Service Canada program officers (Mr. Hobeila and Mr. Guillemette) had discovered that organizations in the Quebec Region were using questionable mechanisms to obtain funds from the Government of Canada. Apparently, the scheme had started a few years ago and could amount to \$400 000 in illegally obtained funds. Mr. Bédard expressed his concern that this process could extend to other organizations and other grants and contributions programs if no meaningful action were taken. Finally, Mr. Bédard indicated that some things in the file led them to believe that public service of Canada employees could be involved in the fraud. Attached to the letter was a report on the information gathered during the administrative investigation that stated that the facts were collected in response to Part D of the grant applications, which states that the applicants declare that the information provided in the application and supporting documents is true, accurate, and complete to the best of their knowledge and that they understand that if the provided information is false or misleading, they may be required to pay back all or some of the grant received. The letter went on to explain that as of its date, the formal items of doubt were letters of support that were forged or appeared forged, letters of support that were identical to another letter submitted by another organization, and letters from organizations supporting the projects that could not be traced or that submitted fictitious letters or had patently

false letters. The research also identified other things considered suspicious, namely, the overlap of the same individuals working for multiple organizations simultaneously, the names of organizations with weak ties to seniors, and potential links between two former employees who might have learned about the program's terms and conditions.

[78] Mr. Bédard stated that either he or Ms. Addison-Roy followed up with the RCMP to schedule a meeting with it, to convince it to investigate. The RCMP prioritizes cases based on its priorities, and Mr. Bédard had to convince it to take on the case and investigate. On August 19, 2011, Sergeant Ghislain Marcil, on behalf of Superintendent Stephen Foster, Director, Commercial Crime Branch, RCMP, informed Mr. Bédard that the documentation had been sent to the Assistant Criminal Operations Officer, Financial Integrity, in Montréal, Quebec, for any action deemed relevant. Mr. Bédard recalled meeting with RCMP investigators. He believed that Ms. Addison-Roy was also present.

[79] Mr. Bédard recalled receiving an email from Ms. Addison-Roy on October 24, 2011, informing him that the RCMP had agreed to conduct the investigation for the Seniors Program. In her email, Ms. Addison-Roy confirmed that Mr. Hobeila should attend a meeting with the RCMP analyst to validate the information that he had collected. Ms. Addison-Roy confirmed that the RCMP would conduct the investigation, depending on its priorities. In other words, she stated that if a more important request arose while conducting its investigation, Service Canada's investigation might be temporarily set aside so that it could address the other investigation as a priority and then return to Service Canada's investigation after that. Ms. Addison-Roy stated that she did not anticipate a specific date for the investigation to complete. The RCMP and Service Canada investigation continued internally in the fall of 2011 and winter of 2012.

[80] On January 5, 2012, Mr. Bédard informed Mr. Dussault and Ms. Addison-Roy that he had made more discoveries in Seniors Program files. In grant application no. 5331871, they found that the grievor had screened it in while his spouse was a member of the board of directors of the applicant organization, Integration and Social Development. Mr. Bédard noted that Mr. Zonnon and Frédérick Ayité Zonnon had the same signature. The grievor and Mr. Zonnon were also Service Canada employees. They were members of the board of directors. There were also names of people who worked for different departments in Canada.

[81] Mr. Bédard clarified that the internal investigation could not begin until the RCMP investigators gave their permission, to not interfere with their search investigation.

[82] The employer called Mr. Dussault to testify. Mr. Dussault explained that the purpose of an investigation is always to shed light on what happened. The first step is to verify whether the information is substantiated. If the allegations are substantiated, the investigation continues. Otherwise, the case is closed. In April 2011, Jacques Legris, Director General, requested that a situation in the Programs Section be fact-checked. Ms. Addison-Roy is the immediate manager under his supervision. Mr. Hobeila and Mr. Guillemette had submitted a significant amount of information. It became necessary to investigate the allegations' merits. The audit focused only on the conflict-of-interest allegations.

[83] Mr. Dussault recalled seeing the spreadsheets that Mr. Hobeila and Mr. Guillemette had compiled. He remembered seeing false information supporting grant applications under the Seniors Program. The organizations with the numbers did not exist. He had to find out whether the information as to whether Service Canada employees were involved was true. He requested the retrieval of information from the grievor's computer (his F: drive, his office email, and his user code for the different databases, including the different social insurance numbers). Mr. Dussault checked each name search with the different social insurance numbers. The grievor, like any other Service Canada employee, was not allowed to verify a person's file if it was not assigned to him. Mr. Dussault traced each of the grievor's name searches. This audit took up to one month. It took time to extract information from the national office's system.

[84] Mr. Dussault confirmed that he attended a few meetings with the RCMP. He was aware of what was taking place on the RCMP side, but he was not involved in the criminal investigation. On December 19, 2011, Patrick Manelli, an RCMP commercial crime investigator, stated that he would take on the criminal investigation. At that moment, he was on standby. The file was still at the audit stage. The administrative investigation had not yet begun. After the grievor was arrested and his accomplice's home was searched, Mr. Boulianne, Assistant Deputy Minister, mandated the administrative investigation. When the search was carried out, Mr. Hobeila and Mr. Dussault checked the documentation for the grant applications under the Seniors

Program. Mr. Dussault knew that other arrests had been made in addition to the grievor's arrest. At that point, he reviewed the list of the board of directors members for each organization. He prepared a spreadsheet and verified each grant application more closely. Mr. Dussault reviewed each letter of support and checked whether the information was true. This was an onsite audit. He began the administrative investigation when the grievor was suspended on April 5, 2012. He reviewed each grant application, and with the information from Mr. Hobeila and Mr. Guillemette, he prepared the list of potential witnesses. Mr. Dussault referred to his handwritten notes of meetings with certain individuals. He met with Ms. Tabiou, accompanied by Guy Lauzon. For all the other witness interviews, Lynn Brisson accompanied him.

[85] Ms. Tabiou confirmed meeting with Mr. Dussault during the administrative investigation on April 20, 2012. She was shocked at being interviewed by Mr. Dussault. The facts that she recalled were consistent with the facts that Mr. Dussault reported. Mr. Dussault explained that Ms. Tabiou's name had come up because she was a member of the Association's board of directors. He noted that she wanted to return the grant cheque to Service Canada. Ms. Tabiou was the first person interviewed. Mr. Dussault met with Ms. Tabiou at her home. Ms. Tabiou told him that she had had asked the grievor and Mr. Zonnon to return the \$24 000 cheque that they had received from Service Canada for their grant application. She was aware of another grant application that had been accepted in the amount of \$18 000, and she knew that it had been deposited in another bank account without her knowledge. The grievor and Mr. Zonnon had told Ms. Tabiou that the application had been denied. Ms. Tabiou knew that that was false. She wanted to withdraw from her involvement in the Association. Ms. Tabiou was a public service employee too, and she no longer wanted to be involved in the Association. She wanted to return the cheque.

[86] Ms. Tabiou informed Mr. Dussault of an emergency meeting that had taken place at her home with the grievor, Mr. Zonnon, and Mr. Agbazé. She knew that Mr. Zonnon and Mr. Agbazé had cashed the \$18 000 cheque, for which there had been no organized activity. At the meeting, she told them that they had to return the money and that she was resigning from the Association. Ms. Tabiou shared with Mr. Dussault her email exchange on July 23, 2010, in which she informed Mr. Zonnon to return the grant money. Ms. Tabiou had sent a withdrawal letter to Frédérique Naud, a grants program officer, to inquire as to how to return the cheques. Ms. Naud consulted Marie-Ève Thibault, Business Expertise Advisor, about the grant applications. Ms. Thibault

directed to closely follow up with organizations about expenditures and to complete the files. Unfortunately, according to Mr. Dussault, the follow-up was not done.

[87] Mr. Dussault met with Komi Amouzou. Mr. Amouzou was a member, with the grievor's spouse, of an organization's board of directors. The grievor's spouse was the sole holder of the bank account associated with that organization. Mr. Amouzou told Mr. Dussault that he had attempted to make purchases and that the payment did not go through. Some activities had taken place, but not all. From what he could remember, Mr. Amouzou told him that the grievor prepared all the documentation and that the grievor became angry when he asked questions. Mr. Amouzou did not remember how the money was spent. He told Mr. Dussault that they had bought computers, a printer, and a camera. They had bought a computer for him, one for the grievor, and one for Maxime Kogoh. The grievor made the purchases and repaid himself with the grant money. He was part of the same organization as the grievor's spouse and Mr. Amouzou. Mr. Kogoh reported similar facts about the cheques that had not gone through.

[88] Mr. Dussault then met with Mr. Zonnon and his spouse. Mr. Zonnon explained to him how to proceed and to create bogus organizations. Mr. Zonnon confirmed that the grievor had taught him how the Seniors Program and the grant process worked. Mr. Zonnon told Mr. Dussault that the grievor wanted to share the grant money equally, at 50%. Mr. Zonnon explained to him that he and the grievor had successfully made several grant applications.

[89] Mr. Dussault also met with Mr. Agbazé. Mr. Agbazé wanted to clear things up during the administrative and criminal investigations. The RCMP investigator met with Mr. Agbazé, who wanted to clear his name. He confirmed to Mr. Dussault that he had taken money but that he was very angry with Mr. Zonnon because the Canadian Togolese Community's reputation had been tarnished. Mr. Agbazé repaid all the money that he received. He knew that the grievor was involved, but he did not know to what extent. He confirmed that Mr. Zonnon had split the grant money with the grievor.

[90] Mr. Dussault also met with Mr. Gedu. His name appeared in the letters of support for the Association and other organizations that had applied for grants. His name came up in the letters from the Canadian Togolese Community and Diastode-Canada. During his meeting with Mr. Gedu, Mr. Gedu confirmed that he had been

involved in some organizations with the grievor and that his signature had been forged on certain documents.

[91] Mr. Dussault met with Mr. Koutou. He admitted that he had completed grant applications with the grievor's assistance. The grievor told him what to write. Service Canada had approved two grant applications. Mr. Koutou confirmed to Mr. Dussault that he had split the money with the grievor. Mr. Koutou signed a statement to that effect and gave it to Mr. Dussault. At each meeting, Ms. Brisson accompanied Mr. Dussault. Ms. Brisson took notes. Before having Mr. Koutou sign the statement, Mr. Dussault read to him what Ms. Brisson had written.

[92] The grievor objected to Mr. Koutou's statement being adduced in evidence. The grievor wanted the opportunity to cross-examine Mr. Koutou on his statement. I allowed the grievor's objection and denied the admissibility of Mr. Koutou's statement. The employer called Mr. Koutou. Mr. Koutou remembered meeting with two investigators, a man and a woman. He did not remember their names. He acknowledged his signature on the written statement, which Ms. Brisson had written.

[93] Mr. Koutou had completed two grant applications. The grievor explained to him how to complete the grant applications, to complete them correctly. He acknowledged his signature on the grant applications. The grievor had introduced him to the Seniors Program and related grants. Mr. Koutou remembered accompanying the grievor, to open a bank account. Unfortunately, the bank did not agree to open the account. He received a \$1000 cheque and cashed it. Mr. Koutou's grant applications had been accepted, and on receiving the cheques, he deposited them in the bank account of the Cultural Assistance and Fulfillment Association, for which he was the only one authorized to access the account. Mr. Koutou stated that the grievor had reviewed the grant applications. The grievor had completed the forms. Email interactions occurred with the grievor, but the majority of the interactions were by telephone. He handed over half of the amounts received from Service Canada to the grievor in cash; that is, half of \$21 600 and \$20 500. His association carried out no activities related to those two grant applications. The letters of support for grants applications under the Seniors Program came from acquaintances of the grievor, whom he had never met. When he received the cheques from Service Canada, Mr. Koutou asked the grievor questions because he was concerned about accepting these amounts of money without carrying out the activities. The grievor always reassured him that it was acceptable and that

there was no danger or that there would be no consequences. The two cheques that Mr. Koutou received were cashed and shared with the grievor. There were no other transactions of this nature. These are the only two transactions. In cross-examination, the grievor's questions confirmed what Mr. Koutou had said in direct examination and did not raise any significant issues that would undermine his credibility.

[94] Mr. Dussault also met with Pauline Combatté, who was the head of one of the organizations for which the grievor had pre-approved one of the grant applications. She confirmed that the organization existed and that she had worked with Joel Amovin. The grievor was not involved.

[95] Mr. Dussault had a second meeting with Mr. Zonnon and his spouse. Both admitted to Mr. Dussault that they had split the grant money with the grievor and his spouse. Mr. Zonnon and his spouse allowed Mr. Dussault to check their computer for his administrative investigation. On a USB key, Mr. Dussault saved the information he was looking for. Mr. Dussault identified in an email from the grievor the cookbook that the grievor had prepared and the false letters of support. The document's properties confirmed that the grievor was its author. Mr. Zonnon and his spouse both signed a statement to Mr. Dussault.

[96] Mr. Dussault then met with Mr. Amovin, who confirmed Ms. Combatté's information. He confirmed that the grievor was not involved in their organization. However, the grievor's spouse was involved, indirectly, and \$5000 had been withdrawn.

[97] Mr. Dussault met with the grievor for his version. He was accompanied by Ms. Bisson. The interview was very long. Mr. Dussault made requests for retrievals with the social insurance numbers. He received about 1100 emails with notes sent to him and the grant programs. Mr. Dussault had questions about the information that he had collected.

[98] With respect to Employment Insurance and the retrievals from databases, Mr. Dussault remembered that the grievor was familiar with the *Values and Ethics Code*. However, the grievor had a poor understanding with respect to using the database. For the grant application program, the grievor denied both being involved in the grant application files and the information that the different witnesses had provided. The grievor denied writing and signing false letters of support.

[99] Mr. Dussault prepared the report based on the collected information. He was not involved in the decision-making process behind the administrative suspension or in the decision to take disciplinary action. He identified the cheques during the investigation. Based on everyone's information, some of them incriminated themselves and had to pay the money back. He and his colleague, Ms. Brisson, prepared the investigation report that was adduced as evidence. Attached to the report was the email that Ms. Tabiou had sent to him, along with the forged letters.

[100] The grievor's first falsified letter was in the name of Sophie Desjardins, a program officer at Service Canada. That person does not exist. The letter contained errors and appeared to be a genuine Service Canada letter. It used the word *Messieur*, but the terminology used is *Monsieur*. The second forged letter was addressed to the organization's officials, when such letters should be addressed to the organization's name. The date is in the wrong place, and the person's title does not exist. It must also include the telephone number with the responsible officer's extension.

[101] In his investigation, Mr. Dussault confirmed that during the screening, the grievor had approved a grant application from an organization for which his spouse was the director. Ethically, it was problematic. Normally, the grievor should never have touched this file because of the apparent conflict of interest. The Togolese community's letter of support was false. He was the president of the Togolese Community Association, and he screened the grant application. The Quebec Enterprise Register confirmed that the grievor was the organization's president from 2006 to 2008. The grant application was submitted in 2007. In the investigation report, the findings can be found. Mr. Dussault explained that there was a typo. It referred to a date in 2009, although the application was dated 2007. Ethically, again, was the fact that the grievor was the president of the Association of the Togolese Community in Canada, and he knew Mr. Gedu personally.

[102] Mr. Dussault confirmed that his investigation report's findings were correct. The grant applications were found on Mr. Zonnon's computer. Mr. Zonnon allowed Service Canada to search his computer. In any case, the amassed evidence demonstrated that the grievor was involved.

[103] In his investigation report, Mr. Dussault determined that the grievor had snooped in Service Canada's databases. The amassed information, as opposed to the

grievor's version of the facts, demonstrated that in his view and on a balance of probabilities, the grievor committed the reproached actions. The witnesses he consulted all incriminated themselves.

[104] Mr. Dussault was able to obtain the public denunciation at the Palais de Justice, which is a public document. Much of the information came from the programs and the RCMP. However, the RCMP could not share a significant amount of documentation and information. The investigation report was completed in January 2013 and was provided to the director, Ms. Addison-Roy. From that point on, he was no longer involved. His sole responsibility was to collect the facts, write a report, and hand it over to management.

[105] In cross-examination, Mr. Dussault disagreed with the grievor that he had played a crucial role. He conducted the investigation impartially. His report was based on information collected from the Programs Section and information disclosed by the interviewees. He agreed that he should not have given his opinion in some places in the report. According to him, he did not believe that his comments in the investigation report had tipped the balance either way. He did not investigate the fraud allegations. That was up to the RCMP. He did not verify the information collected by Mr. Hobeila and Mr. Guillemette. He analyzed and included it in his report, but he did not verify it.

[106] Mr. Dussault disagreed with the grievor that he had conducted a biased investigation. According to him, his investigation was impartial, neutral, disinterested, and free of any bias. He did not know the grievor and had never worked with him. Mr. Dussault disagreed with the grievor that the initial purpose of the investigation was to find witnesses who could incriminate him. He did not know of any witnesses who could exonerate the grievor. As an investigator, he gathered information from the interviewees. Had he obtained information indicating that the grievor was not involved, then it would be in the report. In cross-examination, Mr. Dussault confirmed that Ms. Kobana had provided him with copies of the cheques. He was required to share all the information he had collected with the RCMP investigative officer.

[107] In cross-examination, Mr. Dussault acknowledged the document in Exhibit G-10, entitled, “[translation] Roger Klouvi File 2011-26V Roadmap”. The purpose of this document was to group all the relevant information. The information and the charges were serious. When this document was being written, he had not yet met with the

grievor. He was trying to keep management informed. He met with about 10 witnesses. All the statements, even if they did not directly incriminate the grievor, were important. Mr. Dussault confirmed that Ms. Addison-Roy had no authority over him and no influence on the investigation. She was not involved in writing the report. The purpose of his investigation was only to collect the facts. He agreed that he should not have given his personal opinion in some places in the report. If he were to do it again, he would remove his opinions. He did not obtain written statements from all the witnesses he met. He could not explain why. Toward the end of the investigation, he decided to have the witnesses sign. He acknowledged that in some circumstances, the exchange of the grant money was between the spouses, not directly with the grievor. An exchange of money occurred with the grievor's spouse in some cases but not with the grievor directly. The grievor's spouse had signed and cashed the cheques for certain grants. Mr. Koutou was reluctant to speak to him, but he had provided him with relevant information. He signed the statement voluntarily, and he admitted that he had split the money in two with the grievor.

[108] In re-examination, Mr. Dussault confirmed that as for the handwritten notes taken during the investigation, he made some and Ms. Brisson made others. The final report includes both of their notes. It was the only investigation of this magnitude that he had conducted. He had no authority to verify the cash-related transactions, only the interviewees' statements. The forged letter in Exhibit E-61 came from Mr. Zonnon's computer.

G. The disciplinary process

[109] On April 5, 2012, the grievor was suspended without pay pending the completion of an investigation. Mr. Boulianne signed the suspension letter in which he instructed the grievor that he had been informed of an RCMP investigation involving him and that therefore, he had requested that the Security, Investigations and Emergency Measures Division of Service Canada's Integrity Services, Quebec Region, conduct an administrative investigation to shed light on the following grounds, which were breach of trust and fraud. In light of the allegations, management had determined that his presence in the workplace posed a sufficiently serious and immediate risk for to the department's legitimate concerns and that for that reason, he was suspended indefinitely without pay pending the investigation's outcome as of Tuesday, April 10, 2012. Mr. Boulianne informed the grievor that he could not access Service Canada

offices, his workplace, or his voicemail and that his access to the computer system had been revoked. He requested that the grievor not communicate with Service Canada employees for the duration of the investigation. Once the investigation completed, the grievor would have an opportunity to provide any clarifications or mitigating circumstances. If the investigation's results demonstrated that the allegations were founded, disciplinary action could be taken against him.

[110] Mr. Bédard accompanied Mr. Lefort at the pre-disciplinary hearing. His role was to take notes. The pre-disciplinary hearing was held on March 21, 2013, with Mr. Lefort, Mr. Bédard, the grievor, and his union representative, Stephen Soucy. Mr. Bédard adduced in evidence the handwritten notes taken during the meeting. The grievor could provide his perspective on the investigation report. The report confirmed the grievor's guilt. The grievor was disappointed with how the report was written and was frustrated that he did not have access to the RCMP report. He asked for an additional week to present new items that did not appear in the administrative investigation report. With respect to the snooping allegations, the grievor stated that he had a poor understanding of the *Values and Ethics Code*. According to him, it was not out of malice. Mr. Bédard confirmed that the grievor had told him that he did not know that he was prohibited from dealing with files involving individuals with whom he had ties. It was not clear to him. Mr. Bédard was not involved in the disciplinary action taken against the grievor. He just took notes and gave them to Mr. Lefort when he left the meeting.

[111] Mr. Bédard confirmed that he had no role in the Security and Integrity Division's investigation. Ms. Addison-Roy and Mr. Dussault were responsible for the administrative investigation. Ms. Addison-Roy decided who would be tasked with the investigation. Her role was to determine how the investigation should proceed and to prepare a report for Mr. Boulianne. Mr. Dussault was the investigator. Mr. Bédard did not know of his responsibilities or activities.

[112] Mr. Lefort testified about his role in the disciplinary process. His version of the facts is consistent with that of Mr. Bédard. In March 2011, Mr. Bédard approached him about some questionable grant applications under the Seniors Program. Mr. Bédard informed him that some organizations had residential parking and business addresses of all kinds. Mr. Bédard informed him of the irregularities that Mr. Hobeila and Mr. Guillemette had identified. He continued his investigation to determine the extent of

the irregularities and their scope. It took a few weeks to conduct the preliminary investigation, which established ties with different groups. The factual data was from Service Canada databases. After a thorough review, grant application experts discovered that the grievor was the common denominator of all the applications.

[113] In June 2011, Mr. Bédard identified 4 grant applications with fraudulent letters of support. As the preliminary investigation progressed, more irregularities were identified. The irregularities were observed at the regional level, and possibly at the national level. The deputy minister was informed; so was the regional director in Ottawa. A formal investigation was initiated with the security team. Mr. Lefort was not involved in the investigation done by the team made up of Ms. Addison-Roy, Mr. Dussault, and Ms. Brisson. He had several discussions with Mr. Bédard, given the scope of the information that he had gathered. He brought the file to the RCMP's attention. As the director general, Mr. Lefort has an obligation to report on the use of public funds. Mr. Lefort recalled that there were about 15 grant applications with the common denominator of the grievor.

[114] In July 2011, Mr. Bédard emailed Mr. Lefort, telling him that a co-worker had met with him to tell him that the grievor had asked him questions about the Togolese organizations and their Seniors Program files. According to Mr. Bédard, he considered this information an indication that the grievor was involved in the grant applications. Mr. Bédard recommended that the Security Division look into whether the grievor had reported activities outside Service Canada. The investigation report submitted to him referred to the fact that several people from the Togolese community were involved. In addition, there was relevant information that appeared to set out that the grievor had snooped in Service Canada's databases. The snooping involved the grievor's family and friends while he worked for Employment Insurance. Given the extent of the irregularities and the facts implicating the grievor in Mr. Dussault's investigation report, Mr. Lefort was required to conduct a disciplinary process. Mr. Lefort wanted to ensure that the disciplinary process would allow the grievor to present his version of the facts and to have the opportunity to respond to the allegations against him. Fraud and embezzlement were indicated. At the pre-disciplinary hearing, the grievor could be accompanied by a representative of his choice. Mr. Lefort was accompanied by a Human Resources representative.

[115] Mr. Lefort shared Mr. Dussault's investigation report with the grievor, to obtain his version of the facts. At the pre-disciplinary hearing on March 21, 2013, the grievor was accompanied by a representative of his choice, and Mr. Lefort was accompanied by a Human Resources representative. Mr. Lefort presented a summary of the allegations of breach of trust and misconduct, a breach of the *Values and Ethics Code*, potential fraud, and embezzlement in the Seniors Grant program. Mr. Lefort listened to and noted the grievor's responses to the allegations that were presented.

[116] Mr. Lefort recalled that the grievor had concerns about the form and substance of the investigation report. The grievor wanted clarification of dates, witnesses, and events. The grievor wanted his witnesses' versions represented in the report. The grievor stated that he had indirectly overseen the assessments of the grant applications. The grievor's responses were very general. Mr. Lefort recalled that the grievor had indirectly admitted that he should not have looked at the information of friends and close relatives in Service Canada's databases. The grievor was unaware that it was prohibited to look at the information of friends and close relatives in Service Canada's databases.

[117] However, there was no admission as to the irregularities in or the embezzlement of the grant applications listed in the investigation report. The grievor stated that he did not know most of the people. He requested additional time to review his file and requested copies of the emails referred to in the investigation report.

[118] After the pre-disciplinary hearing, Mr. Lefort analyzed the grievor's responses. He assessed them based on the allegations and on the balance of probabilities. He considered both aggravating and mitigating factors. He consulted the Labour Relations Section to find out whether Service Canada had had similar cases in the past. He wanted a full picture of the situation. According to him, it was clear that the bond of trust with the grievor had been broken, given the extent of the investigation report, the testimonies of those interviewed, the identified irregularities and embezzlement, and the fact that the common denominator that continually arose was the grievor's name in the 15 grant applications in addition to what he heard from the grievor at the disciplinary hearing, the organized system, the amounts involved of over \$200 000 of public funds, the snooping in the databases, and the breach of the *Values and Ethics Code*. In addition, he consulted Human Resources on the applicable case law. Based on the extent of the allegations, the collected information, and the grievor's version, on a

balance of probabilities, he concluded that the allegations were founded. He could not recommend that the grievor take on another position. For all these reasons, he recommended the grievor's termination to Deputy Minister Johanne Bélisle.

[119] According to Mr. Lefort, Mr. Dussault's investigation report was well balanced. The file was complete, as was the investigation. He was unaware of any meetings between Mr. Dussault and RCMP investigators. He did not want to interfere with Ms. Addison-Roy's investigation. According to him, on a balance of probabilities, the evidence had set out that the grievor was involved in the Seniors Program either directly or indirectly. The grievor did not deny the allegations of embezzlement in the grant applications. He did not admit to the fraud allegations, but he also did not deny them. The grievor admitted that he had snooped in the Employment Insurance databases. According to Mr. Lefort, the criminal charges were an aggravating factor in his termination recommendation.

[120] Exhibits E-49 and E-63 have notes on the telephone conversations between Ms. Tabiou and Frédérique Naud, Service Canada. The emails and notes confirm Ms. Tabiou's testimony and her efforts to return the cheque. Ms. Tabiou informed Ms. Naud of it on July 20 and 22, 2010. In the notes, Ms. Naud requested that Mr. Zonnon sign a letter confirming that Ms. Tabiou was authorized to manage the documents of the Seniors Program and the Association's grant application. Mrs. Tabiou absolutely tried to return the \$24 000 cheque.

[121] Despite Ms. Tabiou's efforts to return the cheque, along with her subsequent resignation from the Association, Mr. Zonnon emailed Ms. Naud, confirming that he would move forward with the activities identified in the grant application. Mr. Zonnon stated that he had found new partners and that they could move forward with the activities described in the grant application. On August 9, 2010, Ms. Naud emailed Ms. Tabiou, stating that she took note of her resignation from the Association and that she would follow up closely with Mr. Zonnon. Ms. Tabiou forwarded the email chain to Mr. Dussault.

[122] Mr. Lefort confirmed that the criminal charges were an aggravating but not a determinative factor in the termination recommendation. The criminal investigation was ongoing. The disciplinary meeting took place on August 8, 2012, and at that time, allegations of potential fraud were in place. Mr. Lefort recalled that at the pre-

disciplinary hearing, the grievor argued that the investigators had not analyzed the facts in the investigation report.

[123] In Exhibit G-17, at that stage, according to Mr. Lefort, they were only criminal allegations. On August 8, 2012, the criminal investigation was not yet complete. They were aggravating factors to maintain the suspension without pay. Mr. Lefort replied that according to document G-16, he could not access the information obtained from the RCMP. At that time, Mr. Lefort knew that the RCMP would lay charges against the grievor. He reviewed Mr. Bedard's information. Mr. Lefort did not recall whether at the pre-disciplinary hearing the grievor presented his exchange with the Service Canada Values and Ethics Office, which stated that he had not breached the Service Canada *Values and Ethics Code*. The Values and Ethics Office had determined that the grievor was not in a conflict of interest because his spouse was involved in an organization that had applied for a grant. According to Mr. Lefort, it was not a significant addition. The Values and Ethics Office's finding did not change the fact that the grievor had been involved directly or indirectly in more than 15 organizations that had applied for grants under the Seniors Program and for which there were irregularities and that a dozen witnesses had testified against him. Most cases pointed to the grievor.

[124] The grievor submitted a document, adduced as evidence in Exhibit G-16, in which he identified contradictions in Mr. Dussault's investigation report. The grievor had requested several documents, including emails that had been provided to him, to enable him to respond to the investigation report. Mr. Lefort reviewed everything that the grievor submitted to him. All the documentation that the grievor had requested was provided to him to prepare for his response to the investigation report. Mr. Lefort disagreed with the grievor that there was a lack of natural justice at the pre-disciplinary hearing. The grievor wanted better representation of his version of the facts in the investigation report. He argued that there was no reference to his version of the facts in the report, in the summary of results, or in the report's findings. The grievor argued that his testimony had been completely ignored.

[125] At the end of Mr. Lefort's cross-examination, the day after the hearing, the grievor requested that Mr. Bédard and Mr. Lefort come back, to further cross-examine them on how the investigation process was conducted and the investigators' mandate. The grievor argued that there were irregularities in the investigation, that it was biased, and that he did not have the opportunity to properly question these witnesses. The

employer responded that the witnesses should be brought back only in circumstances in which new things appeared that could not have been revealed earlier. From the start, the grievor had maintained that the investigation was biased and that there were irregularities, and he wanted a second opportunity to demonstrate it. The employer argued that the grievor could recall Ms. Addison-Roy, who had given the mandate to the investigators and who was responsible for managing the investigation process. I denied the grievor's request to recall Mr. Bédard and Mr. Dussault. The grievor did not demonstrate that there was new evidence to which he did not previously have access or evidence that could not be anticipated. I explained again that Board hearings are hearings *de novo*. I asked the grievor, for a second time, to read *Tipple*. I explained that the employer had the burden of demonstrating that misconduct occurred and that the disciplinary action was proportional to that misconduct, considering the mitigating and aggravating facts. If I determine that the disciplinary measure is not reasonable in the circumstances, I must rule on the appropriate measure, but only if I find that it is unreasonable. I told the grievor that he would be able to make any argument that he considers important with respect to the scope of the employer's evidence and that I would sign a summons for Ms. Addison-Roy's appearance.

[126] The employer's last witness was Ms. Bélisle, who was the service management executive for the Quebec Region when the grievor was terminated. She signed the termination letter. She read the investigation report prepared by Ms. Addison-Roy's team, was verbally briefed, and received an explanation of the allegations on file. She learned the details and facts of the allegations involving the Seniors Program. She remembered that the employer had blamed the grievor for being involved in drafting grant applications 12 to 15 times. The grievor was charged with snooping in and consulting the Employment Insurance files of his friends and relatives. Ms. Bélisle agreed with the draft of the termination letter. Program officers must assess taxpayer grant applications without giving favours or perceptions of favour. The grievor knew the people involved. The amassed evidence demonstrated that the grievor had advised them. Grants awarded were to be awarded on a basis without conflict of interest. Program officers must consider the public interest. The grievor's actions were contrary to these values. The grievor had assessed and approved a grant application from his spouse, who was the president of an organization. He received money from approved grant applications. He helped write false letters of support and grant applications. The grievor received funds in exchange for helping with grant applications. Misconduct was

demonstrated in the report. The actions were serious; the grievor's actions took place over a long period, and were done many times. The conduct was completely unacceptable for a program officer. The allegations are very serious, up to and including alleged fraud. There was no other option; termination was appropriate in the circumstances, especially because of public confidence in the management of grant programs. Service Canada's conduct guidelines set out the obligations of Service Canada employees. The grievor assessed the grant application of an organization for which his spouse was the director. According to the *Values and Ethics Code*, he had an obligation to disclose this information to his senior manager. The grievor had an obligation to ensure that public funds — in this case, of the Seniors Program — were used in accordance with the laws, policies, and regulations governing their use. The facts reported in the investigation report set out that the grievor took actions inconsistent with his obligations under the *Code of Conduct*. Through his behaviour, the grievor enabled people and third parties to use public funds inappropriately. He forged letters of support to cover up the inappropriate use of public funds. In addition, the grievor breached the *Policy on the Use of the Electronic Network* and the *Electronic Network Usage Guidelines*.

[127] Ms. Bélisle acknowledged that she had just arrived at Service Canada when she decided to terminate the grievor. Those responsible for Human Resources, the program director, and the person who had taken over Ms. Addison-Roy's position had briefed her. She knew that the grievor had been suspended for just over a year for irregularities in the grant programs. Those responsible for the investigation explained to her the investigation's conduct, the RCMP's involvement, and the fact that the grievor had been interviewed for his version of the facts and that in response to an assessment of the file, the recommendation had been termination. Ms. Bélisle confirmed that she agreed with the recommendation after forming her own opinion about the file. She was aware that the grievor had admitted to the snooping. He was also not entirely familiar with the policy and the *Code of Conduct* related to snooping. In summary, she remembered that the grievor had denied the allegations. She was aware that the investigation report's findings did not reflect the grievor's position.

[128] The grievor called Claude Jacques, Security Manager for Service Canada staff. He had been in charge of the working group responsible for the reliability status unit, secure Internet communication, and protected information for approximately five years. He acknowledged the document and the people listed in Exhibit G-22. Ms.

Addison-Roy had contacted Mr. Jacques to find out whether it was possible to revoke the grievor's reliability status. At that time, the Treasury Board often contacted Mr. Jacques about the *Policy on Reliability Status*, specifically as to whether doing so was possible. Reliability status is a condition of employment. Without a reason to revoke the status, doing so could be taken as disciplinary action. Usually, there is an administrative investigation and, at the same time, a security investigation, which can impact the security clearance. Mr. Jacques had to ensure that all security officers did their work the same way in all the Regions and according to the Treasury Board policy in force. Ms. Addison-Roy contacted Mr. Jacques about twice to find out whether there was any reason to revoke the grievor's reliability status. On November 20, 2012, in her email to Mr. Jacques, Ms. Addison-Roy stated that the grievor would be "[translation] most certainly" terminated for several breaches of the *Code of Conduct* and the *Values and Ethics Code*, in addition to being criminally charged in an RCMP-led investigation. Ms. Addison-Roy tried to persuade Mr. Jacques to launch a security investigation, to revoke the grievor's security clearance.

[129] The grievor called Daniel Comeau. When the administrative investigation was conducted, Mr. Comeau was Director General, Internal Integrity and Security, and Departmental Security Officer. In the grievor's case, he signed the investigation report for the Quebec Region. The grievor was not linked to him hierarchically. He held an executive position. He was responsible for all matters involving the physical security of persons and property and emergency management in an executive role. He had an obligation to ensure that during investigations, he did not exceed his mandate. In his email to Ms. Addison-Roy, he objected to sharing the investigation report with the different stakeholders before he had signed it, to not influence the conclusions. Exhibit G-23 contains an exchange between Mr. Comeau and Ms. Addison-Roy indicating that she, the program director, the labour relations officer, and the investigators were to meet to discuss their comments on the report and to determine whether the report should be further refined. Mr. Comeau said that the administrative investigation report should not be reviewed by anyone not in the security field and involved in the investigation, to maintain integrity and objectivity. His impression was that the report circulated before he had signed it. He did not want the report sent to anyone before had he signed it.

[130] Mr. Comeau did not recall exactly the email in Exhibit G-22, but he was generally aware of it. Exhibit G-22 is a series of emails between Mr. Comeau and Ms.

Addison-Roy in which she again raised the question of revoking the grievor's reliability status. This time, she referred to the fact that surely, the grievor would be terminated. On November 21, 2012, he responded that he required a report to be able to revoke the reliability status. Ms. Addison-Roy told him that the grievor would be criminally charged. Ms. Addison-Roy then forwarded their exchange to Mr. Dussault.

[131] He confirmed that it was inappropriate to use the security investigation process for disciplinary purposes. He agreed with the conduct of the administrative investigation at the time. It was standard to copy the persons identified in Exhibit G-24. The investigators did an excellent job. The work was professional. Anyone reading the report would see that it is a good investigation report. According to him, it meets the standards. The report's substance and form comply and reflect good work. The table of contents, structure, reasons, objectives, and witness interviews enable him to conclude that this is a good report. Mr. Comeau disagreed that natural justice was breached in the conduct of the investigation.

[132] The grievor called Ms. Addison-Roy. When the administrative investigation was being conducted, Ms. Addison-Roy was Regional Director, Security Investigations and Emergency Measures, Service Canada. Emergency measures investigations are similar to security investigations. The grievor asked several questions about administrative investigations in general and the proper conduct of such an investigation. Ms. Addison-Roy explained that before conducting an administrative investigation, the manager's allegations must be verified. If the allegations are substantiated, after verification, management decides whether there should be a mandate to conduct an administrative investigation. For example, for the allegations against the grievor of snooping and false signatures, a central administrative retrieval had to be done to verify the grievor's mailbox, Internet access, and searches of the Employment Insurance database and the common programs system. That verification determined whether there had been snooping. Once the retrieval was completed, the gathered information was analyzed. In that way, it is possible to determine whether the system was used for personal reasons and whether there was abuse. This information is then sent to the manager. No administrative investigation can be carried out before the mandate. Once the allegations are confirmed by the facts, and once the mandate has been given, a more in-depth verification is done of the allegations and facts. In the grievor's case, the email, the addresses of the people whom he had contacted, the civic addresses, the truthfulness of the letters, and the production of false documents were all verified.

[133] Ms. Addison-Roy assigned Mr. Dussault the investigation mandate. They talked every time he discovered new information. She had to report to the assistant deputy minister. There are rules to follow; the RCMP cannot share information about investigation results or the progress of its investigations. RCMP investigators cannot help with the employer's administrative investigation. Ms. Addison-Roy was adamant that Mr. Dussault and Ms. Brisson had never interfered in the RCMP investigation. The RCMP kept them abreast of developments in the investigation. Information was exchanged but only as to the next steps in the investigation.

[134] The grievor adduced in evidence an email from Ms. Addison-Roy dated July 17, 2012, in which she informed Ms. Brisson and Mr. Dussault that they had cooperated very well with the RCMP and that the investigators greatly appreciated it. She noted that they had cooperated very well given the privileged information. Ms. Addison-Roy explained that she referred to privileged information in the sense that they were privileged to have that information. By stating that they had cooperated very well, she meant the fact that Mr. Dussault had had conversations with them about the next steps. She knew where they were going in the investigation; for example, we are moving toward such a thing, and in such a week, there will be a search and a request from two Service Canada employees to participate in the search. When the RCMP required information, Service Canada provided it. The provided information included, for example, the appointment dates of certain people working for the employer and requests for audits and information related to his employment. However, Mr. Dussault and Ms. Brisson could not obtain information collected by the RCMP as part of its criminal investigation.

[135] Ms. Addison-Roy explained that the grievor had breached the *Values and Ethics Code*. The facts established that the grievor had forged false letters of support. There were copies from other letters of support from other organizations. One of the grant applications contained the grievor's civic address. The grievor screened in the draft grant proposal for an organization for which his spouse was the director. The grievor snooped in Service Canada's databases and helped several people fill out grant applications. All those actions are counter to the *Values and Ethics Code*.

[136] The grievor asked Ms. Addison-Roy whether she remembered writing to Mr. Comeau and Mr. Dussault about the revocation of the grievor's reliability status in November 2012. Ms. Addison-Roy stated that the administrative investigation began in

April 2012. The search took place in April 2011. She did not recall the date on which Mr. Dussault had interviewed the grievor for his version of the facts. The grievor was the last person to be interviewed. In November 2012, when she wrote the email, the grievor had been interviewed. She contacted Mr. Jacques about the reliability status because the administrative investigation was almost over. There was enough information to know where they were going with their recommendations. This was not his first request to revoke a status in response to an administrative investigation. Ms. Addison-Roy was still considering revoking the reliability status when there was a possibility of termination. It was always in the discussion. Ms. Addison-Roy had had discussions a few months earlier. She acknowledged that she had indicated in writing that the grievor would most likely be terminated, given all the information collected. She wanted to be sure that she was ready to move forward with the revocation were the grievor terminated.

[137] The January 30, 2013 (Exhibit G-27), email exchanges of Ms. Addison-Roy with Line Pineault, Mr. Boulianne, and Mr. Dussault were exchanges that she required to keep people informed of the developments in the investigation. The decision to terminate the grievor was left to Mr. Lefort as the executive director. She wanted Ms. Pineault to support revoking the grievor's reliability status were he terminated. The administrative investigation was not yet complete, but the administrative investigation team knew what direction to take. The facts and witnesses established a breach of ethics and a violation of the *Values and Ethics Code*. Her only power was to recommend. She had no final decision-making authority. If the grievor was not terminated, the employer could not revoke the reliability status. Ms. Pineault responded "OK", so she assumed that she understood what Ms. Addison-Roy anticipated. With respect to her email about her request to Mr. Jacques to access the grievor's credit file, she was seeking to validate the grievor's comments, about which she had serious doubts. According to the testimony, 50% of the amounts delivered personally to the grievor had been cashed. Ms. Addison-Roy wanted to verify that information. She asked whether it was possible to waive the requirement to obtain the grievor's consent, given the fraud allegations.

[138] Ms. Addison-Roy explained that she recommended revoking the grievor's reliability status because he had been accused of fraud and breach of trust, according to the testimonies of those involved. It was risky to let the grievor work at Service Canada or even elsewhere in the public service. The grievor was accused of criminal

fraud. During the administrative investigation, people testified that the grievor had pocketed money from program grants.

[139] As for her email exchanges with Mr. Dussault and Mr. Legris on July 17, 2012, Ms. Addison-Roy's request to hire a firm to compare the grievor's signature with the signature provided on the false letters by Mr. Jacques was denied as there was sufficient evidence at that time to recommend terminating the grievor. There was no need to compare the signatures.

[140] As for her email exchanges with Ms. Brisson and Mr. Dussault, Ms. Addison-Roy wanted to know whether they could obtain copies of the cheques. Ms. Addison-Roy had checked with Mr. Comeau as to whether they could be obtained. Ms. Addison-Roy explained that the expression that she used in her email, to ensure that she was shielded and supported by Mr. Comeau, was meant to ensure that the investigation was lawful, without using powers that were not conferred on them.

[141] Ms. Addison-Roy explained that the investigation revealed that the grievor had used Service Canada's Employment Insurance database to consult the files of colleagues, friends, members of the Togolese community, and individuals involved directly or indirectly in fraud in the Seniors Program. According to the investigation report, the grievor had the opportunity to explain his version of the facts. The grievor was given the opportunity to explain the multiple emails that he had sent from his professional email account. According to the investigation report, the grievor had acknowledged his wrongdoing with respect to snooping in the Employment Insurance database by consulting the files of colleagues, friends, and members of the Togolese community. He had not really understood the *Values and Ethics Code* with respect to snooping. He took responsibility for and regrets his actions. Although he also acknowledged his wrongdoing about the privileged information that he gave to his acquaintances by email, he again admitted that he had a poor understanding of the *Values and Ethics Code*. According to him, providing general information is not contrary to the *Values and Ethics Code*. The grievor denied any involvement in any organization. Ms. Addison-Roy met with the RCMP two or three times during the investigation to present documents and explain the fear of potential fraud. She did not recognize the document adduced in evidence in Exhibit G-33. The document consists of notes of the May 18, 2012, meeting with the RCMP. She doubted that she had written it because she does not make mistakes when she writes.

[142] In the investigation report, Ms. Addison-Roy concluded that the bond of trust no longer existed. That is why she and the investigation team recommended that the grievor be terminated, considering the seriousness of his actions. With Human Resources' help, the recommendation was presented to the decision maker. The facts were presented to the grievor, and he was given an opportunity to respond to them.

H. The grievor's version of the facts

[143] The grievor testified that he did not have a permanent job as of the hearing. He was doing on-call work for a publishing company as an assistant operator, two or three days a week. He gave a brief overview of his Service Canada career as an Employment Insurance evaluator, as a program officer, and as a senior advisor. The grievor knew the Seniors Program well. He knew how to screen grant applications and how to check documents. At the screening stage, it is necessary to verify that all documents are present and that the application is complete. The application is verified, to ensure that it meets the program objectives. Once the analysis is complete, a score on a scale from 0 to 100 is assigned. This does not mean that the project with the highest score will be approved. There is another approval stage with other decision-making criteria for tax approval.

[144] The grievor was trained on the "Capital Assistance funding" and "Community Participation and Leadership funding" under the Seniors Program. These documents were available to the public. As a program officer, the grievor had no decision-making authority over awarding grants. That authority was vested in the regional office and other partners to decide the final award of a grant application. During the time that the grievor worked in Programs in 2007, he had not been involved in the full cycle of a grant project. He had experience only in screening and in the analysis stage. He never had the opportunity to complete the recommendation stage and was not familiar with the final-decision approval process.

[145] The grievor was very involved in the Togolese community. He was known as the "[translation] dean" of the community. He was part of the first wave of Togolese immigrants in 1998 and 1999. From 2003 to 2007, he was the president of the Togolese Association. His community applied for contributions and grants under the programs. He then decided to end his functions in the Togolese Community Association because of the *Values and Ethics Code*.

[146] The grievor was the vice-president of Amnesty International Togo, as well as Development and Peace in Montréal from 2001 to 2004. This organization had no relationship with the federal government, so the grievor continued in his position in that organization. The grievor did not complete a confidentiality report in his first position, as the *Values and Ethics Code* stated that he had 60 days to do it. His first job at Service Canada was a contract position for January 2007. His contracts were extended by 1.5 months until the grievor became a permanent employee in 2008.

[147] To comply with the *Values and Ethics Code*, the grievor refrained from participating in organizations applying for federal government grants. In June 2007, he withdrew from any organization that had dealings with the federal government. All his fellow citizens knew that he worked for Service Canada. In his community, he did everything he possibly could to encourage his fellow citizens to participate in social activities. During his term as president, he informed the office of the Togolese Association about the different possibilities for social involvement. The information he provided is available in the guides on the Service Canada website. They asked him about Employment Insurance and social insurance and everything pertaining to Service Canada. Some information he could not share. He did not hold back from sharing information that was available to the public. The grievor told this to Mr. Lefort during the pre-disciplinary meeting.

[148] The grievor was suspended without pay on April 10, 2012. The suspension came into effect on April 5, 2012, as the grievor had not reported to the office. The grievor met with Mr. Dussault and Ms. Brisson on October 30, 2012. He made a complaint to the access-to-information commissioner because his request had not been processed on time. His complaint was allowed. The access-to-information request was made for his grievance filing. The grievor wanted to send along all the information, but unfortunately, his application was not replied to on time. He received a response to his complaint after his termination. His grievance was presented at the final level without the documentation underlying his termination. The grievor submitted his request for documents on April 18, 2013. He received an acknowledgement of receipt but did not receive a response until May 2015. In the meantime, he made his complaint. In 2014, he was criminally charged. In May 2015, he received the documentation.

[149] As stated in Exhibit G-35, the complaint under the *Privacy Act* (R.S.C., 1985, c. P-21) was deemed founded as it was not answered within the 30-day time limit, as

provided in that Act. In Exhibit G-36 are questions that Mr. Dussault and Ms. Brisson asked in an interview of the grievor. The grievor stated that he knew Frédéric Zonnon (Mr. Zonnon's brother) as a former co-worker at Service Canada. Mr. Zonnon was his fellow citizen from the Togolese Community in Canada. In response to a question, the grievor replied that he had not prepared grant documents for the Seniors Program. He also answered a question that he had read the *Values and Ethics Code* on his hiring and that he had taken training in 2011. He was aware of the snooping policy. He mentioned the grant applications he remembered as of the interview. The grievor confirmed that he had not shared his passwords with anyone.

[150] According to the grievor, the Quebec Enterprise Register does not contain up-to-date information. He left Diastode-Canada as being involved in producing conflict-of-interest confidentiality reports was significant work. However, I note that the grievor did not submit any documentary evidence to that effect. The grievor knew almost all the people mentioned in the investigators' list of questions. He did not know T.A. He had no connection with that person. The grievor also did not know T.K. That person was looking for information on social insurance. T.K. wanted to access his benefit file. The Internet link was not working, and the site was slow, so he sent his social insurance number and access code to the grievor. The grievor refused to use T.K.'s access codes. Instead, the grievor asked T.K. to go to the Service Canada website. The grievor said that several of his Togolese compatriots expected him to help them. The grievor explained to them the guidelines that he had to follow and told them that he could not even provide his contact information. The grievor told T.K. to call the centre and to go in person, to obtain the information that he needed.

[151] The employer objected to the questions about the interview during the investigation with Mr. Dussault and Ms. Brisson. The employer raised the rule set out in *Browne v. Dunn*, 1893 CanLII 65 (FOREP), which states that the grievor should have cross-examined those witnesses so that they could give their versions of the facts. I took the employer's objection under reserve and asked the parties to make the necessary arguments as to the scope to be granted for the grievor's testimony with respect to the questions of Mr. Dussault and Mr. Brisson.

[152] The grievor testified that he only explained the context of the program and that he provided explanations for the missing documents. He did not understand that there was a risk of conflict of interest. The grievor denied any involvement in developing

grant projects. He denied signing the letter from the Canadian Togolese Community. He did not participate in any grant application, and according to the statements, he did not participate in any of those organizations' operations or forge any letters of support.

[153] The grievor referred to the purchase of a personal computer. He had requested that the computer be delivered to his office, with authorization from management. He could not answer the investigators' questions about the computer in question.

[154] The grievor denied forging the letter with respect to the Association of Retirees. The grievor stated that he was not involved in developing or documenting the project. He did not sign a letter of support. He was unaware of the \$12 800 cheque. The grievor denied receiving money from Mr. Gedu in the past. He had already lent money to Mr. Gedu. It was a loan of money before he became a public servant. Mr. Gedu never paid it back, and he was not associated with him.

[155] With respect to the Social Development Club, in September 2010, the grievor was on annual leave. The grievor denied sending letters. He asked when the letter was sent. The investigator never answered him.

[156] The grievor denied preparing letters for Mr. Zonnon for a grant application. Mr. Dussault and Ms. Brisson never showed him the documents to which they had referred. He was never shown the documents during the investigation. With respect to the cookbook, his email was not used, and the grievor denied emailing documents to Mr. Zonnon.

[157] The grievor explained that the mood was heavy during the investigation and that the questions were asked in an accusing tone. He felt that the purpose of the investigation was only to validate the collected facts, not to determine their truthfulness. He also felt that the investigators had never intended to learn his version of the facts.

[158] The grievor was completely unaware of the sum of \$19 575 and the grant application that was submitted. With respect to the cookbook prepared as part of the Association's grant application, his email address was not used, and he never emailed Mr. Zonnon. The purpose of the exchange between the grievor and the investigators was not to obtain his version of the facts. The investigators simply tried to validate the

results of their search. They never intended to obtain his version of the facts. The grievor was unaware of the grant applications presented by the investigators.

[159] With respect to the grant project submitted by the Social Development Club, of which the grievor's spouse was a member, the grievor denied preparing a letter of support from the Association of Retirees from Cultural Communities of Montréal East and sending it to Mr. Zonnon. He also did not prepare a false lease. He was unaware that the \$19 575 was split between his spouse and Mr. Zonnon's spouse.

[160] With respect to the grant application of the Social Development Club, of which his spouse was the organization's treasurer, the grievor was unaware that his spouse had a bank card and cheques signed by Mr. Zonnon's spouse. He was unaware of the sum of \$22 175. He was unaware of the letter of support signed by Mr. Agbazé and validated by Mr. Zonnon. He made no recommendations with respect to it.

[161] The grievor denied any knowledge of his spouse's involvement in Integration and Social Development. He had no knowledge of leading meetings of the board of directors or of letters of support involving this organization. He had not seen the confessions to which the investigators referred. He was unaware of that organization's grant applications.

[162] With respect to the false letter of support from the Seniors' Association of Laval in the September 2009 grant application from the Association, the grievor denied providing a letter template to Mr. Zonnon. The grievor did not ask Mr. Zonnon any questions to that effect in cross-examination. The grievor did not tell Mr. Zonnon that he would contradict his testimony.

[163] With respect to the 2009 and 2010 grant applications from the Association for \$24 000 and the letter of support from the Canadian Togolese Community, the grievor said that he was not involved. He did not provide any explanations at the hearing in response to his email exchanges with Ms. Tabiou about the \$24 000 cheque and his comment that the government was paying for the intent to conduct activities, not actually conducting them. The grievor denied both being aware of the letters from Sophie Desjardins and signing them.

[164] The grievor denied being involved in Diastode-Canada in September 2009. He did not know who signed the grant application if it was not Mr. Gedu's signature that

appeared. He did not apply for a grant for that organization. He was unaware that this application had been rejected or that the Canadian Togolese Community had signed a letter of support and that there would be a conflict of interest because the grievor was part of the Canadian Togolese Community at that time.

[165] The grievor was unaware that the Seniors' Social Development Group had provided a letter of support from Diastode-Canada signed by the coordinator, Mr. Gedu. He was unaware of the grant application in the amount of \$24 600. He denied sharing that money with Mr. Zonnon.

[166] The grievor acknowledged his close relationship with Mr. Zonnon. He was closer to him than to anyone else. He had good and friendly relationships with Mr. Zonnon and his spouse. Both couples visited each other. They worked together as Employment Insurance assessment officers in 2006. Everyone in the community knew that the grievor had changed jobs because he had been the president of the Canadian Togolese Community until 2007.

[167] In 2009, Mr. Zonnon asked him to learn about the Summer Studies and New Horizons programs. At that time, the grievor was a regional advisor at Service Canada. He never responded to Mr. Zonnon's requests. Mr. Zonnon's brother provided the information to Mr. Zonnon. The grievor knew Mr. Zonnon's brother; they worked together in 2007.

[168] The grievor said that Mr. Zonnon wanted more information. He referred him to the website for more information. He only provided information that was available to the public. The information was always shared orally. He never provided him with documents. He never helped him fill out grant applications and never received any money from Mr. Zonnon. He derived no benefits of any kind from Mr. Zonnon. He never asked Mr. Zonnon to take any particular action.

[169] The hearing was the first time that the grievor had seen the document of grant application number 7260169. When it was made, he was not a program officer. On June 6, 2008, he was an Employment Insurance processing officer. He has never been a member of that organization. He did not participate in any of the activities. The grievor knew that the grant application had been approved during the administrative investigation and at the hearing. He denied receiving a contribution.

[170] The grievor had no knowledge of the grant application numbered 7260169 or of the fact that it had been approved in the amount of \$18 000. The first time he saw the document was at the Board hearing. It was the same for the cookbook. He saw that document for the first time at the Board hearing. He does not know who produced that document. He had never seen the document's contents before the hearing. The cookbook was supposedly prepared with the Government of Canada computer assigned to him. The grievor stated that there was no way to know where that document came from. His work computer was of the Dell brand. The document's properties do not confirm the document's author or origin.

[171] The grievor made an access-to-information request to obtain all the documents underlying the administrative investigation. The document in Exhibit G-37 indicates that Ms. Addison-Roy requested an analysis of the grievor's computer hard drive. Ms. Addison-Roy made that request on July 30, 2012, with respect to the investigation that began in 2011. The result of the investigation was that it had found nothing according to the parameters of the investigation requested by Ms. Addison-Roy. Therefore, the cookbook document did not originate from the grievor's work computer.

[172] With respect to the grant application numbered 9152208 from 2009 in the amount of \$24 000 for the Association, the grievor was unaware of it. He did not help by providing documents or completing the application. In September 2009, the grievor worked as a regional advisor in the Citizen Services Branch. He had no knowledge of the activities. He never claimed a share or a sum of money. He never received any information or gave any information or documentation to help Mr. Zonnon.

[173] As for the false document bearing the name of Sophie Desjardins, he had seen it during the administrative investigation. They are letters, but he does not know where they come from. He does not know who signed them. He did not know who claimed that he created the documents. Mr. Dussault and Mr. Brisson never told him.

[174] According to the grievor, his meeting with Ms. Tabiou, Mr. Zonnon, and Mr. Agbazé about the \$24 000 cheque was intended simply to explain to Ms. Tabiou that the activities could be conducted without her. I note that at paragraph 170, the grievor denied any knowledge of the grant application, but that a few minutes later, he agreed that he had attended a meeting about that application. The grievor had no intention of obtaining money. It was just to provide explanations to Ms. Tabiou. The grievor was

not a member of the organization, but he had travelled to Gatineau with Mr. Zonnon and Mr. Agbazé to meet with Ms. Tabiou at her home. Ms. Tabiou was looking for other information that he did not have. He understood that she wanted to return the cheque, but their organization and their internal organization did not want to. His participation at the meeting led to confusion. This was his only intervention to ensure the continuation of the project. He did not understand Ms. Tabiou's insistence on returning the cheque.

[175] The grievor was also unaware of the Social Development Club's grant application numbered 8989055 that was submitted by Mr. Zonnon's spouse in 2009 and approved in March 2010 in the amount of \$22 175. He had no information about the processing of that application. No information had been shared with him. He was not involved in preparing documents; nor did he know how the grant money was used. Furthermore, he had never seen a completed report template. He did not prepare the document.

[176] The grievor was also unaware of the Social Development Club's grant application numbered 10305290 for the approved amount of \$24 000 in 2011. The grievor denied any involvement in that grant application. He saw the document for the first time at the Board hearing. He never provided any advice or information to advance the application; nor did he receive any money.

[177] In cross-examination, the grievor stated that he contacted the Public Sector Integrity Commissioner to ask the question about his spouse's involvement in an organization with her and Mr. Zonnon. He had heard a conversation between his spouse and Mr. Zonnon about programs and projects. He noticed that the relationship between Mr. Zonnon and his spouse had changed. He later learned that the grant application had been approved but that they had not yet received the cheque. The grievor asked Mr. Zonnon why it was that amount of money. He asked him what it was about. The grievor told Mr. Zonnon that if he did not have good intentions or if the activities were not to take place, he would report the situation. The grievor provided a copy of the Public Sector Integrity Commissioner's response to Mr. Lefort. He never committed any embezzlement or fraud. He did not believe that it was necessary to inform the Public Sector Integrity Commissioner that he had screened the grant application of his spouse's organization.

[178] The grievor's spouse was aware of the situation, and the grievor told her that if there was any embezzlement, he would report them. He had warned his spouse, and his spouse had informed Mr. Zonnon of it. The grievor had doubts about Mr. Zonnon's and his spouse's ability to deliver the activities. From that point on, the relationship with Mr. Zonnon changed. The grievor completely withdrew. There was no more conviviality. The grievor's spouse informed Mr. Zonnon that the grievor would report them. The grievor's spouse was a member of the Social Development Club and Integrity and Social Development. She resigned from those organizations. The grievor denied helping his spouse with her grant applications. His spouse was autonomous, and she conducted the activities. She participated in community and church activities, but they did not talk about it.

[179] The grievor believed that the criminal investigation and the administrative investigation had been merged. The investigators exchanged information. In October 2012, the RCMP provided information to the Service Canada investigators. The RCMP investigators provided a report of what the grievor had discussed with them. The grievor had made an access-to-information request to the RCMP, but it was denied because the documentation was before the courts. The grievor testified that he was unable to present his evidence to the Board but did not indicate the documentation that he was missing. Several times during the hearing, I informed the grievor that he could make a request for the disclosure of information and documents at any time. The grievor did not submit any requests. Documents were reviewed in the administrative investigation that he could not access. The grievor did not specify his allegation or identify any documents. Exhibit G-40 sets out that in August 2012, Service Canada would recommend terminating the grievor even before meeting all the witnesses in the administrative investigation.

[180] The document of the complaint to the Office of the Privacy Commissioner of Canada, which the commissioner determined founded, was based on the fact that Mr. Dussault had followed the grievor during the administrative investigation. According to the grievor's testimony, his rights were violated because there was a photograph of his residence at the time of the unpaid suspension and the confirmation of his home address.

[181] According to the grievor, the information in the Quebec Enterprise Register was not up to date as of the alleged events. He stated that during the administrative

investigation. During the disciplinary hearing, he also stated that the investigation report was erroneous.

[182] With respect to the snooping, the grievor knew that he was prohibited from searching files that were not his own. He could search by name or social insurance number. He understood the importance of protecting taxpayers' information. All his accesses from 2006 to 2012 were audited. The grievor never denied snooping in files that were not his own, but he did not fully understand his obligations under the *Values and Ethics Code*. Now, he understands better the importance of not snooping. He never disclosed any taxpayers' personal information.

[183] The grievor maintained that from the start, the investigators followed a path to incriminate him. They looked for witnesses to incriminate him rather than to shed light on the situation. The mandate was designed to incriminate him, not to seek the truth. In August 2012, before meeting with him in October 2012, the recommendation was made to terminate him. Ms. Addison-Roy negotiated the revocation of his reliability status, to be able to terminate him. The investigators had letters and documents that he had never seen. According to Mr. Lefort, the grievor's observations were minor. According to the grievor, the decision to terminate him was not made fairly and equitably. He raised several inconsistencies in the investigation report, and none was corrected.

[184] The decision makers and those who made the recommendations for the termination did not have the correct information. The grievor asked to be reinstated in his position. He asked that justice be served. He also asked for a letter of apology. He has been humiliated and wounded, and his reputation was ruined. He asked for the chance to mourn that wound. He is ready to return to work in a professional manner.

[185] The grievor reaffirmed under oath that he never committed any embezzlements, received any money, or personally benefited from the grant program. He never committed fraud, and had he had any suspicions about embezzlement in organizations he knew, he would have disclosed it to the Public Sector Integrity Commissioner, whether they had to do with the grant projects of Ms. Tabiou, Mr. Agbazé and Mr. Zonnon, or even of his spouse.

V. Reasons and arguments

[186] An adjudicator seized of a matter involving a termination must assess whether the conduct that gave rise to the termination took place and whether the penalty imposed is proportional. If the penalty imposed is excessive, the Board will intervene to determine the appropriate penalty (see *Basra v. Canada (Attorney General)*, 2010 FCA 24 at paras. 24 to 26; and *William Scott & Co. v. C.F.A.W., Local P-162*, [1977] 1 Can. L.R.B.R. 1 at paras. 13 and 14 (“*Wm. Scott*”).

[187] The termination letter, dated April 18, 2013, and signed by Ms. Bélisle, sets out the following misconduct allegations:

[Translation]

...

- i. *breach of the Values and Ethics Code;*
- ii. *snooping in the government's Employment Insurance databases; and*
- iii. *direct and indirect involvement in a fraud of several hundred thousand dollars under the New Horizons for Seniors Program.*

...

[188] It is the employer's responsibility to establish the underlying facts relied on to justify the termination as well as its appropriateness (see Palmer & Snyder, *Collective Agreement Arbitration in Canada*, 4th ed., at paragraph 10.67). The standard of proof is that of the civil standard of the balance of probabilities.

[189] Examining the proportionality of the penalty requires considering all relevant related circumstances, including the mitigating factors, such as the grievor's clean disciplinary record, his years of service, and the aggravating factors, such as the grievor's mindset and the repetitiveness of the actions taken, which are directly related to his guilt (see *Wm. Scott*, at para. 14; *Samuel-Acme Strapping Systems v. U.S.W.A., Local 6572* (2001), 65 C.L.A.S. 157 at para. 210; *Georgian Bay General Hospital v. OPSEU, Local 367* (2014), 243 L.A.C. (4th) 112 at paras. 58, 65, 66, and 68; *Fundy Gypsum Co. v. U.S.W.A., Local 9209* (2003), 117 L.A.C. (4th) 58 at paras. 40 and 45; and, more generally, Brown and Beatty, *Canadian Labour Arbitration*, 5th ed., at 7:4424).

[190] Specifically, it must be determined whether the grievor's misconduct was sufficiently serious to justify the termination as a disciplinary action. The issue is whether the disciplinary action was proportional to the seriousness of the alleged

misconduct (see *McKinley v. BC Tel*, 2001 SCC 38 at paras. 29, 48, and 57; and *Basra v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 28 at para. 29).

[191] The employer had to prove the allegations listed in the termination letter, which, in its view, justified the termination. In particular, it had to establish that on a balance of probabilities, the grievor breached the *Values and Ethics Code*, snooped in the government's Employment Insurance databases, and participated in a fraud of several hundred thousand dollars under the Seniors Program.

[192] If the employer discharges that burden, it must then establish that the measure imposed was proportional to the seriousness of the misconduct. When determining proportionality, I must determine whether the disciplinary measure imposed was excessive by considering all relevant related circumstances, including the mitigating and aggravating factors. If I find that the measure was not excessive, it remains valid. If I find that the termination was excessive, I must decide what disciplinary measure is warranted.

A. The employer's arguments

[193] The employer argued that it did not take the grievor's termination lightly. The discovery of certain information in 2011 led to the administrative and criminal investigations. The grievor raised doubts about the evidence adduced by the employer's witnesses and the evidential weight of the documents and testimonies of the different stakeholders. The decision to terminate the grievor was made based on the investigation report and the gathered facts. It is not up to the managers, in this case Mr. Lefort and Ms. Bélisle, to redo the investigation before making a decision. Even if there is evidence, however weak, it must be contradicted to overturn the termination. The issue is as follows: on a balance of probabilities, is it likely that the grievor committed the misconduct alleged in the termination letter? The grievor could have called witnesses of his choice, but he chose to base his evidence solely on the evidence of managers and his testimony. The grievor submitted that the investigation report was hearsay. That argument applies to both the grievor and the employer. The employer acknowledges that there were many typos in the investigation report. When the administrative investigators met with the grievor, they failed to make the minor changes identified by the grievor. However, this does not change the fundamental elements of the file and the serious allegations made against the grievor. The people

interviewed during the administrative investigation testified at the hearing. The Board must weigh the grievor's evidence against that of the other witnesses.

[194] The employer asks itself why the grievor, a man who is responsible and involved in his community and known to all suddenly is accused by so many people with whom he had ties, others not, and different projects and different people; why are those people suddenly testifying against him? The grievor did not present any explanations or triggers for a conspiracy against him for any specific reason. Furthermore, the grievor did not submit any evidence to that effect. Those who testified about the transactions, in which they participated or refused to participate in Ms. Tabiou's case, said that they were transactions that should not have occurred. Fraud, in the sense of dishonesty, underlies the allegations. The scheme was not complex. The grievor was always involved in the background in the grant applications. The vast majority of the people around him testified that he helped complete the grant applications or completed them himself. All the witnesses confirmed that the activities never took place. The grievor received his share for helping. Why are all these people giving similar testimony against him? The employer submits that it is more than likely that the grievor behaved as alleged.

[195] Each witness's credibility must be weighed against the rest of the evidence as a whole. If the witness's evidence coincides with the facts, chances are that it is more than likely that things happened as was testified. Mr. Zonnon had nothing to lose or gain. He pleaded guilty, signed a certificate to that effect, and confirmed at the hearing what he had done. In cross-examination, the grievor failed to dispel the fact that Mr. Zonnon had given him an amount of money. Only the dates do not match. Mr. Zonnon's candour must be considered; there are facts and circumstances surrounding the facts. Mr. Zonnon often had difficulty remembering the dates and times of his interactions with the grievor. However, the employer challenges the grievor to state that he did not take the money. Why end such a long-standing friendship? Mr. Koutou testified and signed a serious statement. He admitted that he was involved in the fraud, that he received cheques, and that he shared the amounts of the cheques with the grievor. Mr. Koutou had nothing to gain from his testimony before the Board. Mr. Koutou's testimony was even more surprising than Mr. Zonnon's, as he admitted things that could have serious repercussions for him. At the hearing, the grievor never confronted Mr. Koutou on this matter. Therefore, the evidence from those witnesses is serious and important.

[196] Ms. Tabiou was transparent and credible. She testified and always acted in good faith throughout all the events. She had nothing to gain from testifying against the grievor. In addition, she still works in the public service. She explained what happened, under oath. She put herself at risk. She believed that the first grant of \$18 000 had not been accepted. Later, she found out that the cheque had been cashed. She felt discomfort because there was a possibility that her name might be associated with those people. She truthfully stated that she wanted to return the \$24 000 cheque for the second grant application. There is a discrepancy between Ms. Tabiou's testimony and the grievor's version of the facts as to what happened at the meeting at her home. The real reason the grievor was there is not known. The grievor maintains that he was there as a mediator. Ms. Tabiou testified convincingly that the grievor insisted that the organization keep the cheque and try to move forward with the activities. The grievor tried to convince her not to return the cheque.

[197] The allegations of snooping and unauthorized access arose from people in the grievor's community. The people in his personal life turn against and report him; it is no accident. The employer submits that according to the evidence, it is more likely than not that things happened as explained by its witnesses.

[198] With respect to the grievor's position on the documents' properties, the employer's position is that the grievor is the author of the documents that were found on Mr. Zonnon's computer. On examination of the document's properties, it appears that the grievor is the author of the document. The employer never claimed that the documents were from the grievor's computer. The documents were from Mr. Zonnon's computer.

[199] The grievor alleged that the investigation was biased and that everyone tried to terminate him. Mr. Lefort, in fact, was not motivated by the grievor's termination, and the same is true for Ms. Bélisle. The decision was not made lightly. Ms. Bélisle made a decision informed by her experience as an assistant deputy minister. She did not sign the termination letter just because she was told to. Ms. Bélisle seriously considered the facts that were reported to her.

[200] Ms. Addison-Roy repeatedly and strongly insisted that the grievor's reliability status be revoked during the administrative investigation. However, Mr. Comeau and

Mr. Jacques refused to grant it. The reliability status was not revoked. Ms. Addison-Roy did not make the decision to terminate the grievor; it is Ms. Bélisle and Mr. Lefort.

[201] Even if the investigation report is set aside, there is much evidence that the grievor failed to contradict, among other things, the testimonies of Mr. Zonnon, Mr. Koutou, and Ms. Tabiou. Hearings before the Board are hearings *de novo*. Any breach of natural justice during the administrative investigation is corrected by the hearing before the Board. The grievor adduced all the evidence that he wished to submit.

[202] The employer referred me to the following decisions: *Pagé v. Canada (Attorney General)*, 2009 FC 1299 at para. 21; *Tipple*; *Patanguli v. Canada (Citizenship and Immigration)*, 2015 FCA 291 at para. 29; and *Turner*, at para. 118. Board hearings are *de novo*; that is, they remedy any irregularities during the investigation and the pre-disciplinary process. The evidence adduced at a Board hearing is heard on the civil standard of the balance of probabilities (see *F.H. v. McDougall*, 2008 SCC 53 at para. 26 and the following paragraphs).

[203] In *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at paras. 9 to 11, the British Columbia Court of Appeal identifies two main ideas on credibility issues. To be credible, it is not enough for a grievor to simply deny the facts and allegations against them. For the grievor to be credible, their testimony must be logical and possible in the context of all the evidence as a whole. The employer submits that the grievor's position and testimony are inconsistent with the rest of the evidence.

[204] The employer asked the Board to conclude with respect to the case law principles in *Ayangma v. Treasury Board (Department of Health)*, 2006 PSLRB 64 at para. 258 and the following paragraphs. The grievor's actions were premeditated; this case does not involve a spontaneous lack of judgment. The grievor's actions took place over a four-year period and involved several people. With respect to unauthorized access and snooping, the grievor did not provide any explanations except to say that he did not fully understand his obligations under the *Values and Ethics Code* very well. The grievor now claims to have a better understanding of his obligations and the need to protect taxpayers' personal information. At paragraph 262 of *Ayangma*, the Board contends that in cases of fraud, the appropriate disciplinary measure is termination. The grievor committed acts of fraud by using his position and knowledge of his position with things that relate to and affect the employer's core operations. Moreover,

ignorance of the law is not a defence in itself (see *Mercer v. Deputy Head (Department of Human Resources and Skills Development)*, 2016 PSLREB 11 at para. 51).

[205] In *Brazeau v. Deputy Head (Department of Public Works and Government Services)*, 2008 PSLRB 62 at paras. 181, 182, and 189, conflicts of interest in the public service are considered a serious offence in case law and may lead to termination. The grievor received an amount of money and personally benefited from his conduct. The grievor's conduct does not constitute an isolated incident; the alleged actions took place over several years. Therefore, the termination was appropriate.

[206] The employer does not understand the purpose of the grievor's communications with the Public Sector Integrity Commissioner in 2011 about his spouse's involvement in the associations and her involvement in grant applications under the Seniors Program. The employer does not believe that the grievor's intention to report his spouse if there was any embezzlement in the grant applications was sincere. Rather, it believes that it was wool pulled over the employer's eyes to cover up his involvement in his spouse's grant applications.

[207] The employer referred me to *Gravelle v. Deputy Head (Department of Justice)*, 2014 PSLRB 61 at para. 90, which concluded that although the misuse of the Internet, in breach of the employer's policy, was not established, the termination is still justified. Mr. Koutou's evidence alone tilts the balance; the grievor cashed out money from grant cheques. The grievor did not ask Mr. Koutou any questions about the money that was cashed. This uncontradicted evidence alone is sufficient to justify the termination. In its analysis, the employer concluded that the bond of trust was irreparably broken. Service Canada must maintain public trust and cannot retain an employee who has taken the actions that the grievor has. The employer submits that the decision to terminate the grievor was reasonable in the circumstances and requested that the grievance be denied.

B. The grievor's arguments

[208] According to the grievor, the Board must consider whether the alleged facts have been adequately proven. If so, the issue remains the reasonableness of the penalty. The burden of that proof is with the employer. The issues remain of procedural fairness in the investigation process and of fundamental freedoms under the *Charter*.

[209] *Charter* values were not respected. Through the adduced evidence, the decision-maker's bias can be seen. The grievor is presumed guilty from the start of the investigation. The *Charter* values are fundamental and apply to all citizens. The grievor submits that his rights were violated, so the decision to terminate him is invalid.

[210] The termination letter and Exhibits G-8, G-9, and G-28 contain fraud allegations. All the evidence gathered and detailed in the investigation report was intended to incriminate the grievor and find him guilty of being involved in the fraud. There was a jurisdictional error. There was no delegation of authority to the investigators to conduct an investigation into fraud in the Seniors Program. The investigators did not have jurisdiction or delegation of authority. All the employer's witnesses said that there was a prohibition on exchanging and working with the RCMP in the administrative investigation. This is unambiguous and prohibited.

[211] The evidence demonstrates that the employer knowingly sought information to incriminate the grievor and to share this evidence with the RCMP when it knew that it was not entitled to. The employer's evidence is weak. The employer acknowledges that Mr. Dussault's investigation report should be set aside, given its numerous shortcomings.

[212] According to the grievor, the employer has to prove the allegations on which the decision to terminate the grievor is based. The grievor has the right to benefit from the presumption of innocence in our modern society. The information gathered had to be clear, neutral, and transparent. Evidence of a criminal offence in a civil procedure must be serious. The employer's adduced evidence, the intent with which that evidence was sought and retained, and the motivation behind seeking that evidence in partnership with administrative investigators and RCMP investigators in a criminal investigation cannot be used to decide the issue of the grievor's employment. The criminal evidence is tainted and inadmissible.

[213] At the moment it made the decision to terminate the grievor, the employer could not justify the grievor's termination and prove that the grievor had committed fraud. The purpose of the investigation was not to collect facts and shed light on the allegations, to make an informed decision. Quite the opposite is true. It was a compilation of facts to reach a predetermined outcome. The grievor requested that the report be set aside. Such a report cannot support a decision with such serious

consequences. Exhibit G-22 is sufficient in itself to invalidate the report. The entire process should be invalidated.

[214] Despite all this, the Board may find the report inadmissible, even if the evidence before it is *de novo*. The witnesses returned to testify to the same facts set out in the report. Mr. Zonnon and Mr. Koutou were prepared to testify against the grievor. The grievor submits that their testimonies are not credible and are unreliable. They are there to incriminate the grievor.

[215] The grievor made access-to-information requests. He could not obtain several documents. That is why the grievor argued that it was difficult to prove that the termination was predetermined. As I stated in the previous paragraphs, several times during the hearing, I pointed out to the grievor that he could make a request for the disclosure of information or documents at any time. The grievor did not avail himself of that right at any time.

[216] The grievor alleges that the employer was in in bad faith from the start of the investigation, given the evidential weight of Exhibit G-9, about the meeting with the RCMP. In his opinion, Exhibit G-9 sets out that the employer obtained evidence from the RCMP that could “[translation] incriminate” the grievor. The employer was not neutral at all during its investigation. However, the grievor submits that if it is taken for granted that hearings before the Board are hearings *de novo*, then the testimonies of Mr. Zonnon and Mr. Koutou as to the grievor’s involvement in the fraud are unreliable and not credible.

[217] The grievor is accused of sending several emails containing privileged information and of snooping. However, the employer did not adduce any of those emails as evidence to support this statement.

[218] Mr. Zonnon said that he had no personal interest in testifying against the grievor. The grievor disagrees with that statement. Mr. Zonnon’s admission in Exhibit G-6, which outlines Mr. Zonnon’s release conditions, was in recognition of debts, grant amounts, and a condition that the grievor be sentenced.

[219] The employer did not adduce any evidence that the grievor completed the grant applications. The employer alleges that the grievor prepared false letters of support. The analysis of the files and the properties of the documents produced by Mr. Zonnon

and Mr. Dussault contradict each other. Ultimately, Mr. Zonnon's production of false documents clearly demonstrated that it was for the purpose of incriminating the grievor.

[220] The employer did not prove that the cookbook document was from the grievor or his computer. The employer requested an expert report. The experts carried out the detailed work with all the parameters, with the result that the retrieval did not lead to the conclusion and the assumption that the document was from the grievor's computer. With respect to the fictional letters from Sophie Desjardins, Mr. Zonnon testified that the grievor was the author of the two letters. The letters were very poorly written, and the grievor knows how to write letters. The grievor submits that the evidence demonstrates that Mr. Zonnon is the author of these letters.

[221] Both Mr. Koutou and Mr. Zonnon said that they shared grant money with the grievor. Mr. Zonnon's entire credibility is undermined in that respect, as the grievor testified that he was out of the country on the dates mentioned in the statement. That error is fatal. The Board cannot rely on that statement. It is insufficient to constitute evidence on a balance of probabilities.

[222] Mr. Koutou's credibility issue is that the employer did not apply for the grant. Mr. Koutou did not recall the timing of this grant application. Mr. Koutou said that he shared two cheques with the grievor. No transactions were shown. These are all things that the employer had to demonstrate to provide serious evidence.

[223] The grievor submits that the employer exceeded its powers of investigation and that it committed abuse during the investigation and in how it treated the grievor with respect to his fundamental rights and freedoms. The employer knew that it could not do that. Ms. Addison-Roy informed senior management of all her actions in the administrative investigation and her cooperation with the RCMP. She received accolades and congratulations for her actions. The grievor submits that it is scandalous for an employer to behave that way and for the federal government to conduct its investigations that way. He adds that it is scandalous for Canadian citizens.

[224] The grievor referred me to *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8 at para. 70, with respect to the employer's discretionary powers. Investigation powers must be used in good faith. The grievor pleads to an abuse of authority and the

employer's jurisdiction. He refers to Exhibit G-26. The employer was in bad faith and dishonest; it had no authority to investigate the grievor's credit. The investigator asked to bypass the law to conduct the credit check of the grievor. That is tantamount to an abuse of authority. Exhibit G-31 is evidence that the employer attempted to find mechanisms to obtain evidence to incriminate the grievor.

[225] In Exhibit G-10, the grievor alleges that Mr. Dussault put a blatant strategy in place to obtain evidence against the grievor. Mr. Dussault asked Mr. Zonnon's spouse to go to the bank to take back the grant cheque involving the grievor and his spouse. That demonstrates the employer's poor conscience. According to the grievor, the employer disregarded the grievor's fundamental rights and freedoms. Following the grievor is proof of it. The Privacy Commissioner allowed the complaint in Exhibit G-41.

[226] Regardless of the investigation report's contents, the manner and intent in which the employer obtained evidence against the grievor are illegal. Mr. Lefort and Ms. Bélisle's decision is based on Mr. Dussault's report. According to the grievor, all the RCMP prepared all the witnesses; the employer's evidence was contaminated and is inadmissible. The bulk of the report is hearsay. The employer was free to call all the witnesses to prove the allegations and to allow the grievor to cross-examine them. The investigation report does not contain any analysis of the facts. There is only a compilation of facts. The report does not contain any challenges to the facts as presented by the grievor.

[227] The employer criticizes the grievor for failing to provide sufficient information. The grievor made oral and written submissions in addition to the information shared with Mr. Lefort. Mr. Lefort did not provide any evidence of his treatment of the oral and written submissions. Mr. Lefort stated that the grievor's observations were of minor errors and that he did not take them into account. The report as a whole, the entire investigation, all the evidence, and the entire process must be set aside.

[228] The grievor consulted the Ethics Commissioner. He said that he would not hesitate to report his spouse in the event of embezzlement in his grant applications. The employer refused to consider that evidence.

[229] With respect to snooping, the grievor admitted that he could be led to gain unauthorized access to the people he knew. The information was not privileged. The grievor did not understand his obligations under the *Code of Conduct* and

unauthorized access. However, the grievor now understands the need to avoid snooping and engaging in any unauthorized access.

[230] The grievor referred me to *McRae/Jackson v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)*, 2004 CIRB 290 at para. 76, with respect to determining the existence of misconduct. In this case, the employer had to ensure procedural fairness. In this case, there is a fear of bias by the employer. The employer had an obligation to comply with procedural fairness when there is an impact on a person's life. If there is evidence of a reasonable apprehension of bias, the procedure cannot be repaired, and the decision must be set aside.

[231] In Exhibit G-22, it can be seen that from the start, the employer was biased. The employer's opinion of the grievor from the start can be seen. Certainly, Ms. Addison-Roy was going to recommend terminating the grievor. She deprived the grievor of all the rules of natural justice procedure. She even tried to influence everyone involved.

[232] The other offences related to snooping, as a whole, must be invalidated for lack of procedural fairness. The termination is disproportional, considering the snooping allegations. The grievor referred me to *Mercer*, in which the grievor received only two days' suspension for snooping.

[233] The grievor wishes to be reinstated in his position, with all the salary retroactive to the termination. He wishes that all his rights and losses be adjusted, calculated, and restored since his departure. Even with the Board hearing *de novo*, because of the employer's bias throughout the process, the Board hearing cannot remedy the situation or repair the impact on the grievor. The failure to observe the grievor's rights and freedoms cannot be remedied. The grievor requests that the termination be annulled and that all the corrective measures set out in his grievance be granted.

C. The employer's reply to the grievor's arguments

[234] The case law that the grievor raised is not relevant to the issues before the Board. The circumstances at issue are a termination — an end of employment in the public service, for misconduct. The only circumstances in which that case law may be relevant is if the Board's impartiality is challenged or the adjudicator is accused of bias. At no time did the grievor make any accusations that the adjudicator hearing the case would have been biased. That is the only way that case law could apply.

D. Analysis

[235] I agree with the grievor that the Board must consider the validity of the termination in the light of the evidence before it, considering the legal and factual constraints of the termination. The parties correctly submitted that the applicable standard of proof is the balance of probabilities, as confirmed in *F.H. v. McDougall*, 2008 SCC 53. As the Supreme Court of Canada wrote at paragraph 49, “In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.” The Court set out the test at paragraph 46 as follows: “... evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.” In this case, it was the employer’s responsibility to demonstrate that the evidence was “clear, convincing”, that the grievor breached the *Values and Ethics Code*, snooped into the government’s Employment Insurance databases, and participated in a fraud of the Seniors Program.

[236] The grievor questioned the quality of the investigation conducted by Ms. Addison-Roy, Mr. Dussault, and Ms. Brisson. He argues that in Exhibit G-22, it can be seen that from the beginning of the investigation, the employer was biased. In his opinion, the employer decided that the grievor was guilty from the start. Certainly, Ms. Addison-Roy was about to recommend that the grievor be terminated. The grievor submits that she deprived him of all the rules of procedure of natural justice throughout the administrative investigation. She even tried to influence everyone involved. The grievor objected to the findings of fact in the investigation report. He maintained that his witnesses and his version of the facts were not included in the report. The grievor argued that the employer’s investigation was biased and that the outcome was predetermined. He criticizes the employer for collaborating with the RCMP in the investigation. He submits that he did not have the opportunity to obtain all the necessary documentation to defend himself. For all these reasons, the grievor submits that the investigation report should be set aside and that therefore, the termination should be overturned.

[237] As mentioned earlier, hearings before an adjudicator are hearings *de novo*; any prejudice or inequity caused by a procedural problem during the administrative investigation is remedied by the grievance hearing (see *Maas v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 123 at para. 118; *Pajic v. Statistical Survey Operations*, 2012 PSLRB 70; and *Tipple*, at para. 2). Therefore, any irregularities

in the investigation conducted by Ms. Addison-Roy, Mr. Dussault, and Ms. Brisson have minimal consequences for the circumstances surrounding the grievor's termination. The grievor was given the opportunity to present a full and complete defence before the Board. I repeatedly reminded the grievor of his right to request the disclosure of all information and documents that could be relevant to his grievance. The grievor did not avail himself of this right. The grievor did not provide any details about the witnesses whom he wanted to call and was prevented from calling; he simply chose to testify himself and to call the employer's witnesses.

[238] Although I share the grievor's opinion that the report is poorly written and that it contains many negative opinions about him, the grievor did not adduce compelling evidence that the outcome was predetermined, that favourable evidence had been excluded, or that the RCMP was at the heart of the report. I reject the grievor's position that the employer knowingly sought information to incriminate him and to share that evidence with the RCMP. There is nothing inappropriate about Mr. Bédard contacting the RCMP to alert it to the facts that they had gathered during the initial investigation that Mr. Hobeila and Mr. Guillemette conducted. There is also nothing inappropriate in the collaboration and the information exchange between Mr. Dussault and Ms. Brisson with the RCMP's investigation officers. It is an administrative investigation in the context of a termination, not a criminal investigation. The employer correctly exercised its right to collaborate with the RCMP in its administrative investigation. In addition, the grievor failed to meet the burden of demonstrating that a jurisdictional error or a lack of delegation of authority to the employer's investigators occurred in the fraud investigation. The grievor did not submit any case law to support his claim.

[239] However, I find troubling the fact that Ms. Addison-Roy tried at least twice to find a way to overstep the bounds with respect to investigating the grievor's credit, in an attempt to revoke the grievor's reliability status. Despite Ms. Addison-Roy's efforts, the grievor's reliability status was not revoked, and the employer has followed the applicable standards. Ms. Addison-Roy was unable to convince those responsible for the reliability status to overstep the legal bounds. Mr. Comeau and Mr. Jacques followed the policy to the letter, and all the grievor's rights with respect to his reliability status were respected. Although the employer conducted a biased investigation, and the conduct of certain of its investigators was reprehensible, this matter does not concern them. Their integrity is not being questioned. At issue is the grievor's termination grievance.

[240] With respect to the grievor's argument that the employer supposedly followed him, I am not convinced. The grievor was observed at home for the purpose of serving him a letter. The alleged following was not intended to confirm that he was guilty of the allegations against him; it was simply to serve a letter from his employer.

[241] The grievor submits that his rights under the *Charter* were violated, so the decision to terminate him is invalid. He did not submit any case law to support his claims. He simply argued that his rights were violated, without providing any clarification. The grievor did not demonstrate how the *Charter* applies in the circumstances of his termination. All the case law that he submitted deals with issues of impartiality accusations in staffing and immigration files. The arguments that *Charter* rights under s. 7 were violated do not apply in the circumstances surrounding the grievor's termination. Section 7 of the *Charter* provides as follows:

7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

7 Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

[242] The protections under s. 7 of the *Charter* are found under the heading of legal rights and have been raised traditionally in the cases of constitutional, criminal, and immigration files. To my knowledge, they have never been raised in a case involving a termination. No Board case law deals with the application of s. 7 of the *Charter* in the context of a termination. Although the employer in this case is Service Canada, a federal public service department, it is not a government actor in a relationship with a fellow citizen. It is an employer's relationship with a unionized employee covered by a collective agreement.

[243] Section 7 of the *Charter* involves a two-step analysis, as follows. Is there a deprivation of one of the three protected interests, either the life, liberty, or security of the person? Was the deprivation in accordance with the principles of fundamental justice? The second step may be broken down into two more steps, in which it is necessary 1) to determine the applicable principle or principles of fundamental justice, and then 2) to determine whether the deprivation occurred in accordance with those principles (*R. v. Malmo-Levine*, [2003] 3 S.C.R. 571 at para. 83; *R. v. White*, [1999] 2 S.C.R. 417 at para. 38; and *R. v. S. (R.J.)*, [1995] 1 S.C.R. 451 at page 479).

[244] There is no independent right to fundamental justice. So, there is no violation of s. 7 if there is no deprivation of the life, liberty, or security of the person (*R. v. Pontes*, [1995] 3 S.C.R. 44 at para. 47). Since the grievor did not demonstrate how he was deprived of his life, liberty, or security by a government actor, I will not pursue my analysis under this argument. I find that s. 7 of the *Charter* does not apply in the circumstances of the grievor's termination.

[245] The balance of the employer's adduced evidence clearly established that the grievor committed the misconduct set out in the termination letter. The evidence was clear and convincing that the grievor breached the *Values and Ethics Code*, snooped into the government's Employment Insurance databases, and participated in a fraud of the Seniors Program.

[246] For the following reasons, I do not find the grievor credible. Usually, the rule in *Faryna* is invoked when oral testimony is contradictory. It can also be applied to choose between two versions of the same events or to assess the credibility of a witness in general. Page 357 of *Faryna* states as follows:

... The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions....

[247] The grievor's testimony is inconsistent with the rest of the evidence as a whole. The grievor maintains that all the employer's evidence was collected and presented in the goal of incriminating him. He submits that Mr. Zonnon's testimony is not credible because Mr. Zonnon had a personal interest in testifying against the grievor, given the release conditions that he negotiated. Once more, I note that the grievor did not submit any evidence to this effect or question Mr. Zonnon on the document.

[248] Mr. Koutou, Mr. Zonnon, and Ms. Tabiou all testified clearly and convincingly that the grievor participated in the fraud under the Seniors Program. I do not find the grievor's explanations credible that he had never been involved in writing the grant applications or that he had never accepted any amounts of money related to them. The grievor's testimony that he had never accepted any grant money from Mr. Zonnon because he was out of the country on the dates mentioned in the statement is not

credible. The grievor provided no evidence to support his testimony. I agree with the employer that to be credible, it is not enough for the grievor to simply deny the facts and allegations against him.

[249] According to *Faryna*, for testimony to be credible, it must be logical and possible in the context of all the evidence as a whole. The testimony must be consistent with the rest of the evidence. The grievor's testimony as a whole is inconsistent with the rest of the evidence. The evidence clearly established that the grievor was involved in writing and submitting the grant applications. According to the testimonies of Mr. Zonnon, Ms. Tabiou, and Mr. Koutou, the grievor was involved in preparing the applications, providing advice and encouragement, and accepting amounts of money from grant applications that Service Canada approved.

[250] The testimonial and documentary evidence establish the grievor's involvement in creating shell organizations to obtain grants for his personal benefit. The employer adduced written and oral evidence of the fraud incidents. Among the many examples in the summary of the evidence, the following are the most glaring:

- Fraud no. 1 (7260169) on the Association's behalf in the amount of \$18 000, proved by Ms. Tabiou and Mr. Zonnon. Mr. Zonnon testified that the grievor completed the grant application and provided the required information. Mr. Zonnon provided an amount of \$5000 and a second amount of \$2000 or \$3000 to the grievor as payment for his share of the grant application. Mr. Zonnon and the grievor both prepared a false activity report; no activity took place.
- Fraud no. 2 (9152208) on the Association's behalf in the amount of \$24 000, proved by Mr. Zonnon and Ms. Tabiou. Mr. Zonnon confirmed that the grievor signed the letter of support. Ms. Tabiou confirmed that the grievor participated in the grant application. She explained in detail the grievor's efforts to convince her not to return the cheque. Ms. Tabiou made it clear that the grievor was always involved in the Association's grant applications. Mr. Zonnon confirmed that the cheque was shared with the grievor and his spouse.
- Fraud no. 3 (8989055) on the Social Development Club's behalf in the amount of \$22 175, proved by testimony. It was a new organization created at the grievor's request, and the money was split between Mr. Zonnon and his spouse, and the grievor and his spouse. Mr. Zonnon made it clear that they created the new association with the goal of pocketing the grant money and with no intention to organize activities for seniors.
- Fraud no. 4 (9097296) on the Social Development Club's behalf in the amount of \$22 950. Mr. Zonnon testified that he shared the money with the grievor and his spouse.

- Fraud no. 5 (010319622) on the Seniors' Social Development Group's behalf. Mr. Zonnon confirmed that the grievor was the mastermind of the organization and that he personally handed grant money to the grievor.
- Mr. Koutou testified clearly and convincingly about his involvement and that of the grievor in grant applications in the amount of \$21 600 and in the amount of \$20 500.

[251] The testimonies of Mr. Zonnon, Ms. Tabiou, and Mr. Koutou were clear and unequivocal. The grievor participated in developing the plans and creating forged letters to support the grant applications, and he was involved in the scheme to deceive Ms. Tabiou when she objected to filing fake photographs and false reports to demonstrate to Service Canada that the activities had taken place, to conform with the grant applications. Mr. Koutou's testimony is clear and convincing that the grievor was involved in a fraud scheme. The grievor and Mr. Koutou shared money from false grants. Mr. Koutou had nothing to gain from publicly testifying to his involvement in the fraud and accepting the money from false grants with the grievor. On the contrary, he had much to lose. Although Mr. Zonnon's and Ms. Tabiou's testimonies had certain contradictions about the dates and what she knew or had said, there was no contradiction and no doubt that the grievor was involved in the fraud; i.e., by writing grant applications, writing forged letters of support, and accepting grant money for his personal benefit.

[252] In addition, I note that the grievor denied that he knew about the \$24 000 grant application, although nonetheless, he admitted that he travelled from Montréal to Gatineau to meet with Ms. Tabiou, to convince her to move ahead with the grant application and to keep the cheque. The grievor's testimony is contradictory and not credible. The evidence as a whole is clear and unequivocal; the grievor received money from false grant applications and personally profited from his conduct. The alleged misconduct goes to the core of his assigned duties at Service Canada. The grievor's conduct is not an isolated incident; the alleged actions took place over several years. I agree with the employer that the grievor's actions were premeditated. This is not a case of a spontaneous lack of judgment.

[253] The grievor claimed that he had a poor understanding of the *Values and Ethics Code* with respect to the information that he could disclose to the people concerned by their Employment Insurance files and his involvement in the assessment of his spouse's grant application. I do not find his explanation credible. During the

administrative investigation, the grievor replied that he had not been involved in preparing grant documents for the Seniors Program. The evidence clearly established that the grievor was involved in screening his spouse's grant file. Mr. Bédard testified convincingly that the grievor was involved in screening application number 533187 from his spouse in 2007, and the grievor did not contradict his testimony. The grievor also acknowledged that he had read the *Values and Ethics Code* on his hiring and that he completed training on it in 2011. Therefore, he was aware of the snooping policy and the *Values and Ethics Code*. The Office of the Integrity Commissioner's opinion in 2011 as to his spouse's involvement in the associations and in the grant applications does not confirm the grievor's testimony in that respect. The grievor failed to state in his application to the Commissioner that he had been involved in screening his spouse's application. Service Canada's *Values and Ethics Code* and internal rules provide that employees who know an applicant should not take up the assessment of the application, let alone be an applicant in the background.

[254] This defence completely ignores the fraud allegations against the grievor and his involvement in writing the forged letters of support that were proven against him. Fraud in itself is a breach of the *Values and Ethics Code*. Furthermore, by his own admission, the grievor accessed without authorization and snooped in Service Canada's databases in files that were not his. That misconduct alone justifies the termination. The Board's case law is consistent in this respect. *Mercer*, in which the grievor received a two-day suspension, does not establish that this disciplinary action is proportional to the misconduct but instead that it was not an excessive measure justifying the Board's intervention. The Board will intervene to reduce a disciplinary measure only in circumstances in which it is excessive and therefore not proportional to the misconduct.

[255] By being involved in the fraud with Mr. Zonnon and Mr. Koutou, and by trying to influence Ms. Tabiou to become involved in the fraud, by accessing without authorization and snooping in Service Canada's databases in the files of people whom he knew but that were not his files, the grievor breached the *Values and Ethics Code*. The bond of trust has been irreparably broken. The risk of recidivism is too high, and the grievor's actions are completely incompatible with a program officer's duties. Therefore, the termination was appropriate, in all the circumstances.

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

(The Order appears on the next page)

VI. Order

[257] The grievance is denied.

September 26, 2023.

FPSLREB Translation

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