

Date: 20250626

File: 566-02-46506

Citation: 2025 FPSLREB 80

*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

REBECCA WILKINSON

Grievor

and

**TREASURY BOARD
(Department of Employment and Social Development)**

Respondent

Indexed as

Wilkinson v. Treasury Board (Department of Employment and Social Development)

In the matter of an individual grievance referred to adjudication

Before: Audrey Lizotte, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: Emilie Taman, counsel

For the Respondent: Philippe Giguère, counsel

Heard via videoconference,
August 13 to 15, 2024,
and on the basis of written submissions,
filed August 22 and 26, 2024.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] On January 9, 2020, Rebecca Wilkinson (“the grievor”) was hired as a support clerk classified at the CR-03 group and level with Employment and Social Development Canada (ESDC or “the respondent”) for a one-year term appointment. On January 4, 2021, she was appointed indeterminately to that position, and on January 7, 2021, she was appointed to an acting support clerk position classified at the CR-04 group and level.

[2] The respondent is responsible for developing, managing, and delivering a range of social programs and services to Canadians. Given that mandate, it is the steward of large repositories of private and confidential information, including sensitive personal data, and Canadians rely on it to manage and protect that information effectively.

[3] On March 3, 2021, the respondent received a complaint from the grievor’s estranged husband, a member of the public, who suspected that she had obtained the home address of his girlfriend (“the client”) using the respondent’s database. A fact-finding analysis revealed that she accessed the database and obtained that address on November 5, 2020.

[4] During the administrative investigation and disciplinary hearing that followed, the grievor admitted to the wrongdoing. She also voluntarily admitted to using the information to twice drive by the client’s house and to asking a colleague to make an additional unauthorized access, to obtain the home address of the client’s parents, which her colleague refused to do. The grievor admitted to being aware of her responsibilities under the respondent’s *ESDC Code of Conduct* (“the *Code of Conduct*”) and acknowledged that her actions contravened it. She apologized for her misconduct and offered assurances that it would never happen again.

[5] The grievor was terminated on November 26, 2021, and grieved her termination on December 8, 2021. The grievance was referred to the Federal Public Sector Labour Relations and Employment Board (“the Board”) for adjudication on January 23, 2023, under s. 209(1)(b) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the *Act*”). During the hearing, the grievor did not contest that the respondent had

grounds for imposing disciplinary action. However, she argued that termination was excessive in the circumstances.

[6] For the reasons explained in this decision, I find that the termination was not excessive.

II. Summary of the evidence

[7] The parties submitted an agreed statement of facts about the admitted misconduct, general background information, and a chronology of the events. To supplement this evidence and address the issue of whether termination was excessive in the circumstances, the parties called witnesses and introduced additional documentary evidence. The respondent called two witnesses, both of whom were its employees, Stephanie Sfalcin, Acting Director, Service Delivery, Ontario Region; and Mary Ann Triggs, Assistant Deputy Minister, Ontario Region. The grievor testified on her behalf.

A. The termination letter

[8] The termination letter dated November 26, 2021, and signed by Ms. Triggs, provided the grounds for terminating the grievor's employment. It included the following relevant passages:

...

I have concluded that your behaviour has irreparably damaged the bond of trust that must exist between you and the Employer. For this reason, I have no alternative but to terminate your employment in accordance with the authorities delegated to me under Section 12, (1) (c) of the Financial Administration Act (FAA), effective immediately.

In determining the appropriate disciplinary sanction, I considered that you have no previous disciplinary record; that you fully cooperated in the investigation; that you were forthcoming about your personal and health related issues from July 2020 onward; that you were apologetic and demonstrated remorse, and that no fraudulent activity was reported.

I further considered that in asking your colleague to access the personal information of the client's parents that you demonstrated an awareness of the inappropriate nature of your actions, and that you inappropriately used your government email to discuss your personal issues with your friend.

Furthermore, you completed the Stewardship of Information and Workplace Behaviours training course on January 16, 2020, which

outlined that you are permitted only to access the information that is necessary for your work and any attempt to access or disclose information, for personal use, gain, or financial benefit to you, your family or anyone else is considered a breach of the ESDC Code of Conduct.

Therefore, you understood that your unauthorized access on the file and asking a colleague to perform an unauthorized access on that same individual's parents was inappropriate.

...

B. The admission of misconduct

[9] In the agreed statement of facts, the grievor admitted to the misconduct and acknowledged that through it, she demonstrated a lack of integrity and stewardship, and that she breached the *Code of Conduct* and the Treasury Board's *Values and Ethics Code for the Public Sector* ("the *Values and Ethics Code*"), which were part of her terms and conditions of employment.

[10] She acknowledged that on November 5, 2020, she conducted an unauthorized access of a confidential ESDC database, to obtain personal and confidential client information for her benefit, thus giving herself a form of preferential treatment. Specifically, she accessed client information that was not part of her assigned workload and used it for personal benefit, as she wanted to know where the client lived and where everything was taking place with her husband. She admitted to twice driving by the client's home. The first time was to see where her husband's affair was taking place and where her son might live one day. The second time was to see if her husband was at the client's house, as he would not respond to her calls or messages.

[11] She acknowledged that in December 2020, she attempted a second and related unauthorized access of the database by asking a colleague to obtain personal and confidential client information on her behalf and for her personal benefit. Specifically, the grievor asked a colleague to obtain the home address of the client's parents so that she could send them a letter, to let them know how their daughter, the client, helped break up her family. The colleague refused.

C. The agreed background information

[12] The joint statement of facts included a summary of the framework in place to secure the personal and confidential information of Canadians in the respondent's

stewardship and the training that the grievor received on her responsibilities to safeguard it.

[13] The respondent is subject to the *Privacy Act* (R.S.C., 1985, c. P-21), the Treasury Board of Canada Secretariat's (TBS) policies and directives for managing and protecting Canadians' personal information, and the respondent's enabling legislation, the *Department of Employment and Social Development Act* (S.C. 2005, c. 34) and the *Department of Employment and Social Development Regulations* (SOR/2005-311).

[14] Because of the inherent risks of managing large holdings of personal information, the respondent also has internal policies and procedures for collecting, using, and disclosing it, such as but not limited to the *Departmental Policy on Privacy Management* and the *Policy on Departmental IT Security Management*.

[15] As part of her duties, the grievor had access to the personal and confidential information of the respondent's clients. In January of 2020, she completed eight training modules or courses on the issue of the departmental mandate, security of information, access to information and privacy, values and ethics foundations, stewardship of information, information management and IT security. This training explained her obligations under the respondent's directives, policies, procedures, and legislation as well as under the respondent's *Code of Conduct* and the Treasury Board's *Values and Ethics Code for the Public Sector*.

[16] In an employee declaration about protecting client information, she acknowledged that she had read, understood, and would adhere to those instruments. Further, each time she logged on to her computer, she was required to click on a login pop-up window that reminded her of those obligations.

D. The agreed chronology of events

[17] In June 2020, the grievor's marriage of 10 years ran into conflict, as she discovered that her husband was having an affair with one of his work colleagues. Later, they attended couples therapy. She began consulting a nurse practitioner in July 2020 and a social worker for therapy on November 20, 2020, to deal with the mental distress associated with the discovery of the affair.

[18] At the end of November 2020, the grievor's husband informed her that he wanted to separate. In December 2020, he moved out, and they sold their family home in January 2021. They would not reconcile.

[19] On March 3, 2021, the respondent received a complaint from the grievor's estranged husband, who suspected that she had obtained the client's home address from the respondent's database. The complaint stated the following:

...
I am currently married to [the grievor], and going through a divorce. She has been threatening and defaming a female friend I have, and has found out where she lives. The only way I can think of her getting this info is from accessing through a work system from where she works in the EDSC [sic]...
...

[20] A verification revealed that the grievor had accessed the client's account on November 5, 2020.

[21] On April 12, 2021, Ms. Triggs approved an administrative investigation. On April 22, 2021, by letter, Ms. Sfalcin informed the grievor that she was the subject of that administrative investigation, in relation to alleged *Code of Conduct* breaches.

[22] The grievor was interviewed on April 28, 2021, and on May 18, 2021, the respondent's Internal Investigations Unit issued its administrative investigation report. It attached personal emails that had been found on the respondent's email system. Three were from the grievor to her friend, and one she received from her friend. All dealt with the situation with her estranged husband. The grievor's first email was dated August 12, 2020, and in it, she encouraged her friend to maintain an Instagram account with the client, so that she could monitor the client's posts.

[23] In her second email, dated February 12, 2021, the grievor informed her friend that she had used a fake Facebook account to message the client's mother, to inform her of the relationship between her estranged husband and the client. The email stated this: "That means my final revenge is complete."

[24] In her third email, dated February 26, 2021, the grievor told her friend that the police had called her the night before and had questioned her about a message that had been posted about the client on a website called "The Dirty". Her email stated this:

“I explained to the officer that they had an affair and in the beginning, yes, i [sic] was not nice, but now I’m moving on and I don’t care... He said he is not pursuing anything now but if it continues he will have to.”

[25] The investigation report summarized the grievor’s statements during the interview, including this one:

...
*... she explained that the police had called her regarding an
offensive message posted on social media. She admitted during the
interview she did not post that first message as pointed out by the
officer, however, [sic] posted a second message on or about March
10, 2021, and added she is not proud of it.*
...

[26] The investigation report concluded that the grievor had conducted an unauthorized access of the respondent’s databases, to obtain a client’s personal information for her benefit, and that she had used that information while dealing with ongoing personal matters. Moreover, she had asked another employee to commit an act that would have breached the *Code of Conduct*, which was to access unauthorized information about a client. Her colleague had refused.

[27] It concluded that the grievor had contravened the *Code of Conduct* when she breached the value of integrity by accessing ESDC databases without authorization, providing and receiving preferential treatment, and failing to act in such a way as to maintain the respondent’s trust.

[28] The grievor received a copy of the report on June 14, 2021, and was provided the opportunity to submit a written rebuttal.

[29] She did so on June 24, 2024. She stated that after finding out about her husband’s affair, she fell into a deep depression, which caused significant implications for her mental health. She explained that she did not eat or sleep and that her thought process was unclear. She also stated that she had been attending counselling for several months and was taking medication for her sleep, depression, and anxiety. In addition, she said that she knew that what she did was wrong and that she strived to never be that person again. She apologized for what she did and guaranteed that it would never happen again.

[30] The grievor was invited to attend a disciplinary hearing on August 16, 2021, to present any extenuating or mitigating circumstances for the respondent to consider before it decided the appropriate corrective or disciplinary measures. She admitted that she was aware of her responsibilities under the *Code of Conduct*. She acknowledged that her actions contravened it and that they violated the client's confidentiality and privacy. She stated that she regretted her actions. She apologized and stated that it would never happen again.

[31] The grievor also shared more information about her personal circumstances. She attributed her behaviour to her medical condition and said that she had since been taking medication for depression and anxiety and was seeing a counsellor for it. She was extended the opportunity to provide medical documentation to substantiate her claims, and she agreed to.

[32] On August 16, 2021, the grievor provided a medical note from her nurse practitioner that stated, "This letter is to confirm that [the grievor] has been followed regularly for depression and anxiety since July 2020 as a result of her marital conflict and relationship breakdown with her husband last year in June 2020."

[33] On August 23, 2021, she provided this medical note from her therapist: "... [the grievor] began therapy with me on November 20, 2020. Our treatment focus has been on addressing emotional and psychological challenges that have arisen resulting from current life stressors through a cognitive behavioural therapeutic modality."

[34] On August 27, 2021, the respondent sought and obtained the grievor's consent to obtain clarification from her nurse practitioner.

[35] On August 31, 2021, the respondent received the clarification. The nurse practitioner stated that since July 2020, the grievor had had significant stress and anxiety, which caused her difficulty sleeping, all of which "may have" impacted her ability to think clearly and rationally, her concentration, and her judgement. Further, she advised that the grievor had intermittent periods of increased stress and anxiety during that time, which "may have" affected her judgement differently at different times. Lastly, in her medical opinion, she advised that the behaviour was not likely to reoccur.

E. Ms. Sfalcin's testimony

[36] Ms. Sfalcin stated that any access to information in the respondent's databases is on a need-to-know basis. The respondent's directives, policies, and procedures and training are repetitive by design to drive home the message that public servants are entrusted with very large databases of information and that it is essential to maintain public confidence that they be good stewards of it and use it only for its intended purpose, and no other. That is the cardinal rule.

[37] To ensure employee awareness, the respondent instituted an annual attestation program that requires employees to declare that they have read and understood the *Code of Conduct*.

[38] Ms. Sfalcin held the grievor's disciplinary hearing. She stated that she decided to request the additional medical information since the grievor referenced that her medical situation could have impacted her conduct. She stated that the respondent had a duty to inquire into those types of instances.

[39] Ms. Sfalcin found the first medical notes vague. She requested additional clarification, to establish whether there was a nexus between the grievor's condition and conduct. The additional notes stated that the grievor's ability to think clearly and rationally "may have" been affected. The use of the word "may" was equivocal and did not provide the required clarity.

[40] Ms. Sfalcin stated that all the information collected was analyzed with her labour relations representatives and that it was provided to Ms. Triggs for a decision.

[41] In cross-examination, Ms. Sfalcin agreed that the grievor never denied that she understood that what she had done was wrong; she very frankly admitted to the misconduct and did not try to minimize what she had done. Ms. Sfalcin agreed that the grievor did not disclose the information to anyone and displayed genuine remorse. Ms. Sfalcin agreed that the grievor never claimed that her conduct was due to a mental health condition or that she was unable to appreciate her actions when she accessed the database. Ms. Sfalcin agreed that the medical information was produced only because she requested it.

[42] Still in cross-examination, Ms. Sfalcin agreed that the annual attestation used the words "**may** impact my employability" [emphasis added], so it was understood that

termination was a possible outcome but that it was not mandatory. She agreed that a decision to terminate is based on the facts of each case and that some unauthorized uses have been more serious than others.

F. Ms. Triggs

[43] Ms. Triggs testified that she authorized the investigation into the grievor's misconduct. Afterward, she reviewed the disciplinary report and made the decision to terminate the grievor.

[44] She stated that she determined that the grievor had breached the *Code of Conduct* — a condition of employment. Integrity is one of its core values, along with stewardship. It requires that information be used only for its intended purpose.

[45] The grievor's actions violated those values. She used a client's information for her own purposes and to harass that individual. She also tried to engage a fellow employee to do the same. As a result, not just one but a series of actions were premeditated and knowingly committed.

[46] She concluded that the grievor's actions were premeditated based on the grievor's email to her friend dated "2/12/2021" and stating this: "... [husband] just messaged me about it and I'm sooo [sic] happy that her mom got the message. That means my final revenge is complete."

[47] Ms. Triggs stated that that demonstrated that the grievor's actions were part of a revenge plan and a whole year of activity. It was related to the grievor's second misconduct, when she asked the colleague to obtain the client's parents' contact information on her behalf. She stated that engaging her colleague was part of that larger plan of revenge.

[48] I noted that Ms. Triggs incorrectly identified the email dated "2/12/2021" as December 2, 2021. Since the grievor was terminated on November 26, 2021, it stands to reason that the actual date was February 12, 2021.

[49] Ms. Triggs stated that she considered all the mitigating factors listed in the termination letter. She stated that she considered that the grievor had no prior disciplinary record. However, she also considered that the grievor had been remorseful only "to a degree", as she admitted to her misconduct only after she was caught.

[50] Ms. Triggs considered the severity of the situation and that it had been public facing since a member of the public made the complaint. Therefore, it attacked public confidence.

[51] In terms of the grievor's mental state, Ms. Triggs stated that the grievor's medical notes were inconclusive. She added that everyone deals with personal issues in everyday life, but that those personal situations did not provide an excuse to violate the *Code of Conduct*.

[52] Ms. Triggs concluded that the bond of trust between employer and employee had been irreparably broken. The severity of the actions, the impact that they had on the public, and the fact that the misconduct was repeated and was part of a premeditated plan all led her to conclude that she could no longer trust the grievor.

[53] In cross-examination, it was pointed out to Ms. Triggs that the reference to premeditation did not appear in any of the reports. She explained that it was just her term to indicate that the grievor made a series of actions that occurred over a prolonged period. She agreed that the period between the events extended from November 2020 to February 2021.

[54] Ms. Triggs was asked about her comment that the grievor used the information to harass the client. She was asked to confirm if driving by the client's house twice constituted harassment. Ms. Triggs replied that it did given that the information was obtained without the person's consent.

[55] Ms. Triggs agreed that based on the rules, discipline less severe than termination could have been imposed. She agreed that an employee's personal circumstances could serve as a mitigating factor but that determining whether the bond of trust had been irreparably broken would depend on the circumstances of each case.

[56] Ms. Triggs agreed that the grievor remained in the workplace for seven months after the unauthorized access came to light. Ms. Triggs added that special monitoring and increased supervision were involved. Ms. Triggs knew of that since she requested it.

G. The grievor

[57] The grievor testified that in July 2020, she found out that her husband was having an affair. She stated that after that, her world started to crumble, and that she could do nothing to stop it. She felt extremely embarrassed and described it as a very dark time in her life. She started to consult her doctor and began taking medication for depression. Initially, they tried to save their relationship; however, in November 2020, he asked her for a separation.

[58] The grievor stated that during that time, she did not take time off work because her work was her only constant and the only good thing she had. She stated that she felt somewhat better when she was at work. She thought that she could handle it but has since come to regret making that decision.

[59] The grievor described the context that led to her decision to look up the client's address on November 5, 2020. She stated that at that time, her husband had been sharing his location with her and had texted her on each of his breaks, to let her know where he was and who he was with. At one point, he stopped, and she just snapped. She looked up the client's address simply because she wanted to know where the client lived and where her three-year-old son would potentially go. She stated that she did not think of it in advance; she just snapped and did it.

[60] She stated that she used that information to twice drive by the client's home. She did not state when. The first time was to see where the client lived, so she just drove by. The second time was because her husband did not respond, and she wanted to know if he was there.

[61] In cross-examination, the grievor confirmed that the October 13, 2020, medical note was dated the closest to the misconduct. She agreed that during that appointment, she reported that things continued to improve, slowly, and that she was better able to concentrate at work.

[62] In re-examination, the grievor was asked whether anything changed between October 13 and November 5, 2020. She replied that things began to improve because her husband informed her as to where he was and who he was with. Then that started to taper off. And then, on November 5, she messaged him during his break and then during his lunch, and he did not respond. She stated that that was when she just knew

that he was with the client, and she just snapped. She stated that she had a panic attack, which was when she snapped and looked up the client's address.

[63] The grievor described the context that led to her decision to ask a colleague to look up the address of the client's parents. She stated that that colleague knew the parents' names. She stated that they were speaking one day at work and that it came up almost jokingly during their conversation that she should reach out to the parents, to let them know what was going on, because the client had ruined her life and family, without any repercussions. After the grievor returned to her desk, she messaged the colleague and asked if she could get the parents' address for her. She stated that the colleague refused and that it just hit her at that point that what she was doing was really wrong.

[64] She stated that in late November 2020, she realized that the marriage had ended. She stated that it was a very dark period for her. She had to go through the holiday season while sharing her son with her estranged husband and the client. She had to move out of the new house that they had just built and move back in with her parents.

[65] The grievor stated that she used her work email a few times to communicate with her friend since her husband worked in information technology, and she was afraid that he would be able to see her personal emails.

[66] With respect to the statement in her email that her revenge was complete, the grievor stated those were just the words that she said in that moment. She stated that even the client would confirm that she did not take any revenge against her and that she was always very polite and nice to her. She said that she called the client and told her that she did not wish her any ill will but that if she ever were to have a child, hopefully, she would look back and have some regret. But that was it.

[67] In cross-examination, the grievor was asked whether she posted anything about the client on social media. She replied that she did not post anything directly at her or that used the client's name. When asked if she posted something about the client on Dirty.com, she replied that she did not. When she was shown a copy of the interview notes that indicated that she had admitted to doing so, she stated that she must have forgotten about it, but after her memory was refreshed, she agreed.

[68] The grievor stated that the respondent approached her in April 2021 about the unauthorized database access. She stated that she never denied her misconduct. She stated that she knew that what she had done was wrong but that in that moment, she had not been thinking properly or of anything else.

[69] She stated that she learned only during the investigation that her estranged husband made the complaint about her. When asked how he came to suspect that she had obtained the client's home address, she replied that she had no idea but thought that he might have done it out of spite.

[70] She stated that she continued to work as usual until she was terminated on November 26, 2021.

[71] The grievor stated that she is very sorry for what she did and that she wants her job back more than anything else. She would never use the database for any unauthorized purpose were she reinstated. She deeply regrets what she did.

[72] In cross-examination, the grievor admitted that she did not tell her healthcare provider the truth about what happened at her work. She stated that she was embarrassed by it and that she did not want her healthcare provider to think less of her. She agreed that she was aware of her obligation to report any unauthorized accesses and that she chose not to. She agreed that she is a paralegal and that given that training, she is particularly sensitive to the importance of client confidentiality.

III. Summary of the arguments

A. For the respondent

[73] The respondent submitted that the termination was justified in the circumstances. It argued that the misconduct was severe since the grievor showed wilful disregard for some of its most cardinal rules on the use of confidential client information.

[74] The grievor accessed information without authorization, to deal with her private affairs. She used the information to stalk one of the respondent's clients. Clearly, she put her private interest ahead of that of the public. She acted on the information by going to the client's private residence — where the client should feel safe and protected. A person's home address is highly sensitive information. It was a very

serious breach of the *Code of Conduct* and a violation of the client's privacy rights under the *Privacy Act*.

[75] Yet, the grievor's misconduct did not stop there. About a month later, she tried to involve a co-worker in her misconduct. She requested that her colleague access the respondent's confidential database, to obtain the address of the client's parents and then to contact them and let them know what their daughter was doing. Again, she put her interest ahead of the public's. It was another severe breach.

[76] The grievor's behaviour was the hallmark of abusing her position and the public's trust. She used her official position for her benefit.

[77] In terms of mitigating and aggravating factors, the respondent recognized that the grievor had no prior discipline. However, this factor should be given little to no weight, as she was a new employee and had been employed for only 10 months before the first breach. It occurred during her probationary period. Had it come to light at that time, it would likely have led to her termination for failing her probation.

[78] Thus, the grievor was able to benefit from her misconduct going undetected, as she passed her probation period and challenged her termination before the Board on the just-cause standard under s. 209(1)(b) of the *Act*, which is much less deferential than the one used in rejection-on-probation cases.

[79] The grievor did not have a lengthy record of creditable service to draw upon, a lengthy period of good behaviour, or a long period of good service that might weigh in her favour. As a recent hire, she had not worked long enough to build up the kind of so-called "trust equity" that would provide confidence that she could be trusted in the future.

[80] The respondent relied on *Bank of Nova Scotia v. Webster*, [2006] C.L.A.D. No. 344 (QL) at paras. 96 and 98, and *Ball Packaging Products Canada Inc. v. International Assn. of Machinists and Aerospace Workers, Local 863*, [2000] O.L.A.A. No. 785 (QL) at para. 90, in its argument that the level of misconduct required to justify terminating an employee with only a short period of employment is lesser than the level required to justify terminating one of long service.

[81] Although the grievor showed remorse and admitted wrongdoing during the investigation, it should be given little weight, as her evidence was self-serving and at

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times contradictory. She was forthcoming to the respondent only once she was caught. She agreed that she was reminded of her obligation several times between her misconduct and the investigation, yet she did not come forward to admit her misconduct.

[82] The grievor's credibility was also put into question, given the contradictory information that she gave to the respondent versus what she told her nurse practitioner in confidence. She explained that she lied to her nurse practitioner, as she was embarrassed by what she had done, yet she also disclosed other information that was quite embarrassing.

[83] Moreover, the grievor's evidence was difficult to reconcile with the fact that during that difficult period, she continued to work and do it well. She successfully passed her probation period and even received a promotion. It was difficult to reconcile how her personal circumstances did not impact her ability to perform her work yet impacted her ability to follow the respondent's rules. She admitted that those rules were clear to her.

[84] The respondent recognized and empathized with what the grievor was going through. However, one could expect that many employees will go through difficult periods throughout their lives. That does not mean that an employee may violate the rules and that it becomes permissive. The rules apply at all times.

[85] Moreover, the respondent had many services available to the grievor, such as paid leave. She did not use any of them. She should not be able to use her circumstances to shield herself from the consequences of her behaviour. Employees must respect the *Code of Conduct* at all times, regardless of their personal circumstances.

[86] As for the aggravating factors, the misconduct recurred. It was composed of a series of actions over several months. It was also premeditated. It was not the product of a spur-of-the-moment decision. The actions were not permitted, and she knew that she could not do them. Her intent was clear. She was upset at her husband and the respondent's client, which was her motive to obtain the addresses. She testified that she felt that the client got off easy for what she had done.

[87] The grievor's email to her friend demonstrated that she wanted to extract revenge and to inform the client's parents of what the client had done. That was the motivation, from her second breach. Although it might have been normal for her to feel as she did or to want to know what she wanted to know, the intent could not justify the actions. She knew that she was not allowed to do what she did, but she did it anyway. In fact, she tried to do it a second time. Consequently, the respondent submitted that her repeated behaviour was part of a calculated and premeditated course of action and not a spur-of-the-moment decision.

[88] The grievor wilfully ignored the terms of her employment when she accessed private and confidential data for her personal use and benefit. From the day she started working at ESDC, she received daily pop-ups when she logged into her computer. She also participated in rigorous onboarding training. She was further reminded of her obligations in her letter of offer and the annual stewardship attestation. She was also warned several times of the consequences if policies were violated, which could include termination. She wilfully disregarded it all.

[89] In addition, she was a member of the provincial Law Society and understood the importance of maintaining client information confidentiality. One must remember that Law Society members must abide by higher standards than must general members of society.

[90] By her actions, the grievor failed to demonstrate integrity and stewardship, as required by the *Code of Conduct*. She did not act at all times in a manner that would bear public scrutiny. She did not refrain from using her official role to obtain an advantage. She did not take all the steps to resolve and reveal all the apparent conflicts of interest between her private affairs and the public interest in favour of the public. She did not consider the consequences of her actions and the impact on the respondent's reputation.

[91] Safeguarding client information is a critical part of the respondent's mandate. Public trust is dependent on its ability to maintain the confidentiality of the information in its stewardship. The grievor broke that public trust. Her actions led to a member of the public making a complaint. She illegally accessed one of the respondent's client's private and confidential information without their consent or authorization. Unfortunately, the privacy breach can never be remedied.

[92] The breaches were not small and trivial. They were serious, severe, and repeated.

[93] To support its argument that the termination was justified in the circumstances, the respondent relied on *N’Kombe v. Deputy Head (Department of Citizenship and Immigration)*, 2023 FPSLREB 93; *Woodcock v. Canada Revenue Agency*, 2020 FPSLREB 73; *Shaver v. Deputy Head (Department of Human Resources and Skills Development)*, 2011 PSLRB 43; *Gauthier v. Canada Revenue Agency*, 2017 PSLREB 57; *Campbell v. Canada Revenue Agency*, 2016 PSLREB 66; and *Stiller v. Canada Revenue Agency*, 2022 FPSLREB 25.

[94] With respect to *Foon v. Canada Customs and Revenue Agency*, 2001 PSSRB 126, and *Mercer v. Deputy Head (Department of Human Resources and Skills Development)*, 2016 PSLREB 11, both of which the grievor raised as examples of a respondent choosing a lesser penalty, the respondent stated that it was always open to it to choose one. However, those cases may also be distinguished on their facts. Further, little weight should be given to those older decisions, given the rise in the use of technology to store personal information and the increased need to protect it.

[95] The termination should be upheld, as there were insufficient mitigating circumstances. The respondent was sympathetic to the grievor’s situation; however, employees must follow the *Code of Conduct* at all times, despite any personal circumstances. She fully understood that what she did was wrong but nonetheless chose to do it. She failed to consider the consequences that it had on the respondent and its ability to maintain public trust. Her actions went directly to the core of how the respondent delivers its mandate. As a result, the bond of trust was irreparably broken. Her misconduct could not be tolerated and warranted the most severe consequence.

B. For the grievor

[96] As an overview, the grievor argued that she made an enormous mistake when she was at the lowest point in her life, after her marriage ended. After her friend did not agree to her request to look up private information for her, everything came into focus, and the misconduct stopped. When she was confronted, she never hesitated to acknowledge her misconduct or to express remorse. The only person who seemed to doubt her remorse was Ms. Triggs, who had never met grievor and mischaracterized

what she had done. According to Ms. Triggs, the grievor showed remorse only to a degree. The grievor submitted that Ms. Triggs mischaracterized the mitigating factors and did not properly consider them.

[97] The respondent had the burden of establishing that the termination was warranted — which included assessing the mitigating factors. When those principles were properly applied, it became clear that the termination was inappropriate. Citing *Andrews v. Deputy Head (Department of Citizenship and Immigration)*, 2011 PSLRB 100, the grievor argued that not only must discharge fit the offence but also that it is appropriate only without rehabilitative potential. The Board's jurisprudence has held that accepting wrongdoing and expressing remorse are the most important mitigating factors and indicators of rehabilitative potential. Only if a grievor is truly incorrigible will termination be an appropriate sanction.

[98] The grievor cited *Scott v. Deputy Head (Correctional Service of Canada)*, 2022 FPSLRB 104, to support her argument that her personal circumstances had to be considered. She argued that the context was such that the misconduct is unlikely to recur.

[99] The grievor specified that she did not rely on her medical condition as a defence for her inappropriate behaviour. She did not allege that it impaired her ability to judge the appropriateness of her behaviour. However, it explains her actions and supports that they are unlikely to reoccur. On that point, she referred to *Douglas v. Treasury Board (Human Resources Development Canada)*, 2004 PSSRB 60. She argued that she is fully rehabilitated.

[100] The misconduct was neither premediated nor prolonged. There was no series of events. It recurred once — that is not a series. She did not come to work with the intent to do it. Rather, she acted impulsively. An impulsive decision is the opposite of a premediated one.

[101] The grievor challenged the allegation that her misconduct was wilful since, in that moment, she did not think about what she was doing — she just did it. She has since become better and has gained perspective on what she did. She would not repeat the same errors in the future, since she has gained that perspective. That sets out that her behaviour was truly correctible.

[102] The second incident must be placed in perspective. In the matter of a couple of weeks, and the exact time is not known, she and a colleague almost jokingly discussed accessing the address of the client's parents. However, when she asked her friend to get the information and the friend refused, it brought everything into focus, and she realized that she had lost her moral compass. Her testimony was not challenged. There was no support for Ms. Triggs' conclusion that it was just another step in the grievor's master revenge plan.

[103] The misconduct was two isolated incidents, and it then stopped. The grievor did not deny that it was a serious offence. However, termination was excessive in the circumstances.

[104] Ms. Triggs exaggerated the benefit to the grievor when she stated that the grievor used the information to stalk the client. The grievor's evidence was that she drove by the client's place twice. She did not engage with her and did not harass her. There was no evidence of the consequences of the breach on the client. Although it could be characterized as a form of benefit, it was on the lower end of the spectrum. The grievor did not benefit financially. Further, she did not disclose the information to any third party or provide anyone with preferential treatment.

[105] The grievor consistently and immediately acknowledged her misconduct. She never attempted to diminish it. She admitted to it all. She consistently attempted to provide context for her misconduct by stating that she had been going through a difficult time. It was not an attempt to excuse the conduct but to provide context, since it is not every day that a 20-year relationship evaporates in such a dramatic way. She was affected so profoundly that she had to seek medical care. She stated that looking back, she should have taken time off. That sets out a level of insight that speaks to whether it is likely that the behaviour would be repeated.

[106] She admitted that she was not completely truthful with her healthcare provider but only because she was embarrassed. That should not be used against her.

[107] The grievor referred to *Foon* and *Mercer*, both of which involved inappropriate accesses to data. She highlighted them since, in her opinion, the misconducts in them were more serious, yet the penalties imposed were respectively a three- and a two-day suspension. She argued that the fact that the respondent in *Foon* imposed a three-day

suspension could not be explained by the respondent in this case taking data more seriously now than it was then.

[108] The grievor referred to *Gauthier* as the high end of the spectrum for when termination will be justified. The grievor in that case made numerous unauthorized accesses over three years and misrepresented her educational qualifications in multiple appointment processes. She did not accept responsibility, and her explanations were found not credible. By contrast, the grievor in this case had only two misconduct incidents and fully acknowledged her wrongdoing.

[109] The grievor acknowledged that the respondent's jurisprudence was more recent. However, she argued that the facts could be distinguished. All of *Campbell*, *Shaver*, and *Woodcock* dealt with grievors failing to fully appreciate the inappropriateness of their actions. As for *N'Kombe*, the grievor in that case made more than 500 unauthorized accesses. By contrast, the grievor in this case made only 2.

[110] The grievor argued that the fact that she is a licensed paralegal does not mean that she should be held to a different standard. A legal professional should not be held to a standard of perfection and should be given a second chance, if they can demonstrate that their behaviour is corrigible.

[111] The grievor was not terminated while she was still on probation. Therefore, she was entitled to have her case adjudicated on the same just-cause standard that applies to all disciplinary terminations, under s. 209(1)(b) of the *Act*. The fact that the misconduct was committed while she was still on probation was relevant only to the extent that it spoke to her relatively short service. No authority suggests that 'her probationary status, in and of itself, should be given any additional weight when determining the appropriate discipline.

[112] In *Bank of Nova Scotia* and *Ball Packaging Products Canada Inc.*, the arbitrators held that the same misconduct in the same circumstances might lead to a dismissal for a short-service employee and lesser discipline for a long-service employee. That simply reflects the principle that a lengthy period of discipline-free service is a mitigating factor that after all the other aggravating and mitigating factors are weighed, may result in less-severe discipline. Ultimately, the grievor's years of service should be a neutral factor — neither aggravating nor mitigating.

[113] The fact that the grievor was in the final stages of her probation when she committed her admitted misconduct should not tip the scales in favour of upholding the termination when other, significant mitigating factors suggest that a lesser penalty could achieve the corrective goals of discipline.

[114] In the circumstances, the grievor requested to be reinstated with full back pay, less any mitigation amounts.

IV. Analysis and reasons

[115] The issue to determine is whether the decision to terminate the grievor was excessive in the circumstances and, if so, whether an alternative remedy should be substituted for it (see *William Scott & Company Ltd. v. Canadian Food and Allied Workers Union, Local P-162*, [1977] 1 C.L.R.B.R. 1). The grievor did not dispute her misconduct or that it justified disciplinary action.

[116] To make my determination, I must consider the nature of the misconduct as well as the mitigating and aggravating circumstances.

A. The nature of the misconduct

[117] Having reviewed the evidence, I find that the nature of the misconduct was severe. It violated the respondent's *Code of Conduct*. As the respondent put it, the grievor breached its cardinal rule to use the information in its databases only for its intended purpose.

[118] The grievor admitted that she was aware of her responsibility to secure the confidential and private information under the respondent's stewardship and to access it only as required to perform her duties. She admitted that she received extensive training and that she signed a declaration acknowledging her understanding of those responsibilities. Despite that, she ignored them when she decided to obtain the client's home address on November 5, 2020.

[119] By doing so, she violated not only the *Code of Conduct* but also the client's privacy rights. The client did not consent to her information being accessed and used as it was.

[120] The grievor then used that information for her benefit, to deal with a personal matter. She testified that she went to the client's house twice. The inappropriateness of

that action cannot be sufficiently emphasized. Had she wanted merely to see the house where her son might live one day, she could have looked it up on the Internet.

Choosing to go to the client's home was an entirely different situation. I agree with the respondent that a person's home is their place of refuge, which made that information particularly sensitive. Choosing to go to the client's house — twice — augmented the severity of the breach and the violation of the client's privacy rights.

[121] Somehow, the breach was discovered and led to a complaint from a member of the public. The fact that the complainant was her estranged husband did not diminish its significance. The breach squarely attacked the respondent's ability to maintain public trust. That is not insignificant. Public trust in public institutions is a bedrock of civil society. The erosion of that bedrock can have serious implications and should never be taken lightly.

[122] Then, in December 2020, the grievor attempted to enlist another employee in her misconduct. Despite being aware that it was prohibited, she attempted to use her friendship with a co-worker to obtain additional unauthorized information, once again for her personal use. Thankfully, the co-worker refused to comply. The fact that she asked another individual to illegally obtain information on her behalf demonstrated the cavalier character of her attitude toward her responsibilities. Further, the fact that it occurred approximately one month after the first breach negates any argument that it was a spur-of-the-moment decision.

[123] For all those reasons, I find that the nature of the misconduct was severe.

B. The mitigating and aggravating circumstances

[124] The grievor acknowledged that some form of disciplinary action was warranted. However, she argued that the mitigating circumstances were such that a lesser penalty should have been imposed. She stated that the context of the misconduct was important — she was in the midst of a personal crisis, with her marriage falling apart due to her husband's infidelity. She stated that that left her unable to eat or sleep and in a state of depression. Although she did not claim to be unable to appreciate or control her actions, she stated that nonetheless, her circumstances affected her judgment. She argued that since the nature of those circumstances were so extreme, they were unlikely to present again.

[125] The grievor stated that upon being informed that her misconduct was discovered, she apologized, fully cooperated with the investigation into it, and accepted responsibility. She argued that she is fully rehabilitated and that the respondent can trust her to not repeat any misconduct.

[126] I wish to emphasize that I found the grievor sincere in her regret and remorse. However, I also noted a number of inconsistencies in her evidence that I cannot ignore.

[127] The first related to the grievor's explanation of the circumstances that led to her looking up the client's address.

[128] In the agreed statement of facts, she stated that she accessed the client's information "... as she wanted to know where the client lived and where everything was taking place with her ex-husband." She admitted to driving to the client's home twice, the first time to see where the affair was taking place and to see where her son might live one day, and the **second time** was to see if her husband was at the client's house, since he was not responding to her calls or messages.

[129] However, during her testimony, she referred to that second incident as the reason why she looked up the address. She testified that her husband had been sharing his location and suddenly stopped. After he failed to respond to her messages, she testified that she just snapped and looked up the address. Those two versions are inconsistent. As a result, it is unclear whether she was being truthful when explaining the circumstances that led to her looking up the client's address.

[130] The second area of inconsistency in the grievor's evidence was in relation to the client. The grievor testified that she had always been nice and polite with the client and that she did not take any revenge against her. The evidence suggests otherwise. Based on her work emails, she informed a friend that she had succeeded in sending a message to the client's mother on Facebook and that the client had complained to the police about her. The emails stated that she had told the police that: "... in the beginning, yes, i [sic] was not nice ..." with the client. The emails also stated, "That means my final revenge is complete." The use of the word "final" implies that other things occurred. Further, during the investigation, the grievor admitted that she had posted a message about the client on Dirty.com. Based on the website's name, I presume that the message was not complimentary.

[131] None of that evidence supports that she had been noting but nice and polite to the client and that she had not taken revenge against her. To be clear, whether or not she was nice to the client is not relevant to this case. However, failing to be truthful **is** relevant.

[132] The final inconsistency in the grievor's testimony was with respect to what she did with the information that she obtained — the client's address.

[133] She claimed that she did nothing more than drive by the client's house on two occasions. However, how would the grievor's estranged husband have known that she had the address if all she did was drive by twice? His complaint stated this: "[The grievor] has been threatening and defaming a female friend I have, and has found out where she lives. The only way I can think of her getting this info is from accessing through a work system ...".

[134] When asked how her ex-husband found out that she had obtained the client's address, the grievor replied that she had no idea and that it was probably out of spite. His complaint's wording suggests otherwise. It raises serious doubts as to whether it was more than just a drive by.

[135] Those inconsistencies call into play the grievor's credibility. That is why her tenure becomes such a determinative factor. As the respondent stated, she did not have the trust equity accumulated to convince it and then the Board that she is trustworthy. Had she had a lengthy record of good service to fall back on, it might have been possible to conclude that this was but an aberration in an otherwise unblemished career. However, those are not the facts before me.

[136] Although I have great sympathy for the grievor and the horrible situation that she lived through, nonetheless, the respondent has the right to expect that its policies will be respected regardless of an employee's personal turmoil, barring any medical evidence to the contrary. In this instance, the grievor is not relying on any such evidence. I find that the breaches occurred with the full knowledge that they were not permitted. I took the fact that she was offered an indeterminate appointment on December 8, 2020, as supporting that she was capable of functioning sufficiently well during November and December 2020, when the incidents occurred, to pass her probation and be offered an acting assignment at a higher level. That supports that she

was in control of her actions and took an informed decision to place her personal interests ahead of the public interest in those moments.

[137] The grievor argued that the Board's jurisprudence has held that accepting wrongdoing and expressing remorse are the most important mitigating factors and indicators of rehabilitative potential. While I agree they are important, they are but two of the factors to be weighed when assessing whether a disciplinary action was excessive.

[138] The grievor also pointed to *Mercer* and *Foon* to argue that a lesser penalty was appropriate. She highlighted them since, in her opinion, the misconducts in them were more serious, yet the penalties imposed were only short suspensions. She argued that that disparity of disciplinary measures could not be explained by the respondent now taking data more seriously than it had in the past.

[139] The role of the Board is not to scrutinize cases for such disparities. Rather, I must determine whether the respondent's decision to terminate the grievor when it did was excessive in the circumstances.

[140] In this instance, it was not. The nature of the misconduct was severe. The grievor was extensively trained and knew of her responsibilities. She nonetheless accessed confidential information to which she was not entitled. She violated the respondent's *Code of Conduct* and the client's privacy right. She used that information for her own benefit. She went to the client's house twice. She then attempted to use her friendship with a co-worker to get that person to violate the *Code of Conduct* as well. Her actions resulted in a complaint from a member of the public. It attacked the public's trust in the respondent. All this occurred while still in her first year of employment.

[141] I noted that all of the jurisprudence relied upon by the grievor dealt with grievors who were able to rely on their prior good behaviour, established over long careers. I do not agree with her argument that her short career was neither a positive nor a negative factor. The nature of her misconduct was severe and she does not have a long unblemished career to counterbalance the effects of it. The grievor had been in the employ of the respondent for less than a year when the incidents occurred. That is a significant aggravating factor.

[142] The severity of the misconduct, the grievor's short tenure, and the doubts raised during her testimony regarding her truthfulness lead me to conclude that the bond of trust cannot be repaired. For those reasons, the employer has met its burden of establishing that the termination was not excessive in the circumstances.

C. Confidentiality order

[143] The grievor requested that certain medical information be redacted from the exhibits that were entered into evidence.

[144] The Board's Policy on Openness and Privacy provides as follows:

...

... the Board acknowledges that in some instances, mentioning an individual's personal information during a hearing or in a written decision may affect that person's life.

Privacy concerns arise most frequently when some identifying aspects of a person's life become public. These include an individual's home address, personal email address, personal phone number, date of birth, bank account number, SIN, PRI, driver's license number, or credit card or passport details. The Board endeavours to include such information only to the extent that is relevant and necessary for the determination of the dispute.

...

It is recommended that the parties redact information that is not necessary to their case before sending it to the Board and before introducing it into evidence at the hearing. Examples of such information include a PRI, information about someone not a party to the case (e.g., a person's or a company's financial information, a family member's medical information, etc.), medical information (e.g., health card number, date of birth, etc.), security information, financial details (e.g., tax information, SIN, bank account number, salary, etc.), and personal home and email addresses.

In exceptional circumstances, the Board departs from its open justice principles. When it does, it may grant requests to maintain the confidentiality of specific information and evidence and may tailor its decisions to accommodate the protection of an individual's privacy (including holding a hearing in private, sealing exhibits containing sensitive medical or personal information, or protecting the identities and information of witnesses or third parties).

It is the party's responsibility to ask for a confidentiality order if it wants to protect information from the public. The Board may grant such requests when they accord with applicable recognized legal principles.

...

[145] The Supreme Court of Canada restated the test for granting a confidentiality order in *Sherman Estate v. Donovan*, 2021 SCC 25, in the following terms:

...

[38] ... the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

- (1) court openness poses a serious risk to an important public interest;
- (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
- (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

...

[146] At paragraph 73 of that decision, the Supreme Court of Canada added that “... protecting individuals from the threat to their dignity that arises when information revealing core aspects of their private lives is disseminated through open court proceedings is an important public interest for the purposes of the test.” It then went on to recognize that the range of personal information that, if exposed, could give rise to a serious risk, includes “stigmatized medical conditions” and information that reveals “... something intimate and personal about the individual, their lifestyle or their experiences” (at para. 77).

[147] This Board has recognized that the medical information of those appearing before it is worthy of protecting in appropriate circumstances (see *Osman v. Treasury Board (Department of Employment and Social Development)*, 2024 FPSLREB 180; *Employee X v. Canada Revenue Agency*, 2017 PSLREB 18; *Matos v. Treasury Board (Canada Border Services Agency)*, 2024 FPSLREB 7; and *Werberger v. Canada Revenue Agency*, 2016 PSLREB 41).

[148] During the hearing, the grievor’s medical record from August 8, 2020, to August 31, 2021, was entered into evidence as Exhibit U1 – TAB 1. The medical record contains the clinical notes and prescriptions prescribed by her health care provider, as well as some test results. The information that the grievor seeks to redact is limited to information unrelated to the grievor’s depression or anxiety. That information was not

used in the grievor's defence, nor relied upon by the respondent. The information was only entered into evidence as it was otherwise contained in the medical record.

[149] I agree that the above referenced medical information should be redacted. The information in question is not necessary to understanding this decision. An order to redact the information would not impede the fairness of the proceedings but would protect the privacy and dignity of the grievor. The advantages of the order outweigh its negative impact on the principle of judicial transparency.

[150] After the end of the hearing, the parties jointly submitted a redacted copy of the exhibits including her medical record. I have noted that the redactions were consistent with my determination; therefore, they will remain.

[151] Other redactions made to the exhibits protected sensitive personal information (e.g. date of birth, SIN, home address, personal email address), as well as the identity of third parties who did not testify and who were not parties to the proceedings. I have noted that those redactions were consistent the Board's Policy on Openness and Privacy; therefore, they will also remain. That information is not relevant to understanding this decision in a transparent way. Further, the public interest and justice would not be better served if that information appeared in this decision.

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

(The Order appears on the next page)

V. Order

[153] The grievance is denied.

[154] The redacted exhibits submitted by the parties are to replace the original exhibits entered into evidence and will form part of the official record of the Board.

June 26, 2025.

**Audrey Lizotte,
a panel of the Federal Public Sector
Labour Relations and Employment Board**