Date: 20070516

File: 560-02-10

Citation: 2007 PSLRB 52

Canada Labour Code

Before the Public Service Labour Relations Board

BETWEEN

NORMAND J.R. VALLÉE

Complainant

and

TREASURY BOARD
(Royal Canadian Mounted Police)

Respondent

Indexed as
Vallée v. Treasury Board (Royal Canadian Mounted Police)

In the matter of a complaint made under section 133 of the *Canada Labour Code*

REASONS FOR DECISION

Before: Sylvie Matteau, Vice-Chairperson

For the Complainant: Himself

For the Respondent: Neil McGraw, counsel

Heard at Montréal, Quebec,
March 1 to 3 and October 2 and 3, 2006.
(P.S.L.R.B. Translation)

I. Complaint before the Board

[1] The complainant, Staff Sergeant Major Normand J.R. Vallée, is a risk manager with Informatics Services, Central Region, Royal Canadian Mounted Police ("the RCMP") in Montréal. On October 9, 2004, he filed a complaint under subsections 133(1) and (2) and section 147 of Part II of the *Canada Labour Code* ("the *CLC*"). This complaint was addressed to the Canada Industrial Relations Board, which forwarded it to the Public Service Staff Relations Board on October 21, 2004.

[2] On April 1, 2005, the *Public Service Labour Relations Act* (*PSLRA*), enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 39 of the *Public Service Modernization Act*, the Public Service Labour Relations Board ("the Board") continues to be seized with this complaint, which must be disposed of in accordance with the *PSLRA*.

[3] This complaint relates to reprisals in the form of disguised disciplinary measures imposed as a result of the filing of a complaint. The complainant alleged that his safety and that of the people in his care had been endangered by inappropriate work tools, in this case a radio communications system, while he was the coordinator of a motorcade during the Summit of the Americas in Québec in April 2001. The complainant alleges that his employer, specifically Superintendent Gérard Héroux, imposed "disguised discipline," took "discriminatory actions by organizing a 'consultation' based on perceptions" and "subjected him to a form of dismissal disguised as reprisals" for having exercised his protected rights under Part II of the *CLC*.

[4] Both parties agree that this matter falls within the Board's jurisdiction. The Treasury Board is recognized as the employer, and the application of Part II of the *CLC* to regular members of the RCMP is not contested. Nonetheless, I will briefly address the issue of the Board's jurisdiction in my reasons because it cannot be conferred merely through the agreement of the parties.

[5] The respondent objected based on the cause of action in the complaint because the actions forming the accusations are not prohibited under section 147 of the *CLC* and because the complaint was filed outside the 90-day limit provided under subsection 133(2) of the *CLC*. Thus, the respondent limited itself to contesting the

complaint on these grounds, although it reserved the right to present evidence in the rebuttal, which it finally deemed not to be necessary.

[6] The complainant summoned a representative of the Canadian Human Rights Commission ("the CHRC") to appear and requested that an investigation report be tabled. A representative of the CHRC objected and appealed the summons to appear before the Board. A written defence was submitted, which may be consulted in the file. Following verbal representations by the CHRC representative, the parties agreed to place in the file the initial complaint to the CHRC, the CHRC investigation report and the partial interview notes. The representative was excused without having to testify.

[7] The complainant called 11 witnesses and tabled 42 documents. These documents were all tabled with the agreement of the other party, subject to their relevance and evidential value. The complainant chose not to testify. As previously indicated, the respondent did not submit any evidence.

II. Summary of the evidence

[8] The first witness, Line Forgues, NCO, Complaints and Internal Investigations Section (Montréal office), tabled a very large internal investigation report dating back to April 2003, and a complementary report from September 2003 (exhibit P-1) concerning the complainant. A disciplinary measure was imposed on August 23, 2003 against the complainant following this investigation. Ms. Forgues was not questioned about these documents. The respondent did not object to the tabling of these reports because it was understood that they were evidence of a process, but not of the facts they contained; the respondent did not question the witness.

[9] Ruth Rancy is an occupational health and safety specialist. She prepared the training material and the test in this area for the RCMP. She tabled a copy of a question on the test with its multiple-choice answers (Exhibit P-2). The respondent objected to the relevance of this document. At this point in the case, I reserved my decision on the complainant's statements that he intended to use this document later to make a causal link, and I allowed the document to be tabled, subject to its relevance. However, the complainant did not return to this issue in his arguments.

[10] Charles Earle Savard was a superintendent, who retired in 1995. He testified to the complainant's exemplary work. He said he assigned him extensive responsibilities despite the fact that some people thought that the complainant had health problems.

He said that he had requested a medical opinion confirming that the complainant did not have any health problems and subsequently had him assigned responsibilities with the Governor General and with diplomats. He received nothing but praise about the complainant's services to the Governor General at that time. The complainant worked with Mr. Savard between 1983 and 1986 and again between 1988 and 1990. He testified about the lot that, it seems, often befalls officers who volunteer as division staff relations representatives or sub-representatives at the RCMP. These reprisals take the form of transfers, silent treatment, being sent home and being assigned tasks and responsibilities in a way that arrests the careers of the targeted individuals. The respondent objected to the relevance of the testimony on this matter, on the grounds of hearsay. The objection was allowed in part on the complainant's statements that he was attempting to provide evidence of a generalized culture of reprisals for all kinds of reasons, not evidence of the employer's practices in the specific area of labour relations. Nonetheless, the strength of this evidence remained in question in light of the nature of the testimony.

[11] Paul Dupuis is a division sub-representative in staff relations. He testified strictly about his own experience as a division representative and about the reprisals he allegedly suffered because of his activities. Once again, the respondent objected to the relevance of this testimony to this complaint of reprisals. The testimony was allowed subject to the same conditions as the previous testimony. Mr. Dupuis has received suspensions without explanation, suspensions without pay, suspensions with pay away from the workplace and assignments to tasks and responsibilities that did not correspond to his level and qualifications (was "shoved aside"), and he was denied promotions. In cross-examination, it was determined that this witness and the complainant never had the same supervisor during their careers.

[12] Gaétan Delisle, a 37-year veteran of the RCMP, explained that about 30 years ago, the Commissioner had introduced a system of division representatives for the RCMP's members. He then explained the evolution of this system, including the establishment of a legal fund for defending members' rights. He also explained the unionization attempts that were initiated by certain members of the RCMP. He testified about his personal activities as a division representative and the measures he alleges to have been a victim of throughout his many years as an activist.

[13] Once again the respondent objected to the part of Mr. Delisle's testimony concerning the measures he allegedly suffered, on the grounds of relevance. The complainant replied that he should be able to provide evidence of a general culture of reprisals or a "pattern" of reprisals against employees who oppose management or denounce any work situation. Thus this testimony was heard subject to a causal link being established between these different situations and this case.

[14] Mr. Delisle outlined the reprisals he allegedly suffered because of his activities on behalf of the RCMP's members, which included suspensions without explanation, suspensions without pay, suspensions with pay away from the workplace, assignments to tasks and responsibilities that did not correspond to his level and qualifications (was "shoved aside") and denials of promotion. According to the witness, these same measures were apparently taken against the complainant and Mr. Dupuis because they performed the same activities as division representatives.

[15] Lise Tremblay is a retired nurse, who worked at the Notre-Dame Hospital in Montréal. She related only her own experience and impressions and perceptions of people in general. The employer objected to this testimony, and I sustained the objection. This testimony is not related to this case and is not relevant.

[16] Lyne Fillion is a corporal and has been a member of the RCMP for 22 years. Based in Montréal for the past seven years, she worked regularly in Ottawa in the VIP Security Section, on both routine daily assignments and official visits. Although she is not a specialist, she is qualified to drive in motorcades. She explained that working in a motorcade presents a constant danger. Regardless of the risk assessment, you must always be on the alert. Ms. Fillion also explained the nature of the work and the tools required, including the essential communication systems and their importance, as well as communication procedures. She worked with the complainant in 2000 in Moncton and testified that at that time the work was very well done.

[17] The respondent objected to the relevance of Ms. Fillion's testimony concerning the inherent danger of working in a motorcade and the importance of communications. Indeed, at this point the issue is not to decide the validity of the original complaint under section 133 of the *CLC*. The Occupational Health and Safety Committee made its determination and found the complaint valid. The objection was sustained.

[18] In 2000, after taking a course in mediation, Ms. Fillion occasionally worked as a mediator for the ADR (Alternative Dispute Resolution) unit, where she worked with the division coordinator, Benoît St-Pierre. She was assigned there on a temporary basis from September 2001 to April 2002. She testified that in January 2002, there had been a request from Mr. Héroux for a workplace consultation in the Informatics Section. She indicated that, together with Mr. St-Pierre, she took part in designing the process, holding initial discussions with Mr. Héroux, presenting the process to employees in the Informatics Section and interviewing. She also indicated that two other mediators, Luc Beaucage and Benoît Roy, also participated in the interview process. A report was prepared and submitted in April 2002.

[19] Ms. Fillion testified that during this process allegations surfaced concerning the actions of the complainant, who was working in that division, and the fears of some of the other employees. Given the nature of those allegations and the fact that they came from more than one person, the team of four mediators discussed the matter and decided to convey these fears to Jean-Pierre Witty, Acting Commander. Ms. Fillion stated that she never received any instruction from Mr. Héroux or anyone else to spy on or watch the complainant. In cross-examination, she maintained that during the preliminary discussions with Mr. Héroux that led to the consultation process, the issue of security during the April 2001 Summit of the Americas never came up. She also maintained that the complainant's complaint to the Occupational Health and Safety Committee never came up during the process.

[20] Furthermore, Ms. Fillion explained the process of preparing the report and the confidential nature of the data collected during the interviews. She insisted on the fact that it was not an investigation process. It was a matter of collecting information to perform an analysis and assessment of the workplace and to ask participants for suggestions on improvements. The mediators had no authority to impose solutions or to implement solutions proposed by the participants. The mediators can play a part afterwards if participants feel that mediation services are appropriate. Mediation is then provided to those individuals who are interested in participating.

[21] The complainant contacted Ms. Fillion after the report was submitted for clarification on the allegations surrounding his behaviour. A meeting took place in the complainant's office. He was looking for information on the consultation process, on training and on Ms. Fillion's experience in this area. According to the witness, this

meeting took a bad turn. She realized that the complainant wanted to write down all of the questions and her answers. She refused to proceed in this manner, insisting that the meeting remain informal, just like the consultation process. The complainant then got angry and apparently told her that he had recorded the interview without her knowledge. She then left the complainant's office. She stated that she was unaware of any follow-up that may have been done after her departure.

[22] Benoît St-Pierre has been a civilian member of the RCMP for 29 years. He worked in the ADR for seven years, and he is the coordinator. In this regard, he reports directly to the commander. The witness briefly described the unit, its resources and its operations.

[23] Mr. St-Pierre worked in the Informatics Unit before moving to the ADR. He testified that, during his time there, he witnessed several incidents, including a harassment complaint and several interpersonal conflicts. Many of the people involved are no longer in that unit. The respondent objected to this testimony on the grounds of relevance and because the witness was not the appropriate person to testify about the details of these occurrences, since he was going by hearsay. The objection was sustained.

[24] Mr. St-Pierre then explained the workplace consultation process and the development of the report. He indicated that participation was on a voluntary basis. He added that the agreement with the participants was that anything that they said would remain anonymous. The confidentiality of the report's database must be protected for the process to work. This rule of confidentiality may be broken if participants make threats during the process that might bring harm to individuals or if the mediators are informed that some people fear for their safety. This information is then communicated to the appropriate person. That person then takes whatever steps he or she deems appropriate. The mediators are not required to prove the allegations that are conveyed to them; this is not their role. Their commitment to management is only to pass on such information. In response to a specific question from the complainant, Mr. St-Pierre indicated that qualifying this as an information service for the commander is an interpretation by the complainant.

[25] Although the complainant summoned this witness and asked him to bring the consultation file, the working notes and other notes taken for the consultation, the witness did not produce these documents. Given the confidential nature of the process

and the notes, the witness was opposed to tabling them. I noted the breach and, in light of the argument of the witness and, especially, the lack of relevance of these documents with respect to shedding light on this case, I did not order that they be tabled. The complainant alleged that it was the occurrence of these events that constituted the reprisals against his denunciation of the working conditions at the Summit of the Americas and caused him harm. The content of the interviews conducted during this exercise and the mediators' report and notes are not relevant to this case.

[26] In cross-examination, Mr. St-Pierre explained that in January 2002, Mr. Héroux asked to meet with him to discuss the conflicts of which he was aware in the Informatics Unit. This was when Mr. St-Pierre outlined for him the workplace consultation process. Mr. Héroux said that he agreed to the approach. Mr. St-Pierre stated that at this meeting, he specifically asked Mr. Héroux not to give him any details of his own perception of workplace conflicts. He indicated that this is a typical and standard technique for starting such a process. According to him, these details are supposed to come out during the interviews. After the report was tabled, five or six mediations were requested by certain participants. There was no mediation with the complainant, even though he had stated that he was prepared to do so if someone asked to see a mediator with him.

[27] Mr. St-Pierre also stated that there was never any question of the complaint about communications and the safety of the motorcades during the April 2001 Summit of the Americas. Finally, he confirmed that the complainant had filed several grievances against him and the members of the consultation team following the process and that every request for information through the *Access to Information Act* by the complainant was duly handled by the appropriate unit.

[28] Luc Beaucage has been a member of the RCMP for 29 years. Mr. Beaucage was a member of the consultation team. He took part in the presentation of the process in the workplace. He stressed the important distinction between that process and the criminal investigation process. He also met with the participants and conducted mediations. He confirmed that he took notes and gave them to Mr. St-Pierre. However, he explained that he had promised some participants that he would destroy his notes once the information they contained was compiled for the report, along with those of all the other participants. This was based on his understanding of the process and of

the standard approach. This was what he got from his training in this area. He indicated that it was the first process of this type in this workplace.

[29] Mr. Beaucage specified that, if during a confidential process like this one, information should surface indicating that anyone's life or safety was in danger, he had the duty and obligation to act and to convey this information to the appropriate person, in this case, Mr. St-Pierre and the consultation team. This is what he did. The team then decided to convey the allegations to Mr. Witty, Acting Commander. From that point on, it became entirely his responsibility, and the team went on with its work.

[30] André Girard is a Staff Sergeant Major and has been a member of the RCMP since 1976. He is a division representative. Mr. Girard also testified about the situation he had learned of, which involved people being sent home while still being paid, but with nothing to do. The respondent objected because this was not relevant to this case. The complainant replied that he was once again trying to establish the "pattern" of what happened to people who made complaints of any kind. According to him, this is subterfuge for a disciplinary mechanism and he had to be allowed to prove its existence. Thus, the question was allowed subject to the relevance and evidential value of this part of Mr. Girard's testimony. The complainant was notified that he still had to establish a link with the facts in this case. Moreover, I put the complainant on notice to stick to evidence of a "pattern" in connection with the subterfuge of disciplinary measures and to avoid any labour relations issues on which the Board has no jurisdiction over the RCMP.

[31] Mr. Girard confirmed that, to his knowledge, supervisors told those employees to stay home and not to come to work. Others were given "make work" projects. In a way they were shoved aside with tasks that were trite compared to their regular ones or those for which they were trained or that were part of their career paths. According to him, no legislation or policy grants managers such authority. He maintained that this culture of reprisals still exists in the RCMP against people who exercise their rights or complain about anything against management.

[32] The complainant then wanted to table his medical file, to which the respondent objected. According to the complainant, since he is perceived as dangerous, the best way to do disprove that was to table his medical record, which shows that according to the tests and psychological assessments he underwent, this was not the case. These items came up in connection with the 2002 consultation process and are not

connected with the events surrounding the Summit of the Americas and the resulting complaint, which is the source of this complaint of reprisals. I found that this evidence would not be relevant to the case before us, particularly since the complainant's physician was not at the March 2006 hearing to testify and undergo cross-examination by the respondent. The objection was sustained.

[33] When the hearing resumed in October 2006, the complainant called Dr. Mitchell Pantel to testify. Dr. Pantel has been the chief physician at C Division for the past two-and-a-half years. The complainant was attempting to prove that he was still a victim of reprisals by the employer in that he was being refused medical treatment, including dental treatment. In March 2005, the complainant consulted Dr. Pantel about a dental problem that went back to his initiation into the RCMP in 1980 and to the damage caused to his teeth. According to the complainant and his dentist, he needed new treatment because the stress caused by the situation since the Summit of the Americas had created undue wear on his teeth. Dr. Pantel confirmed that he took this request for treatment seriously. He took the necessary steps to refer the request in the appropriate manner, because a request of this nature does not fall under his responsibilities as a physician. Since he is not a dentist, he cannot assess the situation or make recommendations for treatment. With respect to psychological services, he had referred the complainant as appropriate.

[34] Dr. Pantel was notified on December 19, 2005 that the complainant would be filing a complaint against him. Dr. Pantel then notified his supervisor, who confirmed that his response to the complainant had been correct and that he was not to intervene in the case. According to his notes to file, the complainant's file was in "isolation." He was not in a position to explain that note.

[35] However, this testimony addresses facts that occurred after the current complaint was filed in October 2004.

III. Summary of the arguments

A. For the complainant

[36] The complainant started his arguments by relating the chronology of the events in this case. I then reminded him that I had invited him more than once to provide his own version of the facts and his feelings about the reprisals he alleges having suffered. He was informed that nothing he said from the point at which he started presenting

his arguments could be used as evidence. The complainant declined this new invitation to testify. I then told him that he could proceed with his chronology of the events simply to present his arguments, warning him that from this point on in the hearing, only arguments would be accepted. I reminded him that his evidence had been presented only through his witnesses and through documentary evidence to which I attached several reservations. Thus, I do not take as proof the facts reported by the complainant only through his argumentation.

[37] The complainant stated that the events that took place during the April 2001 Summit of the Americas in Québec were the starting point for his recourse before the Board. The reprisals of which he claims to have been a victim go back to the filing of his complaint under the *CLC* on November 8, 2001.

[38] In brief, it was essential that he have the appropriate tools to accomplish his mission as Coordinator of motorcades. The tools that were provided to him were defective, endangering the members of his team and the people for whom he was responsible, including the VIPs and himself. He found himself in a situation of risk and indicated that he was scared. He denounced the situation and, as a result, he suffered and continues to suffer reprisals.

[39] The complainant described in detail the way the days unfolded between April 15 and 22, 2001, and the procedures set out for the transportation of the VIPs. Communications proved to be an essential element in these procedures, and a radio system with improper frequencies complicated things for the motorcade coordinator, to say the least. He described events to support his allegations that the motorcade was at risk, that he was very stressed, and that at the end of it all he found himself in a state of shock. However, these elements were not included as evidence and are not pertinent to this complaint of reprisals since the Occupational Health and Safety Committee's decision is not the issue here.

[40] According to the complainant, it was only in October 2001, in view of his state of shock, that he realized the seriousness of the situation. In November 2001, he filed a complaint with the Occupational Health and Safety Committee. On December 17, 2001, the Committee found that the complaint was justified. On December 20, 2001, Mr. Héroux was notified of the Committee's decision, and on January 7, 2002, Mr. Héroux initiated a workplace consultation process with the assistance of the RCMP's ADR mediation services. The complainant pointed out the very short interval between

the Occupational Health and Safety Committee's notice of the merits of his complaint and Mr. Héroux's decision to proceed with the workplace consultation. According to him, this is clear evidence of the concerted effort to subject him to reprisals because he made the complaint.

[41] To support his argument, the complainant also raised several items in the workplace consultation process that he considers weaknesses. Among others, the fact that Mr. Beaucage confirmed that all of the workplace survey questionnaires had been destroyed, that many of the participants' comments had not been verified and that such a process had never been used before. According to the complainant, this is evidence of a conspiracy against him.

[42] The complainant also described the events related to the workplace harassment complaints and to the wearing of his firearm in the workplace. However, once again, no evidence was presented to me in this regard. There was also mention of a transfer that would have been initiated by Mr. Héroux in May 2002, and again in October 2002, when the complainant would have started teleworking. I had to set aside this entire aspect of the complainant's argument, which had not been proven.

[43] According to him, the evidence was revealed during the workplace investigation, when several participants indicated that they were afraid of the complainant at a given point in time. According to the complainant, these allegations were poorly managed by Mr. Héroux and the ADR officials. They supposedly overreacted, without checking the facts or giving the complainant a chance to respond to these allegations and to provide a response and an explanation. This is yet more evidence of a conspiracy to subject him to reprisals.

[44] It was in light of this whole series of events that occurred after the complaint was filed with the Occupational Health and Safety Committee in November 2001 that the complainant became aware of the reprisals. According to him, there are no other reasons; there is a correlation between these actions, and he is convinced that a reasonable person would also conclude that he had been the subject of reprisals because of his complaint.

[45] According to the complainant, he had been isolated and labelled as having a "social phobia." This systematic isolation was confirmed, in his opinion, by Dr. Pantel's testimony. This was why he filed a complaint with the Occupational Health and Safety

Committee. Despite everything that happened and the reprisals that he suffered, he remained with the RCMP because, according to him, he cannot find a job anywhere else since he cannot rely on references from the RCMP to support his application.

[46] He stated that he suffered harm and mental damages. According to him, the respondent used disloyal and humiliating tactics and acted in bad faith. He asked that this tribunal grant him $20,000 in damages.

B. <u>For the respondent</u>

[47] The respondent found it best to begin its arguments by clarifying the role of the Board in this case. According to the respondent, it is not a question of determining whether harassment occurred, nor of determining whether there were labour relations problems, staff relations problems, organizational culture problems or labour relations problems in the organization. Nor is it a question of determining whether other individuals' grievances are of value or if the organization's labour relations practices are legitimate, nor even whether the initial complaint to the Occupational Health and Safety Committee was well-founded or not. It is only a matter of determining whether, according to the definition of reprisals provided under section 147 of the *CLC*, the complainant was or was not a victim of reprisals.

[48] The respondent presented two preliminary objections. According to the respondent, the current reprisals complaint was filed after the time limit. Subsection 133(2) of the *CLC* provides that the complaint must be filed within 90 days after the date on which the complainant knew of the act of reprisals. In this case, the complaint was filed in October 2004, while the events reported by the complainant date back to January 2002, when the workplace consultation started, and to its report in October 2002, or two years before the reprisals complaint was filed. The complaint is most certainly too late.

[49] Moreover, the complaint is without merit. The reported acts do not meet the definition in section 147 of the *CLC*. No disciplinary measure against the complainant has been proven. The workplace consultation process is not a disciplinary act.

[50] Finally, the respondent maintained that the complainant did not demonstrate a link between the reported events that were qualified as reprisals and the complaint filed in 2001. The respondent asked me to dismiss the complaint because the

complainant did not satisfy the burden of proof that rests with him. The complainant had to convince me that the measure stemmed from the complaint. Yet, there is no evidence that the consultation process, even if it were considered to be of a disciplinary nature, stemmed from the complainant's complaint. The more reasonable explanation for this intervention would instead be the existence of conflict in the office. Although the complainant tried to present evidence of a culture of systemic reprisals by superiors towards different people in the workplace, there is no evidence to make a link in this case.

[51] The respondent pointed out that the evidence provided by the complainant was largely hearsay with little value as evidence and, more often than not, was not relevant to the case. The respondent made the point that it had raised numerous objections and that, although it did not present any reply evidence, I should not infer any conclusions against the respondent.

[52] Finally, the respondent pointed out that the process is not a review of the RCMP's labour relations system. The respondent's practices with respect to the employees who participate in different committees are not the subject of this hearing, and the fact that some did or did not suffer reprisals as a consequence of these activities does not demonstrate that the complainant suffered reprisals because of his complaint.

[53] In conclusion, although evidence on reprisals is often difficult to establish, the complainant's choice not to testify argues in favour of a conclusion that he could not provide this evidence even for its own sake and that the respondent therefore did not have to present evidence.

[54] As for the compensation for damages requested by the complainant, there is no evidence on file of such harm. According to the respondent, the complainant confused the Board's authority to determine whether there were reprisals under the *CLC* with the authorities it has in relation to a complaint under the *Canadian Human Rights Act*. The Board does not have the authority to grant damages in this case.

IV. Reasons

[55] The issue of the Board's authority in complaints under Part II of the *CLC* and its application to regular members of the RCMP remains and should be clarified.

[56] This authority was confirmed under previous legislation by Judge Kennedy in *R. v. Canada (Solicitor General),* [2000] N.S.J. No. 293, where he found as follows:

. . .

> *. . . I so find, mindful that this result will mean that the P.S.S.R. Board, which has no jurisdiction over the R.C.M.P. for purposes of determining collective bargaining rights, will have jurisdiction to review health and safety complaints involving the Force.*

. . .

[57] The Nova Scotia Court of Appeal dismissed the appeal of this decision ([2001] N.S.J. No. 623), and the Supreme Court denied leave to appeal ([2001] S.C.C.A. No. 173).

[58] The *CLC* and the *Public Service Staff Relations Act* have both been amended since this decision. Subsection 123(2) of the *CLC* now provides that its Part II on health and safety applies to the federal public administration and to persons employed in the federal public administration to the extent provided under Part 3 of the new *PSLRA*.

[59] Section 239 of the *PSLRA* (Part 3) provides as follows:

> ***239.*** *In this Part, "public service" has the same meaning as in subsection 11(1) of the* Financial Administration Act.

[60] And finally, subsection 11(1) of the *Financial Administration Act* provides as follows:

. . .

> *"public service" means the several positions in or under:*
>
> . . .
>
> (b*) the other portions of the federal public administration named in Schedule IV;*
>
> . . .
>
> [The Royal Canadian Mounted Police is one of the organizations named in Schedule IV.]

[61] Thus, for the purpose of the application of Part II of the *CLC* we have to conclude that the Board has the authority to hear complaints from employees and regular members of the RCMP on occupational health and safety under Part 3 of the *PSLRA* and under the *Financial Administration Act* and its Schedule IV, which makes the Treasury Board the employer for this purpose. The findings of Judge Kennedy have therefore been confirmed by recent legislative changes.

[62] The question that is to be resolved in this case is whether the complainant has been a victim of reprisals for his denunciation of the hazardous working conditions in which he found himself during the April 2001 Summit of the Americas in Québec — conditions that, according to him, endangered his own health and safety and that of his team and of the people for whom he was responsible.

[63] Section 147 of the *CLC* provides as follows:

> ***147.*** *No employer shall dismiss, suspend, lay off or demote an employee, impose a financial or other penalty on an employee, or refuse to pay an employee remuneration in respect of any period that the employee would, but for the exercise of the employee's rights under this Part, have worked, or take any disciplinary action against or threaten to take any such action against an employee because the employee*
>
> > *(*a*) has testified or is about to testify in a proceeding taken or an inquiry held under this Part;*
> >
> > *(*b*) has provided information to a person engaged in the performance of duties under this Part regarding the conditions of work affecting the health or safety of the employee or of any other employee of the employer; or*
> >
> > *(*c*) has acted in accordance with this Part or has sought the enforcement of any of the provisions of this Part.*

[64] Thus, the complainant would have to demonstrate that:

a) he exercised his rights under Part II of the *CLC* (section 147);

b) he suffered reprisals (sections 133 and 147 of the *CLC*);

c) these reprisals are of a disciplinary nature, as defined in the *CLC* (section 147); and

d) there is a direct link between his exercising of his rights and the actions taken against him.

[65] It should be noted that the complainant did not exercise his right to refusal under subsection 128(1) of the *CLC* and therefore does not have the benefit of the presumption in his favour provided under subsection 133(6) of the *CLC*. The burden of proof was entirely on him.

[66] The respondent objected based on the time limits for making a complaint. Subsection 133(2) of the *CLC* provides that the complaint must be filed within 90 days after the date on which the complainant knew of the reprisal action, or 90 days after the workplace assessment report was released in October 2002, according to the respondent. Moreover, the respondent maintained that the reported actions could not be considered reprisals under section 147 of the *CLC*. Finally, the respondent maintained that the complainant was unable to demonstrate the link between the reported events, which he qualified as reprisals, and the denunciation made in 2001.

[67] I noted these objections by the respondent and found that the complaint was made after the time limit and that the alleged actions cannot be qualified as reprisals under section 147 of the *CLC*. Moreover, the complainant did not provide any evidence of the link between his allegations of reprisals and his November 2001 complaint.

[68] The complaint is dated October 9, 2004, and it consists of a description of the events that took place during the Summit of the Americas in Québec in April 2001 and a series of events that, according to the complainant, constitute reprisal measures. This is a 16-page document, with eight other attached documents. The events described in it, which the complainant sought to demonstrate during the hearing, almost all stem from circumstances surrounding the workplace assessment, the process followed and what it revealed. Mr. Héroux initiated this process on January 7, 2002, less than one month after the December 17, 2001 decision by the Occupational Health and Safety Committee, which found in favour of the November 8, 2001 complaint. This workplace initiative ended with the submission of a report in April 2002. It was followed by an alleged transfer of the complainant in October 2002 that was not proven.

[69] This complaint, dated October 9, 2004 — or two years after the end of the conciliation process and the complainant's transfer — is clearly beyond the time limit,

and the complainant has provided no reason to explain this delay in filing the complaint. Nor did the complainant make the link with the disciplinary measure imposed on him in August 2003, a measure that, in any case, dates back to more than one year before his complaint was filed in October 2004.

[70] On the contrary, he appears to have been very active in filing other grievances or complaints, including one to the CHRC, and, according to Appendix F of the October 9, 2004 complaint, a complaint of an ethical violation against Mr. Héroux on July 10, 2003. For these reasons, I have to allow the respondent's objection. The complaint can be dismissed for this reason alone. However, I will also address the respondent's second objection and his argument concerning the missing link.

[71] The complainant maintained that the workplace assessment process was directly linked to the complaint he filed to the Occupational Health and Safety Committee and to that Committee's decision, and that it was a reprisal against him. According to him, the evidence is the short interval between the decision by the Occupational Health and Safety Committee and the start of that process. This is a rather tenuous link. This coincidence in time does not establish in and of itself the necessary causal link. The burden of proof was on the complainant to prove the allegations of reprisals and to demonstrate that they were linked to his denunciation. The short interval alone cannot establish this link and the violation of the *CLC*. In fact, the complainant recognized in his arguments that employees were afraid of him during the time following the Summit of the Americas and that he was suffering from post-traumatic shock following these events. On a balance of probabilities, these elements could explain the employer's intervention through a workplace assessment, although the complainant did not manage to demonstrate that they were reprisals.

[72] Moreover, this workplace assessment process as such, and the decision to initiate it, do not constitute a reprisal action as defined in section 147 of the *CLC:*

> ***147.*** *No employer shall dismiss, suspend, lay off or demote an employee, impose a financial or other penalty on an employee, or refuse to pay an employee remuneration in respect of any period that the employee would, but for the exercise of the employee's rights under this Part, have worked, or take any disciplinary action against or threaten to take any such action against an employee . . . .*
>
> . . .

[73] The evidence has not demonstrated that these were disguised measures. The same applies to the issue of the refusals to reimburse him for certain dental and other treatments (not to mention that these would have occurred in 2005). Based on these two elements, the complaint is without merit.

[74] As for the matter of the transfer in October 2002, the evidence falls short, and I cannot conclude, under the circumstances, that any "pattern" of disguised disciplinary measures exists based on hearsay and different situations that do not prove that this is such a case.

[75] In the complaint, the complainant described different events that, according to him, constituted reprisals. In his arguments, he reported his activities as a representative of members, and maintained that everyone who played this role on behalf of their colleagues suffered reprisals or differential treatment because of those activities. Since the Board does not have jurisdiction over the RCMP's labour relations activities, I cannot speak to the complainant's activities as a representative of his work colleagues or the allegations of reprisals against him that the activities may have sparked. The complaint that is before me was filed under the *CLC*, and this is the only point I can address.

[76] However, the complainant chose to present this evidence, which was intended to establish a "pattern" of a way in which some managers operated, alleging that he had been a victim of these same reprisals for having used the occupational health and safety provisions of the *CLC*, which displeased his manager. I cannot reach this conclusion based on the evidence before me. The causal link has not been proven, and I cannot conclude that there was a violation of the *CLC*. If there were any reprisals, they may have had other equally plausible reasons. In fact I noted that during his arguments, the complainant acknowledged that measures had been taken by his supervisor at the time to ensure that the situation that occurred during the Summit of the Americas would not recur. Thus, the complaint was taken seriously and concrete actions would have been taken as a result of the difficulties raised by the complainant.

[77] In conclusion, the complainant has not proven on the balance of all probabilities that he was a victim of unlawful reprisals under section 147 of the *CLC* related to his complaint about the defective radios used for the motorcades during the April 2001 Summit of the Americas in Québec.

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

(The Order appears on the next page)

V. Order

[79] The complaint is dismissed.

May 16, 2007.
P.S.L.R.B. Translation

Sylvie Matteau,
Vice-Chairperson