Date: 20080929

File: 561-34-138

Citation: 2008 PSLRB 76

Public Service Labour Relations Act

Before the Public Service Labour Relations Board

BETWEEN

BRUCE RONALD CUMING

Complainant

and

KAREN BUTCHER, THOMAS EGAN, PARISE OUELLETTE, BEVERLY BRIDGER AND PIERRE MULVIHILL

Respondents

Indexed as
Cuming v. Butcher et al.

In the matter of a complaint made under section 190 of the *Public Service Labour Relations Act*

REASONS FOR DECISION

Before: Marie-Josée Bédard, Vice-Chairperson

For the Complainant: Himself

For the Respondents: Tracey O'Brien, Canada Revenue Agency, and
Nancy Milosevic, Public Service Alliance of Canada

Decided on the basis of written submissions
filed May 27, June 18 and July 9, 2008.

I. Complaint before the Board

[1] On January 10, 2007, Bruce Ronald Cuming ("the complainant") filed a complaint under section 190 of the *Public Service Labour Relations Act* ("the *Act*") against several employees of the Canada Revenue Agency (CRA), his former employer, and two representatives of the Public Service Alliance of Canada (PSAC), his bargaining agent. In part 3 of the complaint form, the complainant indicated that his complaint was filed pursuant to paragraphs 190(1)(*a*), (*c*) and (*f*) of the *Act*, all of which refer to a failure to comply with the duty to observe terms and conditions, provided respectively in sections 56, 107 and 132 of the *Act*.

[2] The representative for the CRA, on behalf of the respondents, raised two preliminary objections from the outset to the jurisdiction of the Public Service Labour Relations Board ("the Board") to be seized of the complaint. In the first objection, the CRA argues that the circumstances raised in the complaint are not circumstances that can give rise to a complaint under subparagraphs 190(1)(*a*), (*c*) or (*f*) of the *Act*. In the second objection, the CRA argues that the complaint was not filed within the mandatory 90-day time limit prescribed by subsection 190(2) of the *Act*. The PSAC, on behalf of the other two respondents, for its part, raised in writing a preliminary objection that is similar to the CRA's first objection.

[3] The CRA suggested that the preliminary objections be dealt with by way of written submissions. The PSAC agreed to the suggestion, and the complainant did not reply. Using its authority under section 41 of the *Act*, on May 6, 2008, the Board directed the parties to provide written submissions on the following questions:

. . .

> *1) The complaint has been filed under section 190 of the* Public Service Labour Relations Act. *Subsection 190(2) provides that, "…a complaint under subsection (1) must be made to the Board not later than 90 days after the date on which the complainant knew, or in the Board's opinion ought to have known, of the action or circumstances giving rise to the complaint".*
>
> *The employer objects that the actions complained of were known to the complainant long before the 90-day period provided in the Act.*
>
> *How can the Board be seized of the matter if the time provided to file a complaint has elapsed?*

. . .

> *2) How are, sections 56, 107 or 132, referred to in paragraphs 190(1)(a), (c) and (f), applicable to either the employer or the bargaining agent in the circumstances of this case?*

. . .

[4] The complainant's arguments were submitted to the Board on May 27, 2008, and the arguments of the PSAC and the CRA on behalf of the respondents were submitted on June 18, 2008. The complainant submitted a rebuttal to the Board on July 9, 2008.

[5] Before summarizing the parties' arguments with respect to the preliminary objections, I will outline some of the information contained in the complaint that is relevant to understanding the objections that have been raised.

[6] The complainant attached a "Summary of Grievances" to his complaint form in which he outlined the respondents' actions and omissions that form the basis of his complaint. The "Summary of Grievances" refers to three specific events that, according to the complainant, occurred at three different times, as well as one more generalized allegation.

[7] The first event referred to in the "Summary of Grievances" is entitled: "Wrongful Dismissal (July 2003)." The complainant alleges that the "employer" was "in breach" of its "contractual obligation" in terminating his contract early for reason of lack of work yet hiring another person shortly thereafter. He further alleges that the manner of his dismissal was improper and contests the fact that his name was not placed on the "hiring list."

[8] The second event is entitled: "Defamation/Slander of my Character-Reference Check (Jan. 2004)." The complainant alleges that a reference check was performed after his termination, during which his former supervisor made defamatory and untrue statements pertaining to his performance as an employee. He further alleges that the statements were made without his consent and knowledge. The complainant also alleges that he has not received appropriate support and advice from the PSAC regarding this event.

[9] The third event is entitled: "Privacy Act Violation (March 2006)." The complainant states that he has documented evidence that indicates that his former supervisor received a copy of his result from a General Competency Test (GCT) Level 1 that he had written at the Public Service Commission. The complainant alleges that the documents are "protected," that they were released without his consent and that the release constitutes a violation of his civil rights under the *Privacy Act*.

[10] In addition to those three events, the "Summary of Grievances" contains another section entitled "Employer Failure to Comply with CBA Provisions." In that section, the complaint alleges that his employer failed to comply with several provisions of the applicable collective agreement which is the Agreement between the Canada Customs and Revenue Agency and the Public Service Alliance of Canada - Program Delivery and Administrative Group (Expiry Date: October 31, 2007).

[11] With respect to the steps he took to resolve his "grievances," the complainant wrote the following:

. . .

> *My attempts to resolve the above-noted issues in a civil manner have been, to say the least, an exercise in futility over the course of the past three years. I have been riding a "bureaucratic merry-go-round" . . . union to member of parliament to ATIP Directorate to member of parliament to lawyer to member of parliament to union etc, etc, etc! Processes that relate to dispute resolution within the government workplace should not result in my having to experience such frustration, expense, and hardship. In the name of accountability to the public, checks and balances must exist (within the system) that serve to prevent such sinister employment practices from occurring in the first place. These practices breach transparency guidelines, the C.B.A, the P.S.L.R.A and to* [*sic*] *the CCRA Code of Ethics and Conduct, Sections 3, 3(g) (j) (p) and 5.*

[12] In the conclusion of his "Summary of Grievances," the complainant wrote the following:

> ***CONCLUSION***
>
> *In conclusion, because of the circumstances (non transparent) resulting in my numerous grievances, which transpired subsequent to my termination, matters such as jurisprudence and dispute resolution processes were and*

> *remain rather undefined. These matters remain somewhat confusing even after my having:*
> *a) conducted extensive research and investigation as it pertains to the issues,*
> *b) consulted on several occasions with union and component representatives,*
> *c) consulted on several occasions with the office of my member of parliament, and*
> *d) retained the professional services of a law firm (I have been assured that my case is relatively unusual, complex and probably without precedent).*
>
> *I would very much appreciate any assistance and direction that may be provided by your office.*
>
> . . .
>
> [*Sic* throughout]

II. Summary of the arguments

A. For the CRA

[13] With respect to the timeliness of the complaint, the CRA argues that, according to the complainant's own "Summary of Grievances," the events that form the basis of the complaint against the respondents it represented, fall well outside the 90-day time limit provided in subsection 190(2) of the *Act*. Furthermore, the CRA submits that the complainant has not provided any explanation for the untimely filing of his complaint. The CRA submits that the Board cannot be seized of complaints that are filed outside the time limit established by subsection 190(2) of the *Act*. The CRA referred me to *Panula v. Canada Revenue Agency and Bannon*, 2008 PSLRB 4.

[14] With respect to the object of the complaint, the CRA argues that the allegations contained in the complaint and in the documents submitted by the complainant do not relate to any of the circumstances that can lead to a complaint pursuant to paragraphs 190(1)(*a*), (*c*) or (*f*) of the *Act*, which respectively refer to non-compliance with sections 56, 107 and 132 of the *Act*. The CRA argues that sections 56, 107 and 132 all refer to the obligation to observe terms and conditions in specific contexts that do not apply to this case:

- section 56 refers to the employer's obligation to observe the terms and conditions of employment of employees after being notified of an application for certification;

- section 107 refers to the obligation of the employer and the bargaining agent to observe the terms and conditions of employment of employees during the negotiation period;

- section 132 refers to the obligation of the employer and the bargaining agent to observe the terms and conditions of employment of employees who occupy a position that is identified in an essential services agreement, during the period of application of such an agreement.

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

[15] With respect to the timeliness of the complaint, the PSAC argues that the events referred to by the complainant against the respondents which it represents occurred in 2003 and 2005, well before he filed his complaint in January 2007. In its submissions, the PSAC details its view of the events that led to the complaint in the following manner:

. . .

> *(1) Timeliness*
>
> *The PSAC states that the complainant's term was ended, with notice, on July 10, **<u>2003</u>**. The complainant was then re-hired at the CRA in **<u>May 2005</u>**. The core allegations in this complaint are that the Union failed in its duty of fair representation in not challenging a decision in 2003 to end the complainant's term early, and not challenging the employer's decision almost two years later to hire him back into the Public Service into a lower level position.*
>
> *The complainant did not file any grievances or complaints in relation to these matters despite his right to do so under the Act as these complaints do not involve the interpretation or application of a collective agreement. Accordingly, the Union's consent to represent was not required for the complainant to advance his allegations.*
>
> *Most critically, the within complaint was not filed until January 10, 2007. The complainant asserts that information obtained through an access to information request indicating the employer's dissatisfaction with his performance triggered a new date for the purposes of the* Public Service Labour Relations Act*. Even if this were true, which the PSAC expressly rejects, the ATIP information was obtained by the complainant in **<u>June 2005</u>**, 21 months before he decided to file the within complaint.*

> *Finally, in Spring 2005, the complainant was advised by UTE Service Officer Pierre Mulvihill to file this access to information request and, also, advised the complainant at that time there existed no meaningful recourse through which to challenge an early end to a term position, with notice, or his re-hire in 2005 into a CR-2 position at CRA. Accordingly, the PSAC states that its reasons for not representing the complainant in this matter were communicated to him in a timely way.*
>
> . . .
>
> [Emphasis in the original]

[16] The PSAC argues that subsection 190(2) of the *Act* applies to this case and that under that provision, the complainant is required to submit his complaint within 90 days of the date on which he knew or ought to have known about the action or circumstances that gave rise to the complaint. In this case, the complaint was filed well after the time limit. The PSAC also referred me to the Board's decision in *Panula*. The PSAC further submits that some finality is required in labour relations and that the 90-day time limit for filing a complaint is a clear expression of the interest of the parties and the public in the timely resolution of disputes. Finally, the PSAC argues that the complainant has not provided any meaningful explanation for his delay in bringing the matter to the Board.

[17] With respect to the object of the complaint, the PSAC's position is similar to the CRA's. The PSAC maintains that the complainant has failed to identify any action or omission by the bargaining agent that supports the allegation that it has failed to comply with sections 107 and 132 of the *Act*.

[18] The PSAC further states that, given that the complainant's allegation against the two respondents which it represented relates in fact to the duty of fair representation, it is prepared to consider that the complainant intended his complaint to be based on paragraph 190(1)(*g*) of the *Act*, which refers to a contravention of section 185 of the *Act*, which in turn refers to section 187, being the section that relates to unfair representation by a bargaining agent.

[19] As to the merits of the complaint, the PSAC submits that there are no actions or omissions that establish that the respondents have failed in their duty of fair representation.

[20] On that note, the PSAC submits that the complainant raised the issue of the early end of his term employment, which occurred in 2003, for the first time on March 29, 2005. The PSAC submits that the complainant was then promptly advised of the PSAC'S position by Pierre Mulvihill, Union of Taxation Employees Service Officer, who informed him that there was no meaningful recourse to challenge the early end of a term assignment that occurred two years earlier. The PSAC states that it nevertheless suggested to the complainant some action that could be taken outside the grievance process. The PSAC also submits, with respect to the rehiring of the complainant in 2005, that hiring a person into a term position at a level lower than previous term assignments at the CRA is not a matter that falls under the *Act.* Accordingly, the PSAC via Mr. Mulvihill, did not recommend that a grievance be filed under the circumstances. The PSAC further argues that the complainant was not denied access to the grievance process as he stated in his complaint.

C. <u>For the complainant</u>

[21] With respect to the timeliness of the complaint, the complainant argues that it was filed within the time limit prescribed by the *Act* since he alleges that the circumstances giving rise to his complaint became "clear and evident" in December 2006. The complainant argues that before filing a complaint, he made a ". . . number of attempts to have the matters addressed and resolved through internal processes. . ." and that his ". . . union has failed to provide [him] with ready access to a grievance or appeal procedure. . . ."

[22] In his rebuttal, the complainant details all his attempts to resolve the matters. He writes the following:

. . .

> *The Canada Labour Code supports the use of internal processes to resolve disputes arising in a unionized workplace. My attempts to resolve the issues comprising the complaint via internal processes required:*
>
> *(a) that I perform extensive gathering of information as a number of issues resulted from employment practices that occurred without my consent or knowledge and during a time period when I was not an "on-strength employee".*
>
> *(b) significant research on my part and on the part of my lawyer. Extreme patience was required on my*

> *part as I awaited responses from the Union of Taxation Employees, my Member of Parliament, my lawyer, and the employer.*
>
> . . .
>
> *I was unable to make a certain determination with respect to jurisdiction as it relates to the issues until December 2006 after having received a bona fide written opinion from my lawyer. It was also at this time that my member of parliament's* [*sic*] *office became rather uncooperative and refused to allow me to meet with my M.P. Form 16 (the complaint) was filed on January 10, 2007.*
>
> *In light of the many obstacles described in my submissions, and in the interest of fairness and justice, I respectfully request that the Board exercise its jurisdiction and permit the respective hearing to proceed as scheduled. . . .*
>
> . . .

[23] The complainant attached to his rebuttal a summary of the communications that he had between August 2004 and December 2006 with representatives of the CRA, the PSAC, his Member of Parliament's office and his lawyer. He also attached several letters that he exchanged with those persons. I will refer to those communications and letters that I believe are relevant to understanding the course of events that led to the filing of the complaint.

[24] In his "Summary of Communications," the complainant notes a telephone conversation that he had with Mr. Mulvihill in May 2005, in the following terms:

> . . .
>
> *telephone conversation with Pierre Mulvihill (UTE) when he advised that* ***"he could not do much since I was a term employee. . . I was lucky to have received severance pay . . . I should keep a low profile, find the biggest ass I can and kiss it."***
>
> *he also advised me to make an Access to Information request under the Privacy Act for various files and bring the contents to my Member of Parliament.*
>
> . . .
>
> [Emphasis in the original]

[25] He also outlines further communications that he had with other PSAC representatives and states that he sent a summary of his grievances to the National President of the PSAC in November 2006, to which he never received a response.

[26] The complainant also states that he made an Access to Information request and that he took the file contents to the office of Ed Broadbent, Member of Parliament. He adds that after several conversations with a representative from Mr. Broadbent's office, he was informed in December 2006 that he could not get any assistance from his Member of Parliament and was advised to take the matter to the Public Service Staffing Tribunal.

[27] With respect to legal advice, the complainant states that he retained the services of a lawyer and received a legal opinion ". . . concerning jurisdiction, recourse, case precedents etc." in September 2006.

[28] With respect to the allegation of defamation and the transmission of personal information by his former supervisor, the letters produced by the complainant show an exchange of communications between the complainant and his former supervisor, Thomas Egan. On February 10, 2006, the complainant sent a letter to Mr. Egan in which he raised the issue in the following terms:

. . .

> *I am writing to you about an issue that has recently come to my attention. You will recall that you were my supervisor from January 2002 to July 2003 when I worked for the Compliance Division in the International Tax Services Office. At that time, I was working as a term employee in the position of T1 Client Services Clerk (CR-04). My contract was supposed to terminate in January 2004, but it was terminated early in July 2003, apparently due to lack of work.*
>
> *You may also know that I have held a number of consecutive casual and term employment contracts with CRA since 1992. I have experienced a general pattern of being employed by CRA for periods ranging from a few to 18 months, with periodic lay-off periods lasting usually a small number of months before receiving a call from CRA to return for a new contract. I had progressed to the CR-04 level and had completed a number of work terms at that level. After completing the contract with you in the Compliance Division from January 2002 to July 2003, I continued to apply for CRA postings, but I did not hear from CRA again until May*

2005, when I was engaged by the Revenue Accounts Division until September 2005 at a CR-03 level. I have recently been advised that I will be engaged shortly by the T4 Processing section, but this time at a CR-02 level.

Given my long history of contract employment with CRA, I began to suspect that there was a reason for the lengthy "dry spell" that occurred from July 2003 to May 2005 that had not been communicated to me. This concern led me to maek [*sic*] *a formal request under the Privacy Act for copies of the records in my personnel file with Canada Revenue Agency. Upon receipt and review of these documents, I found one document contained in my file that I believe is incorrect. I also believe that it is harming my ability to obtain contract employment with CRA at the CR-04 level.*

Document No. 16 ("Revenue Canada Taxation Employment Verification") (copy attached) appears to be a form containing a record of a telephone reference check which was performed by Parise Ouellete on January 19 or 20 (although the year is not indicated, I assume it to be 2004) with you. On the Employment Verification Form, Ms. Ouellette appears to have noted that you told her that you had concerns about my honesty, that I lacked discipline, that I only did the minimum, that I upset colleagues by teasing, pushing too far and causing tension, and that he would not rehire me. . . .

. . .

. . . It appears that despite the fact that you did not at any time speak to me about performance concerns, you have provided negative references about me to potential employers after my departure and I disagree with the false information that you have provided. Furthermore, this has made it difficult for me to obtain employment with CRA. I have obtained legal advice about this and I have been advised that what you have done may be defamatory and that I may be entitled to commence a lawsuit against you for damages for libel and slander.

I am not in agreement with the information that you have apparently given at least one person (and maybe more). I do not consent to you giving any information about my job performance that is negative. I was not made aware of any of these alleged performance concerns when I was working with you and I have no ability to challenge what you have said about me or to prove myself and my abilities. I request you to take steps to have the records of the negative reference(s) that you gave about me removed from my personnel file and destroyed, so that no other person is able to see it. It is likely that I will be required to continue applying for term positions with CRA in the future. It is also

> *likely that you will be contacted again in the future to provide a reference for me. I would therefore like us to agree in advance on what it is you will say about me if contacted by potential employers.*
>
> . . .

[29] In February 2006, the complainant received a first written response from Mr. Egan, in which he advised the complainant that arrangements had been made to remove the reference check from the CRA's records. Mr. Egan also indicated that he had verified why the complainant was not offered a CR-04 position. In that regard, he wrote the following:

> . . .
>
> *I have confirmed the reasons why you were not offered a CR04 position. I have been informed that your GCT mark (a standard test from PSC) was not at a level required for the CR 04 position in the selection process that you were a candidate. The minimum pass mark in this process was 40 and your pass mark was 39.*
>
> . . .

[30] On March 24, 2006, Andrew B. Lister, the lawyer retained by the complainant, sent a letter to Mr. Egan stating that his response was unsatisfactory. He further asked that Mr. Egan cease making negative statements about the complainant to potential employers and requested proof of the steps undertaken by Mr. Egan to remove and destroy all copies of the reference check from the complainant's file.

[31] On March 30, 2006, Mr. Egan responded to Mr. Lister's letter as follows:

> . . .
>
> *In reference to your letter dated March 24, 2006. We received Mr. Cuming's letter dated February 10, 2006 where he requested we destroy the said reference check. We responded in our letter dated February 17, 2006 by advising Mr. Cuming that arrangements had been made to remove the reference check from Agency Records. However it is important to note that Mr. Cuming's ATIP requests are dated May 26, 2005 and February 3, 2006 respectively which is prior to us receiving his letter of February 10th.*
>
> *The human resources division has advised me that the reference check was never part of Mr. Cuming's personal file as it was a reference check conducted to verify his reliability.*

> *Mr. Cuming's reliability status remained unchanged after the reference check was completed. The reference has never been used for staffing purposes.*
>
> *Therefore, the dry spell as indicated in your letter is not associated with the said reference check. It is associated with the fact that Mr. Cuming sent unsolicited applications for employment several times during this period to the HR office, where he was repeatedly advised to apply online through the Agency's website for advertised employment opportunities.*
>
> *In conclusion, I'm told that within the selection process in question, candidates who had qualified on the GCT exam, were contacted for potential employment, at which time they were offered a position of either a CR04, CR03 or a CR02, depending on what job was available at time of call. The choice to accept the position was left to the candidate. Mr. Cuming chose to accept the job being offered which was a CR02.*
>
> . . .

[32] With respect to the object of the complaint, the complainant submits that his complaint against the respondents is based on a failure on their parts to observe the terms and conditions of the collective agreement.

III. Reasons

[33] I will deal first with the objection about the timeliness of the complaint.

[34] Subsection 190(2) of the *Act* prescribes that a complaint under subsection 190(1) must be filed within 90 days:

> *. . . a complaint under subsection (1) must be made to the Board not later than 90 days after the date on which the complainant knew, or in the Board's opinion ought to have known, of the action or circumstances giving rise to the complaint.*

[35] In *Panula, Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78, and *Dumont et al. v. Department of Social Development*, 2008 PSLRB 15, the Board concluded that the 90-day time limit prescribed by subsection 190(2) of the *Act* is mandatory. I agree with those decisions and add that no other provision of the *Act* gives jurisdiction to the Board to extend that time limit. I must therefore determine when the complainant knew or ought to have known of the circumstances giving rise to his complaint.

[36] I will discuss the main events to which the complainant refers in his complaint.

[37] With respect to the ending of his term assignment, the events occurred in July 2003, and obviously the complainant knew of his layoff and of the manner in which it was done, in July 2003.

[38] With respect to the allegation of defamation against his former supervisor, the relevant events occurred between February and March 2006. On February 10, 2006, the complainant wrote a letter to Mr. Egan in which he raised the issue of the reference check. He received a first response from Mr. Egan but that response did not satisfy him. He then retained the services of a lawyer, Mr. Lister, who wrote to Mr. Egan on March 24, 2006, and his response was received on March 30, 2006. Mr. Egan's letter contained the CRA's position and an explanation of the CRA's response to the complainant's allegations and requests, and is the last communication presented in evidence pertaining to that event which was proferred in evidence.

[39] With respect to the allegation of a violation of the complainant's right to privacy, the relevant events occurred in the spring of 2006. The complainant alleges that Mr. Egan had access to his results from a test performed in a staffing context and that the release of that "protected" information constitutes a violation of the *Privacy Act*. In that regard, the complainant was advised through Mr. Egan's reply to his letter of February 10, 2006, that Mr. Egan had access to his results from the GCT.

[40] With respect to the alleged violation of the duty of fair representation, the complainant was informed in May 2005 of the PSAC's position regarding the early termination of his term in 2003 and his rehiring two years later to a lower-level position. Even if he had further communications with PSAC representatives in an attempt to have them change their position, the PSAC'S position about the possibility of taking any recourse with respect to the complainant's layoff in 2003 and his rehiring in 2005 was clearly communicated to him in the spring of 2005.

[41] With respect to the general allegations that the respondents did not respect the terms and conditions of the collective agreement, the complainant does not refer to any particular dates or events, but I assume that this allegation relates to all the events to which he referred in his complaint and which have been outlined above.

[42] In light of all the circumstances, I conclude that the complainant knew of each of the alleged circumstances and events that form the basis of the complaint more than 90 days before January 10, 2007, when he filed his complaint.

[43] The legislation does not state that the starting point of the 90-day time limit to file a complaint starts on the date on which a person is informed of the existence of a possible recourse under the *Act.* The *Act* states that a complaint must be made "not later than 90 days after the date on which the complainant knew . . . of the action or circumstances giving rise to the complaint [emphasis added]." In this case, the complainant knew of the actions or circumstances ". . . giving rise to the complaint" more than 90 days before he filed his complaint. It is also relevant to point out that in February 2006, when the complainant wrote to Mr. Egan, he was already talking about possible legal proceedings against the CRA. In March 2006, he benefited from the advice of a lawyer. In his letter of March 24, 2006, Mr. Lister wrote to Mr. Egan that he would be ". . . advising Mr. Cuming with respect to all possible manners of recourse. . . ."

[44] With respect to the communications the complainant had with his Member of Parliament's office, I cannot see how they could have delayed the starting point of the 90-day time limit prescribed by subsection 190(2) of the *Act*. The complainant was certainly free to ask for support or advice from his Member of Parliament, but that initiative is not relevant to determining when he was informed of the circumstances pertaining to the respondents' actions or omissions.

[45] For all of the above reasons, I conclude that the complaint was not filed within the mandatory time limit prescribed by subsection 190(2) of the *Act*.

[46] Should I have concluded that the complaint was filed within the prescribed time limit, I would still have dismissed it on the basis that the allegations contained in the complaint do not relate to circumstances that can give rise to a complaint under paragraphs 190(1)(*a*), (*c*) and (*f*) of the *Act*. Those paragraphs refer and are limited to the obligations of the employer and the bargaining agent to maintain the terms and conditions of employment within specific contexts that relate to the period of negotiations of collective agreements. In this case, the allegations explicated in the complaint refer to events that do not fall within the scope of paragraphs 190(1)(*a*), (*c*) and (*f*) of the *Act*.

[47] Even though the complaint was filed under paragraphs 190(1)(a),(c) and (f) of the Act, the bargaining agent stated that with respect to the allegations of the bargaining agent's representatives' failure to adequately represent the complainant's interests, it was prepared to consider that the complainant intended to base his complaint on paragraph 190(1)(*g*) of the *Act*, which refers to a contravention of section 187 which reads as follows:

> ***187.*** *No employee organization that is certified as the bargaining agent for a bargaining unit, and none of its officers and representatives, shall act in a manner that is arbitrary or discriminatory or that is in bad faith in the representation on any employee in the bargaining unit.*
>
> [Emphasis added]

[48] Should I have concluded that the complaint was timely, I would nonetheless have dismissed the portion of the complaint against the PSAC relating to the duty of fair representation. On that regard, I see no action or omission on the part of the PSAC's representatives that could lead me to conclude that they acted in a manner that was arbitrary, discriminatory or in bad faith in the circumstances of this case.

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

(The Order appears on the next page)

IV. Order

[50] The complaint is dismissed.

September 29, 2008.

Marie-Josée Bédard,
Vice-Chairperson