Date: 20090129

File: 461-HC-24

Citation: 2009 PSLRB 10

Parliamentary Employment and Staff Relations Act

Before the Public Service Labour Relations Board

BETWEEN

LUC BEAULNE

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as
Beaulne v. Public Service Alliance of Canada

Complaint under section 13 of the *Parliamentary Employment and Staff Relations Act*

REASONS FOR DECISION

Before: John A. Mooney, Board Member

For the Complainant: Himself

For the Respondent: Chantal Homier-Nehmé

Heard at Ottawa, Ontario,
February 13 to 15 and July 14, 18, and 21, 2008.
(PSLRB Translation)

I. Complaint before the Board

[1] On February 7, 2007, Luc Beaulne ("the complainant") filed a complaint under section 13 of the *Parliamentary Employment and Staff Relations Act* (*PESRA*). The complaint designates the Public Service Alliance of Canada (PSAC or "the respondent") as the respondent.

[2] The complainant was a maintenance and material handling employee at the House of Commons ("the House of Commons" or "the employer") on Parliament Hill. The applicable collective agreement was the one between the House of Commons and the PSAC for the Operational Services Group, Operations, Printing Services and Restaurant Services Sub-Group ("the collective agreement"), which expired on April 20, 2006 (Exhibit D-1).

[3] On the complaint form, the complainant alleges that the respondent breached its duty of fair representation by representing a non-member against him in a personal affair. The complainant also maintains that the respondent failed to file a grievance against his dismissal when he asked it to do so. In addition, the complainant maintains that the respondent acted in bad faith by attempting to have him dismissed beginning in 2001. The complainant adds that the respondent slandered, harassed, intimidated and humiliated him. Furthermore, the complainant states that the respondent made him ill and made his workplace hell.

[4] The complainant has requested compensation or punitive damages.

[5] In its written response, sent to the Public Service Labour Relations Board (PSLRB) on March 20, 2007, the respondent denies the complainant's allegations.

[6] Given his state of health, the complainant requested that Robert Doucet, a human behaviour counsellor, assist him in presenting his complaint. Mr. Doucet is a psychologist who is treating the complainant as a psychotherapist. Mr. Doucet has experience in labour relations, having been president of a union for five years. The respondent did not object to the request. I granted the complainant's request.

II. Summary of the evidence

[7] The complainant testified and called three witnesses to testify. Six witnesses testified for the respondent. The complainant adduced 27 exhibits in evidence, and the respondent adduced 7 exhibits.

[8] The respondent objected to the complainant's wish to adduce Exhibits P-1 and P-2. The respondent maintained that those two exhibits included unproven allegations by the complainant and reproductions of emails of unsubstantiated authenticity. Since those two exhibits are ring binders containing a number of documents (Exhibit P-2 contains documents totalling 173 pages), I decided that it was preferable for the respondent to express its objections as I considered each document.

[9] The complainant testified. He explained that, in May 2001, he and his former girlfriend (whom I will not identify since she was not called as a witness to present her version of the facts) were both working for the House of Commons but in different locations. The complainant worked on Parliament Hill in Ottawa, and his former girlfriend worked at 747 Belfast Street, also in Ottawa. According to the complainant, his problems began in May 2001 when his former girlfriend made a complaint about him to the Gatineau police, charging him with assault. When the complainant was indicted, the judge in the case issued a restraining order prohibiting him from going to 747 Belfast Street, where his former girlfriend worked.

[10] The complainant explained that he was working nights at that time and that he could have returned to working days starting in December 2001. However, he knew that his former girlfriend wanted to be transferred to Parliament Hill starting in December 2001. Therefore, on October 25, 2001, he met with Diane Peladeau, Chief of Maintenance Services, House of Commons, asking to work nights for a further six months, until spring 2002, so as not to encounter his former girlfriend at work. He did so in good faith, to make things easier. In addition, he liked working nights because it was quieter.

[11] The complainant referred me to an October 31, 2001 email from Pierre Parent, a labour relations manager at the House of Commons, to the complainant's former girlfriend, in which Mr. Parent informed her that the complainant had asked to continue working the night shift and that management had agreed to his request (Exhibit P-2, at page 10). The following day, the complainant's former girlfriend asked Mr. Parent for copies of the complainant's request and management's approval (Exhibit P-2, at page 10). That same day, Mr. Parent responded to the complainant's former girlfriend, stating that the complainant's request and management's approval had both been made verbally (Exhibit P-2, at page 10).

[12] The complainant stated that on November 7, 2001, Ms. Peladeau informed him that Robert J. Beauchamp, President, Bargaining Unit 70390 ("the bargaining unit"), had sent an email via Teresa Riopelle, Secretary-Treasurer of the bargaining unit, to Mr. Parent and others stating that the bargaining unit would provide representation for the complainant's former girlfriend. Mr. Beauchamp also sent a copy of the restraining order to Mr. Parent and to others. That email, dated November 2, 2001, reads, in part, as follows (Exhibit P-2, at page 11):

> . . .
>
> *The executive of Local 70390 recently met with* [the complainant's former girlfriend] regarding *the above restraining order. After reviewing documents provided we have agreed to accept this case and provide representation as required.*
>
> *Furthermore, as the follow-up to* [the complainant's former girlfriend's] *request to you, the union will require that the employer provide written confirmation that Mr. Luc Beaulne will remain on the 11 p.m. to 7 a.m. shift pending resolution of this matter, which is before the courts.*
>
> *We anticipate that the employer will take the appropriate action in ensuring that the restraining order imposed on one of their employees is adhered to.*
>
> . . .
>
> [Emphasis in the original]

[13] The complainant did not understand why bargaining unit executive representatives were becoming involved in his personal affairs in this way and why they decided to represent his former girlfriend against him. The complainant's former girlfriend was not a member of the bargaining unit. Nor did he understand Mr. Beauchamp's obsession with obtaining written confirmation that the complainant would work nights. On October 31, 2001, his former girlfriend received an email from Mr. Parent confirming that the complainant would be working the night shift (Exhibit P-2, at page 10). The following day, Mr. Parent told the complainant's former girlfriend that he and the complainant had reached a verbal agreement on that point.

[14] On November 5, 2001, Mr. Parent emailed Ms. Riopelle and Mr. Beauchamp explaining that he had already informed the complainant's former girlfriend by email

that management had agreed to the complainant's request to continue to work nights until spring 2002 (Exhibit P-2, at page 15).

[15] On November 7, 2001, the complainant contacted Ed Cashman, President, PSAC National Component ("the National Component"), informing him of Mr. Beauchamp's actions and asking why bargaining unit representatives were becoming involved in his personal affairs and why they were representing a non-member against a member in good standing. The complainant later learned that on that same day, Mr. Cashman had emailed Mr. Beauchamp, telling Mr. Beauchamp that he had had a discussion with the complainant that day (Exhibit P-2, at page 16). In that email, Mr. Cashman asked Mr. Beauchamp whether someone from the bargaining unit could represent the complainant. Ms. Riopelle had responded to Mr. Cashman that the complainant did not need representation since his job was not at stake (Exhibit P-2, at page 17).

[16] The complainant testified that Mr. Cashman telephoned him on November 7, 2001, stating that, because of his position, he could not intervene in the situation. Mr. Cashman asked the complainant to send him any evidence he might have about Mr. Beauchamp's involvement in the complainant's personal affairs. The complainant sent Mr. Cashman the November 5, 2001 email from Mr. Parent to Ms. Riopelle (Exhibit P-2, at page 15).

[17] The complainant brought my attention to a November 12, 2001 email from Mr. Cashman to Mr. Beauchamp and Ms. Riopelle, notifying them that a bargaining unit executive member should not take the side of one member against another. (The complainant discovered the email in April 2003 when he became Vice-President of his bargaining unit.) Mr. Cashman also wrote that the actions of the bargaining unit representatives could give rise to legal action by the complainant (Exhibit P-2, at page 20):

. . .

> *Brother Beaulne called me 07NOV2001 and raised his concerns. His perceptions may be legitimate. I want to address the e-mail to Bob Beauchamp dated 02NOV2001 (as sent by Teresa).*
>
> *The e-mail reads in part:*
>
> *a) "The executive of Local 70390 recently met with* [the complainant's former girlfriend] *. . . After reviewing*

> *documents provided we have agreed to accept this case and provide representation as required.*
>
> *b) "Furthermore, . . . the union will require . . . "*
>
> *The message from Bob as President of the local conveys the message, rightly or wrongly, that the local has taken sides in the dispute. The use of the term "union" further indicates that the PSAC has taken sides or at least one can be left with that impression. It is important that any time in situations involving two or more members in the same workplace, that the local executive not be seen as taking sides. Every case needs to be decided upon its own merits. You have not heard the case from the Brother.*
>
> . . .
>
> *As to the suggestion that that "if and when Mr. Beaulne needs our representation, we are in a position to represent him", given the local's statement in writing, the executive has shown bias. Mr. Beaulne may have good reason to initiate a suit of his own against the local executive for failure to represent. The local has been through a very bitter situation recently where a member was not provided with proper representation. The circumstances are somewhat different this time but the end result is the same. Every one deserves their day in court. No one should automatically declare guilty without a proper hearing.*
>
> *We find ourselves in a situation where a service officer will need to be assigned to help Mr. Beaulne, possibly acting in a situation against a member of the local executive who would be representing* [the complainant's former girlfriend]. *That cannot look good in the eyes off the membership or of the Employer. The Employer or others could further use this situation to discredit the members of the local executive. No one will benefit from that type of scenario.*
>
> *In future, I would ask that the local executive take greater care and not place itself in such situations. The executive should not take sides in any dispute but allow the normal course of justice to proceed.*
>
> . . .
>
> [*Sic* throughout]

[18] The complainant testified that Linda Koo, a union officer with the National Component, telephoned him on November 14, 2001, telling him that the National Component had selected her to represent him. (The complainant and the documentation adduced refer to Linda Vaillancourt, but she subsequently married and

is now known as Linda Koo. In this decision I will refer to Ms. Koo.) The complainant asked Ms. Koo to ensure that bargaining unit representatives would stop "[translation] getting on his nerves."

[19] The complainant stated that, the same month, a co-worker told him that "R.L.," a union representative (whom I will identify using initials because the complainant has accused this person of wrongdoing, and this person was not called to testify in self-defence), had met with a number of employees, telling them that the complainant was a "[translation] woman beater." According to the complainant, R.L. also told them to make the complainant's workplace as difficult as possible.

[20] On November 23, 2001, the complainant informed Ms. Koo of that incident, including R.L.'s remarks, and requested her assistance in stopping R.L.'s attack on his reputation and Mr. Beauchamp's intrusion into his personal affairs.

[21] On December 4, 2001, Mr. Parent wrote to Mr. Beauchamp, stating that management should respect the rights of both the complainant and his former girlfriend regarding their hours of work. Mr. Parent added that the complainant had been very cooperative by voluntarily offering to work the night shift to avoid encountering his former girlfriend (Exhibit P-2, at page 24).

[22] The complainant referred me to a letter that Mr. Beauchamp wrote to Mr. Parent on December 5, 2001. In the letter, which the complainant discovered in April 2003, Mr. Beauchamp wrote that the complainant was guilty, and his former girlfriend the victim, of the offence with which his former girlfriend had charged him (Exhibit P-2, at page 26):

. . .

> *Her restraining order only covers Belfast, but management had transferred her to the Confederation Building. What she was concerned about was that if Mr. Beaulne worked days, she would confront him and her request was simply that he remained on nights, until such time as the case was heard. At no time were we representing* [the complainant's former girlfriend], *we were simply trying to intercede on her behalf with Staff Relations.*
>
> *You mentioned in your letter, Management's position – how can you favour the rights of the alleged perpetrator? Again we reiterate you have to look after the safety of all*

> *employees, as it is evident that you show no responsibility, nor do you care about the victim.*
>
> *As for Mr. Beaulne cooperating, he has no choice – he's the perpetrator,* [the complainant's former girlfriend] *is the victim.*
>
> *I agree that this is an outside matter and why Mr. Beaulne sees it necessary to be represented is not clear to me, his job is not on the line.*
>
> *I agree this is not an* [*sic*] *harassment case, but a case of assault and battery, much more serious than an* [*sic*] *harassment.*
>
> *It is quite obvious that you are making a mountain out of a molehill – a simple interceding on behalf of a non-unionized employee has led to you informing the Component on something that is not and has not happened and which is none of your business and what we see again as union interference.*
>
> . . .

[23] The complainant emphasized that Mr. Beauchamp had concluded that the complainant was guilty of the charge of assault even though the case had not yet gone to trial.

[24] The complainant described a December 12, 2001 incident. In a corridor of the Department of Justice building he encountered a co-worker, whom I will identify using the initials "D.N." because the complainant has accused this person of wrongdoing and this person was not called to testify in self-defence. According to the complainant, D.N. pushed him hard twice, punched him hard in the stomach and insulted him. The complainant then went to the cafeteria, where he encountered D.N. again. D.N. shouted to the complainant to forget the incident that had just occurred. A number of employees, including Stéphane Pilon, the complainant's supervisor, witnessed the cafeteria scene.

[25] The following day, D.N. approached the complainant, asking to speak with him. The complainant took him to Mr. Pilon's office. D.N. apologized for his behaviour.

[26] On December 17, 2001, the complainant wrote to Nycole Turmel, PSAC National President, describing Mr. Beauchamp's intrusion into his personal affairs and asking her to meet with him (Exhibit P-2, at page 28). On December 21, 2001, Ms. Turmel

responded that she was forwarding the complainant's letter to Mr. Cashman since the matter was the National Component's responsibility, of which Mr. Cashman was president (Exhibit P-2, at page 29).

[27] The complainant testified that, at that time, he was under stress because he was awaiting trial, and if convicted, he might not only be incarcerated but also lose his job at the House of Commons if the conviction affected his security rating.

[28] On January 4, 2002, the complainant visited his physician because the entire affair was beginning to affect him physically and mentally. The complainant referred me to a medical certificate stating that he was having adjustment problems because of difficulties at work (Exhibit P-2, at page 30).

[29] The complainant's trial took place on January 29 and 30, 2002. He was immediately acquitted of all charges, and the trial judge rescinded the restraining order.

[30] The complainant stated that Mr. Beauchamp harassed him. The complainant referred me to the PSAC's harassment policy, which states that employees must cooperate and that mutual respect is the cornerstone of that cooperation (Exhibit P-2, at page 34). The policy also provides that employees are entitled to a work environment free of personal harassment.

[31] The complainant explained that on February 13, 2002 he met with Mr. Cashman, Ms. Koo and another bargaining agent representative, whom I will identify using the initials "T.L." because the complainant has accused this person of wrongdoing and this person was not called to testify in self-defence. Those three people met in the food court at 240 Sparks Street in Ottawa. The complainant requested explanations from Mr. Cashman and told him to ensure that Mr. Beauchamp "[translation] got off his back." The complainant gave Mr. Cashman a number of emails as well as two documents supporting his complaints against the respondent (Exhibit P-2, at pages 36 and 37). Mr. Cashman stated that T.L. would provide the complainant with the documents he would need to defend himself. T.L. never provided the promised documents, although the complainant repeatedly asked him for them.

[32] On March 28, 2002, the complainant and a friend went to the PSAC's head office on Gilmour Street in Ottawa to meet with Mr. Cashman, Ms. Koo, Ms. Riopelle and

Mr. Beauchamp. This was the first time the complainant had met Mr. Beauchamp. The complainant asked those present a number of questions, without obtaining satisfactory responses. When the complainant stated that he would meet with Ms. Turmel, Mr. Cashman formally prohibited him from doing so and escorted the complainant and his friend out of the building.

[33] The complainant ran for the office of president of his bargaining unit. The election was held on April 4, 2002. The complainant was not elected.

[34] The complainant related an incident involving his former girlfriend. On May 8, 2002, he was walking on Sparks Street with Richard Cloutier, Head Representative of the bargaining unit, when he encountered his former girlfriend. The complainant had not seen her since the day of the trial. The complainant said to her, "[translation] I am innocent." His former girlfriend shouted insults at him in French, adding: "[translation] It cost you a lot in legal fees." She repeated the insults about 10 times. The complainant was embarrassed and walked away.

[35] After that incident, the complainant told Mr. Cloutier that he would like to file a harassment complaint against his former girlfriend because of the incident that had just occurred. Mr. Cloutier responded that the complainant could not file a harassment complaint because of that incident since his former girlfriend had not insulted him in the workplace during work hours.

[36] Later, Mr. Cloutier told the complainant that he did not understand French and that thus, he could not testify about that incident. Two weeks after that incident, the complainant learned that the first language of Mr. Cloutier's spouse was French. When the complainant confronted Mr. Cloutier with this fact, Mr. Cloutier admitted that he understood French and that he had understood what the complainant's former girlfriend had said to the complainant when they encountered each other on Sparks Street. Mr. Cloutier, whom the investigator of the complainant's former girlfriend's harassment complaint had interviewed, stated that he would change his testimony on that point. The complainant referred me to Mr. Cloutier's written statement to that investigator, in which Mr. Cloutier admits that the complainant's former girlfriend shouted the following at the complainant: "[translation] You goddamn dirty dog, you goddamn dirty dog, it cost you a lot of money" (Exhibit P-2, at page 50).

[37] On May 27, 2002, the complainant received a letter from Annie Gagnon, Harassment Prevention Officer, informing him that his former girlfriend had filed a harassment complaint against him because of the Sparks Street incident (Exhibit P-2, at page 43). The complainant referred me to that complaint, in which his former girlfriend states that he shouted, "[translation] innocent, innocent" (Exhibit P-2, at page 42). According to the complaint, the complainant's former girlfriend responded: "[translation] No, being acquitted isn't the same thing, and hitting me cost you a lot."

[38] The complainant referred me to a May 9, 2002 email that Mr. Beauchamp sent to the complainant's former girlfriend, asking her to send him a copy of the transcript of the audio recording of the complainant's trial. Mr. Beauchamp wrote as follows (Exhibit P-2, at page 45):

. . .

> *Thank you for the information. It doesn't surprise me that an incident occurred. I would appreciate it very much f [sic] you could keep me informed on all further developments regarding your official harassment complaint. As well, if and when you receive the cassette transcript could you be as kind to reproduce it for us?*

. . .

[39] The complainant also referred me to a May 9, 2002 email from Mr. Beauchamp to Mr. Cashman and Ms. Koo containing the following comments about the complainant's former girlfriend's harassment complaint:

. . .

> *This is being forwarded for your information. Would you believe this is the same guy who ran for «PRESIDNET» [sic] of this Local on April 4th 2002. What a JOKE and God help us!!*

. . .

[40] The complainant then requested a transfer to another position in the public service, as shown by the emails exchanged between Mr. Cloutier and Mr. Parent. However, Mr. Parent indicated that such a transfer was not possible (Exhibit P-2, at pages 46, 47 and 48).

[41] In July 2002, the complainant decided to become a union representative. In preparation, he took a course on grievance settlement, obtaining a certificate stating that he had taken the course in fall 2002 (Exhibit P-2, at page 60).

[42] In summer 2002, Heather Brooker became National Component president. The complainant informed Ms. Brooker of his problems. They exchanged some emails.

[43] On August 27, 2002, the complainant filed an internal complaint with the respondent against Mr. Beauchamp, on the grounds that Mr. Beauchamp had acted in bad faith by representing a non-member against a member (Exhibit P-2, at page 52). On August 30, 2002, Ms. Brooker responded to the complainant stating that he had not provided enough evidence to justify an investigation (Exhibit P-2, at page 53). In October 2002, the complainant provided Ms. Booker with more detail about his complaint (Exhibit P-2, at pages 55 to 59 and 62).

[44] The complainant described his December 9, 2002 meeting with Ms. Brooker in a restaurant near the PSAC's head office. The following persons were also present: Mr. Ransom, PSAC Vice-President, National Capital Region, Mr. Cloutier, and Richard Lefebvre, Vice-President of the bargaining unit. Although the complainant was depressed and on sick leave at the time, Mr. Cloutier and Mr. Lefebvre persuaded him to attend the meeting. Ms. Brooker stated that the complainant was right and that the respondent had breached its duty of representation. Ms. Brooker apologized repeatedly and promised that Mr. Beauchamp would "[translation] get off his back." Ms. Brooker then offered the complainant a cheque for $1000 in compensation for his losses in the matter, on condition that he sign a release. The complainant felt insulted and left the restaurant. Mr. Cloutier and Mr. Lefebvre caught up with him and persuaded him that it was in his interest to return to the table to see whether Ms. Brooker would offer him more money. The complainant acquiesced and went back to see Ms. Brooker. Ms. Brooker told the complainant that she would offer him an additional cheque, for $500. According to the complainant, $1500 represented only 37 percent of the expenditures he had incurred in the matter. The complainant again wanted to leave, but Mr. Cloutier advised him to take the money and to attempt to claim more later. The complainant accepted the two cheques and signed the release. In the release, the complainant agreed not to take legal action against the respondent or its representatives (Exhibit P-2, at page 65). Ms. Brooker verbally promised letters of

apology from Mr. Cashman and Mr. Beauchamp. According to the complainant, the respondent's representatives waited until he was ill before making him sign a release.

[45] Mr. Cashman did not apologize to the complainant for his behaviour (Exhibit P-2, at page 67); he apologized only for the deadlines not being met. Mr. Beauchamp never apologized for his behaviour.

[46] On February 5, 2003, Art St-Louis, Chief, Maintenance and Material Handling Services, wrote to the complainant, noting that the investigator of the complainant's former girlfriend's harassment complaint had found that both the complainant and his former girlfriend were guilty of letting a personal situation poison their workplace (Exhibit P-2, at page 68).

[47] On April 16, 2003, the complainant was elected Vice-President of his bargaining unit. Mr. Lefebvre was elected President.

[48] The complainant stated that when he became Vice-President of his bargaining unit, he discovered irregularities in the management of its budget. He wanted to refer me to various documents on that point. The respondent objected to the allegation and to any evidence that might be adduced on this point on the grounds that the management of the bargaining unit's budget had to do with respondent's internal governance and that this point was irrelevant to this complaint. I agreed with the respondent. The management of the bargaining unit's budget is irrelevant to the issue of whether the respondent provided fair representation to the complainant.

[49] On July 30, 2003, the complainant met with Ms. Brooker a second time, at the same restaurant near the PSAC's head office. The complainant told Ms. Brooker that after becoming Vice-President of his bargaining unit in April 2003 he had discovered new documents that, according to him, incriminated Mr. Beauchamp. The complainant also stated that the respondent had not respected the agreement that they had reached in December 2002. In addition, the complainant revealed that he had discovered a document indicating the legal fees that Mr. Beauchamp had incurred in consulting a lawyer about the complainant. Ms. Brooker told the complainant that he did not have enough evidence to support his allegations against Mr. Beauchamp.

[50] The respondent objected to me admitting into evidence the document indicating the legal fees that Mr. Beauchamp had incurred in consulting a lawyer about the

complainant, arguing that it was irrelevant and had to do with the respondent's internal governance. I took the objection under advisement. I decided not to admit this evidence because it is irrelevant and because, in my opinion, the document is protected by solicitor-client privilege.

[51] In September 2003, the complainant resigned from his position as vice-president of his bargaining unit.

[52] The complainant stated that on November 19, 2003, T.L. insulted him as he was walking past the Confederation Building on Wellington Street. T.L. allegedly said the following to the complainant: "Fuck off; go back to work." Danik Racine, a co-worker, was passing by. The complainant asked him if he had heard what T.L. had said, and Mr. Racine responded in the affirmative. The complainant told Ms. Peladeau about the incident, stating that he wanted to file a harassment complaint against T.L. Ms. Peladeau called T.L., who came to meet with the complainant. T.L. said: "I'm sorry if I said that." The complainant told T.L. that he did not accept his apology because it contained the word "if." At that point, T.L.'s shirt caught fire, and he left the office. Apparently, without thinking, he had put a lit cigarette in his shirt pocket. After that meeting, the complainant told Ms. Peladeau that he did not accept T.L.'s apology.

[53] On November 19, 2003, the complainant visited Dr. Frank J. LaRue, his physician. Dr. LaRue ordered him to stay home from work for approximately eight weeks for medical reasons (Exhibit P-2, at page 80).

[54] On December 9, 2004, the complainant received a letter from Ms. Peladeau, explaining that he had been on sick leave since November 5, 2003 and that the employer could extend his sick leave by two years (Exhibit P-2, at page 92).

[55] On October 25, 2006, Mr. St-Louis wrote to the complainant, stating that his employment would end on November 6, 2006 for reasons of incapacity (Exhibit P-2, at page 94).

[56] On November 23, 2006, the complainant emailed Ms. Brooker, telling her that he had just been dismissed for medical reasons (Exhibit P-18) and stating that the respondent was responsible for his dismissal because of the way it had treated him.

[57] On December 1, 2006, the complainant again emailed Ms. Brooker about his dismissal, asking her to explain to him why she did not respond to his previous email

and asking what she would do to make him forget the way the respondent had treated him (Exhibit P-20).

[58] On December 7, 2006, the complainant sent another email to Ms. Brooker, reminding her that she had not yet responded to his two previous emails and asking her to meet with him (Exhibit P-21).

[59] On December 18, 2006, the complainant sent another email to Ms. Brooker, criticizing her for ignoring him (Exhibit P-19).

[60] On January 1, 2007, the complainant emailed Ms. Brooker and Mr. Cashman, stating that the respondent had ruined his life (Exhibit P-25).

[61] On January 22, 2007, the complainant emailed Ms. Brooker, Mr. Cashman and Mr. Ransom, requesting their assistance in filing a grievance against his dismissal. The email reads, in part, as follows (Exhibit P-22):

. . .

> *I was strongly advised to contact and ask you that a formal grievance be made against Management for wrongful termination, I have 90 day's [sic] to file and my time is almost up, so please reply A.S.A.P.*
>
> *I was officially terminated on the 6 of November 2006, so we still have time to proceed and since I'm a Member of this union I wish for you to comply and respond to my unfortunate situation.*
>
> *If you decide not to respond before my precious time expires, the situation will be out of my hands, now don't forget that I asked you back in November 2006 if you had any solution or resolution.*
>
> *I think this Grievance idea was an option you could have mentioned or offered to me back in November, don't you think, but unfortunately you never responded to my many requests for Help since. This is our last chance to try and save my Job, so please reply. . .*

. . .

[62] On February 3, 2007, the complainant sent another email to Ms. Brooker and Mr. Cashman, asking them to file a grievance against his dismissal. The email reads, in part, as follows (Exhibit P-23):

. . .

> *Since my time is running out and since you still haven't responded or replied to my many requests, for representation, I now have no choice in the matter and was strongly advised to give you (psac) two last options before I proceed otherwise…*
>
> *1- I want to grieve Management decision for wrongful termination before it's too late or…*
>
> *2- I'm going to file a complaint with the PSLRB against you for Bad Faith, Failure to file a grievance and Duty to Fair representation.*
>
> . . .
>
> *So please reply ASAP and let me know of your decision concerning my grievance demand, if you do not reply soon I will have no choice but to file a complaint with the PSLRB against you for the above mentioned, and please understand that I will expose you al [sic], from Ms. Turmel to Mr. Beauchamp and everybody else in between.*

. . .

[63] The complainant adduced in evidence his performance evaluation, completed by his supervisor, for the period from June 1 to August 31, 2002 (Exhibit P-2, at page 155). It indicates: "[translation] occasionally exceeds requirements" and adds that the complainant has a great deal of initiative and a positive attitude.

[64] The complainant adduced an email in evidence in which Paul Martin, then a member of Parliament, writes to Ms. Peladeau that the complainant is doing an excellent job (Exhibit P-6).

[65] The complainant testified that he wanted to file a grievance against his dismissal but that Ms. Brooker did not respond to his emails. As a result, he did not file a grievance against his dismissal.

[66] The complainant adduced a list of the amounts of money he requested as corrective measures. The complainant requested $1,500,000 for loss of employment and $1,000,000 for loss of enjoyment of life. He also requested that a fine be imposed on the respondent as exemplary damages and disciplinary action (Exhibit P-27).

[67] Under cross-examination, the complainant confirmed that he had taken courses in labour relations, as shown by the certificates he adduced in evidence (Exhibit P-2, at

pages 60 and 61). They were short courses, given on weekends. They were not very elaborate. The course on grievance settlement was a two-day course, and the course on union operations was a one-day course.

[68] Under cross-examination, the complainant stated that he never filed a grievance against his dismissal.

[69] The complainant denied that Mr. Cloutier had acted as his representative.

[70] In response to another question from the respondent, the complainant stated that he was on sick leave from November 2003 until his dismissal.

[71] The complainant stated that he did not contact the respondent when he received the letter from his employer telling him that he could extend his sick leave by two years (Exhibit P-2, at page 92).

[72] The respondent referred the complainant to the October 25, 2006 letter from Mr. St-Louis noting that the complainant had not contacted the respondent to inform it of changes in his medical condition:

> [Translation]
>
> . . .
>
> *Since the beginning of your absence, the House of Commons contacted you repeatedly to notify you of your employment status at the House and of your responsibility to contact us if your physician considered you fit to return to work. Unfortunately we received no indication from you that your medical condition had improved and that you were able to return to work.*
>
> . . .

[73] In addition, the complainant stated that he did not recall whether he provided medical reports to Ms. Peladeau.

[74] The complainant testified that he was not approached by bargaining unit representatives to file a grievance because they were his attackers.

[75] The complainant acknowledged that he knew Andrée Lemire. She was a nice person with whom he had never had negative interactions. The complainant never asked Ms. Lemire to file a grievance against his dismissal because he did not know

what her duties were. The complainant knew that Ms. Lemire worked at the National Component but had never had business dealings with her.

[76] The complainant acknowledged that, in 2004, he consulted a legal firm about taking legal action against the respondent, as shown in a November 2, 2004 letter from a lawyer at this firm, adduced in evidence by the respondent (Exhibit D-6). The complainant wanted to obtain justice for the harm that the respondent had caused him.

[77] The respondent's representative referred the complainant to a November 9, 2006 email that he sent to a legal firm (Exhibit D-3). He acknowledged that he tried to retain the services of a lawyer at that time.

[78] Under cross-examination, the complainant stated that T.L. was not a member of the bargaining unit executive. The complainant added that he never filed a harassment complaint against T. L. because Ms. Peladeau did not want him to.

[79] The complainant acknowledged that he took no steps to ascertain whether Ms. Brooker received the emails that he sent her from November 2006 to February 2007 (Exhibits P-18 to P-26).

[80] Mr. Racine testified for the complainant. He has been a House of Commons employee since 1999. He testified that, in November 2003, he was smoking a cigarette near the Confederation Building when he heard T.L. say the following to the complainant: "Fuck off; go back to work."

[81] Louis Lemay testified for the complainant. Mr. Lemay has known the complainant for 13 or 14 years. They met in high school. Mr. Lemay stated that the complainant's attitude had changed since 2001 and that he hoped that the complainant's "[translation] ordeal" would be over one day.

[82] On February 15, 2008, at the end of the first week of the hearing, the complainant indicated that he would adduce a medical report signed by Dr. Marion Koch, his psychiatrist, establishing his condition and the fact that his health problems had been caused by the way the respondent had treated him. The respondent objected to Dr. Koch's report being adduced on the grounds that it was irrelevant. I decided that I would allow the complainant to adduce the report because it could be relevant. The complainant's allegation, as worded on the complaint form, was that the respondent

had breached its duty of representation at the time of his dismissal, that the cause of his dismissal was his health and that the deterioration of his health was attributable to the respondent's behaviour toward him. The medical report could support those allegations. In addition, the effects on the complainant's health of the presumed breach of the duty of representation could affect the corrective action. The respondent then asked me to call Dr. Koch as a witness at the hearing, so that it could cross-examine him on his report. The respondent also asked for a copy of the report and the notes on which it was based, within a reasonable time, before the hearing of this complaint continued. The respondent reserved the right to call its own expert witness to refute Dr. Koch's conclusions. The complainant did not object to that request. I agreed to the request and ordered that, if the complainant wanted to adduce Dr. Koch's report, he would have to call Dr. Koch as a witness. Also, the complainant would have to provide the respondent with a copy of Dr. Koch's report and résumé within the three weeks after February 15, 2008. I also ordered that, if the respondent decided to file its own report on the complainant's health, it would similarly have to provide the complainant with a copy of the medical report and the résumé of the expert author of that report within a reasonable time.

[83] On Thursday, July 10, 2008, at the respondent's request, I held a telephone conference with the complainant, Mr. Doucet and the respondent's representative. I learned that the complainant had not yet provided the respondent with Dr. Koch's medical report and that he did not intend to call Dr. Koch as a witness. I explained to the complainant that he could not adduce Dr. Koch's report because he had not provided it to the respondent within the prescribed period.

[84] During the telephone conference, the complainant stated that he intended to call Dr. LaRue, his physician, as a witness. Dr. LaRue's testimony would be about the treatment provided to the complainant. Dr. LaRue would also comment on Dr. Koch's report. The respondent objected to Dr. LaRue appearing because the complainant had not informed it that he intended to call that expert witness. In such a short period, the respondent was unable to retain the services of an expert of its choice to help it better understand Dr. LaRue's testimony and to cross-examine him if necessary. The respondent also objected to Dr. LaRue commenting on Dr. Koch's report since Dr. Koch would not be present for cross-examination. I decided to authorize Dr. LaRue to testify but to take the respondent's objection under advisement. However, I decided that Dr. LaRue would be allowed to testify only about his own observations about the

complainant. He would not be allowed to refer to or to comment on Dr. Koch's report since Dr. Koch would not be present for cross-examination.

[85] During the telephone conference, Mr. Doucet stated that he wanted to adduce a report that he had written about the complainant in his capacity as a psychotherapist. The respondent objected to the request because it had not been provided with a copy of the report. I decided that the report was not admissible since the complainant had not provided the respondent with a copy within a period that would have allowed it to consult one or more experts in the field. Allowing a medical report to be adduced under those circumstances would run counter to procedural fairness.

[86] During the July 10, 2008 telephone conference, the respondent requested that Ms. Brooker, who was in Tel Aviv, Israel, testify by telephone conference. The complainant objected to the request. The respondent noted that it could not call Ms. Brooker as a witness in time and that bringing her to Ottawa would incur significant travel costs. I decided to hear Ms. Brooker by telephone. I added that, if I found that operating method to be ineffective, I would stop Ms. Booker's testimony and hear the parties' arguments on a more effective way of having her testify. Having Ms. Booker testify by telephone conference proved to be satisfactory.

[87] On July 14, 2008, at the continuation of the hearing of this complaint, Mr. Pilon testified for the complainant. Mr. Pilon has been a building management officer at the House of Commons since May 13, 2002. He has worked at the House of Commons since 1990. He was the complainant's supervisor when the complainant worked days.

[88] Mr. Pilon stated that the complainant was a good employee; in fact, one of his best employees. His performance was above average. The complainant had very good relationships with his co-workers and clients.

[89] Mr. Pilon stated that he met with the complainant and D.N. in December 2001. The complainant asked D.N. why he had pushed him the previous day. D.N. denied having pushed him. The complainant persisted in questioning him, and D.N. eventually admitted having pushed the complainant hard several times. When asked why he had done that, D.N. stated that he had pushed the complainant because R.L. had told him that the complainant was a "[translation] woman beater" and that D.N. had no respect for that kind of person. R.L. was a union representative.

[90] Mr. Pilon stated that two persons named R.L. worked at the House of Commons; one was the other's father. The father worked on Belfast Street, and the son worked the night shift on Parliament Hill. Mr. Pilon was unable to confirm whether D.N. was referring to R.L. senior or R.L. junior. Mr. Pilon doubted that D.N. was referring to R.L. senior. Mr. Pilon testified that R.L. junior was a union representative. He did not know whether R.L. senior was a union representative at that time.

[91] Mr. Pilon stated that the complainant did not file an official complaint against D.N. Mr. Pilon did not know whether the complainant filed a complaint against R.L.

[92] Dr. LaRue testified for the complainant. He provided explanations of the complainant's state of health and the treatment provided to him. He expressed an opinion on the connection between the complainant's state of health and the respondent's behaviour. Out of concern for procedural fairness to the respondent, I decided to ignore the parts of Dr. LaRue's testimony dealing with the connection between the complainant's state of health and the respondent's behaviour. In fact, the complainant informed the respondent only practically the day before the continuation of the hearing that he intended to call Dr. LaRue as a witness. As a result, the respondent was unable to retain the services of an expert who could have helped it to better understand Dr. LaRue's testimony and to cross-examine him if necessary. I also set aside the parts of Dr. LaRue's testimony alluding to other physicians because, as explained above, those persons were not present and thus could not be cross-examined about their medical reports.

[93] Dr. LaRue explained that he has been a general practitioner in Quebec since 1969. The complainant had been his patient since November 3, 2003. He had had a total of 26 consultations with the complainant, each averaging over an hour.

[94] During the first consultation, on November 3, 2003, Dr. LaRue observed that the complainant was suffering from anxiety, psychological distress, sadness and fatigue. The complainant was feeling very confused, was hypervigilant, had difficulty sleeping and concentrating, and was finding no enjoyment in life. Other symptoms shown by the complainant included confusion, distress, discouragement, constant calls for help, physical and verbal agitation, and feelings of humiliation and indignation. Dr. LaRue concluded that the complainant was suffering from fatigue resulting from a conflict

that had lasted for two years. The complainant asked him to do something to get him away from his work.

[95] From the first consultation, Dr. LaRue diagnosed post-traumatic stress disorder, attributable to the cumulative effect of adverse events. In addition, the complainant was suffering from alixithymia, that is, difficulty in being in touch with his feelings.

[96] Given the severity of the complainant's symptoms, Dr. LaRue referred the complainant to a psychiatrist to confirm Dr. LaRue's diagnosis and to provide the complainant with long-term treatment. The complainant consulted four psychiatrists.

[97] Dr. LaRue stated that he used the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition* ("the DSM4") in making his diagnosis. It is the standard reference to assess mental disorders used in North America. Dr. LaRue described in detail the five criteria set out in the DSM4 for diagnosing post-traumatic stress disorder and explained how the complainant's condition corresponded to the criteria.

[98] Dr. LaRue therefore stated that the complainant was suffering from persistent stress resulting from causal factors and that those factors had been present well before the first consultation. There was no hope of solving the complainant's problem.

[99] Dr. LaRue testified that the complainant was suicidal. The complainant was experiencing an all-encompassing existential revolt. Dr. LaRue's role was simply to keep the complainant alive. Dr. LaRue was unable to cure the complainant as long as the conflict related to his workplace remained unresolved. The complainant wanted to obtain justice, and until that happened, Dr. LaRue was unable to cure him. Dr. LaRue could only provide him with support treatment. Dr. LaRue could initiate treatment aimed at a cure only after the complainant felt that he had obtained justice.

[100] According to Dr. LaRue, the complainant was subjected to psychological harassment at work and had no coping mechanism to counter it.

[101] Under cross-examination, Dr. LaRue stated that he was neither a psychiatrist nor an expert in labour relations medicine.

[102] In response to a question from the respondent, Dr. LaRue stated that he did not investigate the facts related by the complainant and that that was not his role as a physician.

[103] Mr. Beauchamp testified for the respondent. Mr. Beauchamp works as a driver for the House of Commons transport service. He has worked at the House of Commons for 30 years. He has been involved in union activities since 1985. He has occupied a number of positions in the union hierarchy, including that of president of the bargaining unit, for 14 years. He is now an occupational safety and health officer.

[104] Mr. Beauchamp took a number of courses offered by the respondent, including the basic course on union affairs and the course on grievances. All union representatives working for the respondent take the basic course on union affairs.

[105] Mr. Beauchamp testified that he first heard of the complainant when the complainant became an employee of the House of Commons in 1999 or 2000. As president of the bargaining unit, Mr. Beauchamp received the list of new employees from the employer.

[106] Mr. Beauchamp stated that he had known the complainant's former girlfriend for a number of years. As a driver, he had to drive to the House of Commons offices on Belfast Street every day to pick up mail. The complainant's former girlfriend was not a member of the bargaining unit. Mr. Beauchamp believed that that was the case because she occupied a position that was excluded from unionization.

[107] Mr. Beauchamp testified that the *PESRA* provides that a bargaining agent may assist a non-unionized employee.

[108] Mr. Beauchamp stated that he assisted the complainant's former girlfriend because, when she came to see him, she appeared upset. Her physical appearance made Mr. Beauchamp wonder whether she had been involved in a traffic accident. The complainant's former girlfriend came to see Mr. Beauchamp on her own initiative. Mr. Beauchamp sympathized with her about her situation and was concerned for her safety. At that point the she gave Mr. Beauchamp a copy of the restraining order. She explained to him that she wanted to be transferred to Parliament Hill but that the restraining order applied only to the Belfast Street offices. According to Mr. Beauchamp, it would have been necessary to amend the restraining order to reflect such a transfer.

[109] Mr. Beauchamp testified that he discussed the restraining order with the bargaining unit's executive and that he told them that the information was confidential. He did not recall discussing the restraining order with R.L.

[110] Mr. Beauchamp testified that he was unaware of the rumours about the complainant.

[111] Mr. Beauchamp stated that he did not represent the complainant's former girlfriend against the complainant. He assisted the complainant's former girlfriend, who was in a precarious situation.

[112] According to Mr. Beauchamp, employees who want assistance must request it. The bargaining unit has 400 employees. Mr. Beauchamp stated that he was not a babysitter.

[113] Mr. Beauchamp read and signed the December 5, 2001 letter to Mr. Parent (Exhibit P-2, at page 26). Although Ms. Riopelle composed that letter, Mr. Beauchamp read it before signing it. The respondent brought an excerpt from the letter to my attention in which Mr. Beauchamp states that he was not representing the complainant's former girlfriend but that he was simply interceding for her with the employer.

[114] The respondent asked Mr. Beauchamp to comment on the December 5, 2001 letter he sent to Mr. Parent in which he writes that the complainant was guilty as charged (Exhibit P-2, at page 26). Mr. Beauchamp explained that he wrote that letter because the complainant's former girlfriend wanted a transfer to Parliament Hill and that, clearly, if that transfer occurred, an altercation would ensue between her and the complainant. Mr. Beauchamp was concerned for her safety.

[115] At the National Component's request, Mr. Beauchamp sent Mr. Cashman a copy of the restraining order, but he did not send it to anyone else.

[116] Mr. Beauchamp testified that on November 7, 2001, Mr. Cashman emailed him because Mr. Cashman wanted an update on the situation between the complainant and the complainant's former girlfriend (Exhibit P-2, at page 16). Mr. Beauchamp discussed that letter with Mr. Cashman on the telephone. Mr. Cashman was concerned that bargaining unit representatives were taking the side of the complainant's former girlfriend in the matter. Mr. Beauchamp responded to Mr. Cashman that he was not

taking the side of the complainant's former girlfriend but simply wanted the employer to respect the restraining order.

[117] Mr. Beauchamp stated that the complainant never approached him for help. Mr. Beauchamp asked four or five union representatives in the bargaining unit whether the complainant had contacted them to request assistance, and they all responded that the complainant had not.

[118] Mr. Beauchamp stated that, in 2001, the complainant did not file a complaint of a breach of the duty of fair representation. Nor did the complainant file a harassment complaint against Mr. Beauchamp or other members of the bargaining unit.

[119] Mr. Beauchamp recalled the 2002 meeting with the complainant, Mr. Cashman and Ms. Koo. The discussion had to do with the situation involving the complainant and his former girlfriend. The complainant wanted financial compensation.

[120] Mr. Beauchamp did not run for the position of president of his bargaining unit in the 2003 election.

[121] Mr. Beauchamp stated that, in 2003, the complainant was elected Vice-President of the bargaining unit. The vice-president's role is to assist the president with his or her duties. The vice-president acts as president of the bargaining unit if the president is absent. The vice-president must be familiar with the grievance process, the duty of fair representation and the process for dealing with harassment complaints.

[122] Mr. Beauchamp testified that the workplace at the House of Commons was very tense. Morale was very low. There were many conflicts between employees and the employer and among the employees themselves. If something happens to an employee, all employees learn about it very quickly. According to Mr. Beauchamp, the House of Commons is a malicious rumour mill.

[123] Under cross-examination, Mr. Beauchamp reiterated that he had not represented the complainant's former girlfriend but that he had simply assisted her in approaching the employer. The *PESRA* allowed him to assist an employee who was not a member of the bargaining unit.

[124] The complainant asked Mr. Beauchamp why he did not forward to the complainant the November 2, 2001 email that Ms. Riopelle sent to Mr. Parent on behalf

of Mr. Beauchamp. In that email, Ms. Riopelle informed Mr. Parent that the bargaining unit would provide a representative for the complainant's former girlfriend (Exhibit P-2, at page 11). Mr. Beauchamp responded that that matter was between the bargaining unit and the employer, adding that it was the employer's responsibility to inform the complainant of assistance provided to his former girlfriend.

[125] Mr. Beauchamp stated that, until the matter involving the complainant's former girlfriend, he had encountered the complainant but that he had never conversed with him.

[126] When the complainant asked Mr. Beauchamp why he had not requested the complainant's version of the facts, Mr. Beauchamp responded that the complainant had not approached him and that he could not run after the 400 members of the bargaining unit. Also, he was not interested in the complainant's version of the facts; his only concern was that the restraining order be respected.

[127] The complainant asked Mr. Beauchamp why he continued his efforts on the assignment of work shifts, given that Mr. Parent had told him that the situation had been resolved. Mr. Beauchamp responded that he was awaiting confirmation from the employer, not from a representative of the Human Resources Department. He was awaiting confirmation from the complainant's superior, Ms. Peladeau.

[128] The complainant asked Mr. Beauchamp why he stated in his December 5, 2001 letter to Mr. Parent (Exhibit P-2, at page 26) that the complainant was guilty as charged, even though the case had not yet gone to trial. Mr. Beauchamp responded that the word "perpetrator" was a good description of the complainant's behaviour. Mr. Beauchamp had reached that conclusion based on what the complainant's former girlfriend had told him and based on her appearance.

[129] The complainant asked Mr. Beauchamp why Ms. Riopelle, on behalf of Mr. Beauchamp, had written to Mr. Cashman that the complainant's job was not at stake (Exhibit P-2, at page 17) given that in his November 26, 2001 letter to Mr. Parent (Exhibit P-2, at page 22), Mr. Beauchamp had written the opposite. Mr. Beauchamp responded that he now knows that the complainant was at risk of losing his job if the court convicted him of assault against his former girlfriend.

[130] Mr. Beauchamp stated that he learned that the complainant had been acquitted of the charge against him. In fact, everyone knew it because the complainant wore a sweater with the following written on it: "[translation] I am innocent."

[131] The complainant asked Mr. Beauchamp why the complainant's former girlfriend had written to Mr. Beauchamp on May 9, 2002, stating that she would provide him with a transcript of the audio recording of the complainant's trial (Exhibit P-2, at page 44). Mr. Beauchamp responded that he did not ask for that transcript but that she had offered to provide it to him because she was frustrated at the outcome of the trial. She wanted the transcript to be placed in the complainant's file. Mr. Beauchamp added that it was a public document and that he did not receive it in the end.

[132] The complainant referred Mr. Beauchamp to the May 9, 2002 email that he sent to Mr. Cashman after learning that the complainant's former girlfriend had filed a harassment complaint against the complainant. Mr. Beauchamp wrote the following in that email (Exhibit P-2, at page 45):

. . .

> *This is being forwarded for your information. Would you believe this is the same guy who ran for «PRESIDNET» [sic] of this Local on April 4th 2002. What a JOKE and God help us!!*

. . .

[133] The complainant asked Mr. Beauchamp to whom he was referring in that email. Mr. Beauchamp responded that he was not referring to the complainant.

[134] The complainant asked Mr. Beauchamp whether he had placed himself in a conflict of interest by providing assistance to the complainant's former girlfriend. Mr. Beauchamp responded in the negative.

[135] Ms. Koo testified for the respondent. Ms. Koo is a union relations officer with the National Component. At the time she was dealing with the complainant, she performed the same duties, but her title was Service Officer. Ms. Koo has worked for the National Component since October 2001. She occupied service officer positions for various PSAC components starting in 1994. In those positions, she performed various duties, including representing members of the respondent when grievances were filed (usually at the last level of the internal grievance process), providing opinions to members about their rights under collective agreements and representing members

regarding complaints, including staffing complaints. Ms. Koo also sat on various committees, including a PSAC constitution committee, an occupational safety and health committee, and an employment equity committee.

[136] Ms. Koo has taken a number of labour relations courses, including a basic course on unions, a course on grievance settlement, a course on work stoppages, a course on occupational accidents and a course on occupational safety and health. She holds certificates from the Labour College of Canada and the Labour Studies Institute.

[137] Ms. Koo stated that bargaining unit executive members are required to take two courses. The first course is a basic course on unions. In it, students learn about their positions within the union structure and the nature and roles of the bargaining unit and the National Component as well as union members' rights, the importance of defending those rights and the union's role in that defence.

[138] The second course is on settling grievances. Students learn how to write, document, research and file grievances. They learn the roles of the union and the employer along with the importance of the duty of fair representation, of collective agreements and of deadlines.

[139] Ms. Koo stated that the National Component was familiar to members of a bargaining unit because National Component representatives provided opinions to members and assisted them in filing grievances. Bargaining unit vice-presidents are invited to National Component general meetings and often attend symposia organized by the National Component.

[140] Ms. Koo testified that, in mid-November 2001, Mr. Cashman chose her to assist the complainant in his dispute with Mr. Beauchamp. Mr. Cashman chose her out of concern for neutrality. She did not know the representatives of the complainant's bargaining unit because that bargaining unit was not part of her portfolio at the National Component. Nor did she know the other persons involved in the matter. Mr. Cashman told Ms. Koo that a bargaining unit representative was representing a non-union member. He was apprehensive that the situation could give the impression that bargaining unit executive members had taken sides.

[141] Ms. Koo testified that she contacted Mr. Parent to inform him that she was representing the complainant, as shown by the December 4, 2001 letter from Mr. Parent (Exhibit P-2, at page 24).

[142] Ms. Koo stated that she represented the complainant to the best of her ability. She first met with him during the second or third week of November 2001. The complainant stated that he felt that he was being harassed. He was agitated and spoke in an aggressive, even violent, tone. Ms. Koo asked him some questions to better understand the situation. The complainant described his situation at work, especially regarding his former girlfriend and the restraining order issued by the Gatineau court. The complainant explained to Ms. Koo that he felt that bargaining unit representatives were representing his former girlfriend against him. The complainant added that he had once been popular but that no one talked to him any longer because of the rumours circulating about him. Ms. Koo asked him to identify the persons who were spreading the rumours, but he did not do so. The complainant thought that Mr. Beauchamp was spreading the rumours but had never seen him do so. Ms. Koo gave the complainant advice and explained his options to him. She told him that he needed to provide evidence if he wanted to take action against the persons who were spreading rumours about him, but he did not provide evidence to support his allegations.

[143] Ms. Koo testified that at the first meeting the complainant told her about the incident when D.N. pushed him up against the wall. The complainant said that he could not file a complaint against D.N. because D.N. had explained his actions and the situation had been resolved.

[144] Ms. Koo testified that she recalled the February 2002 meeting with the complainant at 240 Sparks Street, Ottawa. Mr. Cashman and T.L. were also present. The meeting lasted several hours. The complainant said that he was not satisfied with Ms. Turmel's response to his letters. The complainant believed that there was a union conspiracy. Mr. Cashman told the complainant that he needed to provide evidence to support his allegations if he wanted to file a complaint, adding that the complainant had not provided him with such evidence. Ms. Koo added that the complainant wanted financial compensation.

[145] Ms. Koo testified that she was present at the March 28, 2002 meeting with the complainant at the PSAC's head office. Mr. Cashman, Mr. Beauchamp, Ms. Riopelle and

a friend of the complainant were also present. At that meeting, the complainant told Mr. Beauchamp that people were whispering behind his back that he was a "[translation] woman beater." The complainant wanted that situation to stop. He was wearing a sweater that had the following on it: "[translation] I am innocent." He gave Mr. Cashman some documents. The complainant wanted to be reimbursed for the cost of calls he had made on his cellphone. Ms. Koo added that each time she called the complainant she told him to call her back using a toll-free number. When Mr. Cashman refused to give money to the complainant, he became angry. Because Ms. Koo was worried, she contacted the security service. A security guard, not Mr. Cashman as the complainant testified, escorted the complainant out of the building.

[146] Ms. Koo stated that the complainant never asked her to file a grievance and that, to her knowledge, he never filed one. The complainant never requested her assistance in filing a harassment complaint and never filed such a complaint.

[147] Ms. Koo stated that she first learned at this hearing that the complainant's former girlfriend had filed a harassment complaint.

[148] Ms. Koo stated that she would have filed a grievance or a complaint if the complainant had asked her to. Ms. Koo added that the complainant did not need union approval to file a grievance or a complaint. A member must obtain union approval only when a grievance has to do with the collective agreement.

[149] Ms. Koo stated that the complainant never complained to the respondent about the quality of the representation she provided to him.

[150] Under cross-examination, Ms. Koo stated that the respondent may represent a non-union member.

[151] The complainant asked Ms. Koo whether she believed that he was being harassed. Ms. Koo responded that she had never stated that he was not being harassed; she had told him that he needed to provide evidence to support his allegations of harassment. A person who files an unfounded harassment complaint can be accused of a vexatious act or of having acted in bad faith.

[152] Ms. Koo stated that she never saw the November 2, 2001 email from Ms. Riopelle to Mr. Parent (Exhibit P-2, at page 11) or the November 12, 2001 email

from Mr. Cashman to Mr. Beauchamp (Exhibit P-2, at page 20). She saw them for the first time at this hearing.

[153] Ms. Lemire testified for the respondent. Ms. Lemire has been a union officer with the National Component for 17 years. The National Component assigned her the House of Commons portfolio in fall 2002.

[154] Ms. Lemire stated that she first heard of the complainant around April 16, 2003. The bargaining unit of which the complainant was a member had invited her to their annual meeting. The complainant had been elected Vice-President of the bargaining unit on that day. A bargaining unit representative introduced Ms. Lemire to the members present at the meeting and explained to them that Ms. Lemire looked after union matters for the House of Commons. Ms. Lemire knew that she had already spoken with the complainant but did not recall whether that conversation had taken place that evening or shortly after. She did recall that she accompanied the complainant and other members of the bargaining unit who were having a cigarette outside the West Block of Parliament. The complainant approached her and briefly outlined his dispute with Mr. Beauchamp, particularly the fact that Mr. Beauchamp was representing a non-member against him. Ms. Lemire asked him whether he was being represented. He responded that Ms. Koo was representing him. In Ms. Lemire's opinion, what was important was that the complainant was represented. Ms. Lemire added that he did not request her assistance.

[155] Ms. Lemire stated that the members of the bargaining unit were not to contact her directly if they wanted assistance. They were to contact a bargaining unit representative, and that representative would contact her. If a union member contacted her directly, she explained that the member needed authorization from the regional vice-president to do so.

[156] The respondent asked Ms. Lemire whether she would have represented the complainant if he had asked. Ms. Lemire responded that authorization by the national president was required in case of a conflict between two PSAC members. Ms. Lemire would have represented the complainant if he had obtained that authorization.

[157] On November 23, 2006, Ms. Brooker emailed Ms. Lemire asking whether she knew anything about the complainant and particularly whether he had been dismissed (Exhibit D-7). Ms. Lemire was not aware of anything. That same day, Ms. Lemire emailed

Gilles Lavigne, President of the bargaining unit of which the complainant was a member, asking him whether he knew anything about the matter (Exhibit D-7). The following morning, Mr. Lavigne responded that he was not aware that the complainant had been dismissed (Exhibit D-7). That same morning, Ms. Lemire informed Ms. Brooker that Mr. Lavigne was not aware of the matter (Exhibit D-7).

[158] Ms. Lemire testified that she contacted Monique Enright at the House of Commons' Human Resources Department, who told her that the complainant had been dismissed for medical incapacity. Ms. Enright explained to Ms. Lemire that when an employee is dismissed, the employer sends the respondent a copy of the dismissal letter as required by the collective agreement but that the employer is not required to do so in cases of dismissal for medical incapacity.

[159] Ms. Lemire testified that the complainant never requested her assistance or filed a grievance. She added that she was surprised to learn that the complainant had been ill and had been dismissed for medical incapacity. She wondered why the complainant was not contacting the respondent. She added that, for all kinds of reasons, some employees who are dismissed for medical incapacity do not request the respondent's assistance.

[160] Ms. Lemire explained that the complainant could have contested his dismissal himself because he did not need the respondent's approval for that type of grievance. According to the collective agreement, the complainant had 20 working days to do so. Ms. Lemire would have advised him to contest the dismissal since most other public service employers allow sick leave for up to five years. That situation had not arisen at the House of Commons, and it would have provided an excellent opportunity to request a two-year extension to the complainant's sick leave.

[161] Ms. Lemire stated that a member may file a harassment complaint directly with the employer without requesting approval from the bargaining unit or the National Component. The union will provide representation if the member requests it.

[162] Mr. Lavigne testified for the respondent. He stated that he has worked at the House of Commons since 1996. He became involved in union activities in late 2004. At that time, he was an occupational safety and health officer. On February 23, 2006, he was elected President of the bargaining unit by acclamation.

[163] Mr. Lavigne stated that he did not know the complainant or the complainant's former girlfriend. He added that he did not hear any rumours about the complainant while he was an occupational safety and health officer.

[164] Mr. Lavigne testified that he did receive the November 23, 2006 email from Ms. Lemire about the complainant's dismissal (Exhibit D-7). The following day, he responded that he did not know anything about the matter (Exhibit D-7). He then contacted Ms. Enright of the Human Resources Department who confirmed that the complainant had been dismissed for medical incapacity, but she was unwilling to provide further details.

[165] Mr. Lavigne stated that the complainant never contacted him to file a complaint or a grievance. If the complainant had contacted him, he would certainly have assisted him since doing so was his responsibility as president of the bargaining unit.

[166] Ms. Brooker testified for the respondent by telephone conference. Ms. Brooker has worked for the Department of Foreign Affairs for 11 months as an administrative advisor at the Canadian embassy. From August 2002 to August 2007, she was National President of the National Component. She worked for the PSAC for 24 years, occupying various union positions.

[167] Ms. Brooker stated that shortly after being appointed President of the National Component in 2002, Mr. Cloutier informed her of the complainant's situation.

[168] Ms. Brooker explained that the complainant had filed a complaint against Mr. Beauchamp (Exhibit P-2, at page 52), an internal union complaint. She took the complaint very seriously. On August 30, 2002, she wrote to the complainant, informing him that there was not enough evidence to justify an investigation (Exhibit P-2, at page 53). His complaint was vague. It was his word against that of another union member. For an investigation to be launched, there must be more than an allegation that someone has acted inappropriately.

[169] Ms. Brooker stated that she contacted Mr. Beauchamp to obtain his version of the facts. Mr. Beauchamp explained to her that a court had issued a restraining order requiring the complainant and the complainant's former girlfriend to work in separate locations. Mr. Beauchamp had told the employer that the complainant and his former girlfriend were not to work in the same location. Ms. Brooker stated that she did not

know whether Mr. Beauchamp "[translation] was wearing his union hat" when he approached the employer or whether he was acting as a citizen who was concerned about the complainant's former girlfriend's situation.

[170] Ms. Brooker recalled meeting with the complainant on December 9, 2002, at the Colonnade Restaurant on Gilmour Street. Mr. Cloutier and Mr. Ransom were also present. The complainant had brought along some documents, including invoices. The complainant said that the respondent was responsible for the harm to his reputation. It was clear that he wanted financial compensation. He was going to take legal action against the respondent unless he received that compensation. He said that he had already consulted a lawyer for that purpose. Ms. Brooker told him that he did not have enough evidence against Mr. Beauchamp. Ms. Brooker did not see how the respondent could accept any responsibility since the situation was unclear. Ms. Brooker was prepared to assist the complainant but not to pay him the amount he demanded. He presented invoices, including some for personal telephone calls unrelated to his dispute with Mr. Beauchamp. Ms. Brooker was unwilling to reimburse those costs.

[171] Ms. Brooker repeated that she could not tell whether Mr. Beauchamp was acting as vice-president of the bargaining unit or as a concerned citizen when he contacted the employer about the restraining order.

[172] Ms. Brooker stated that she did not believe that the complainant had enough evidence to confirm that he had been subjected to harassment. Making derogatory remarks about another person constitutes harassment. Mr. Beauchamp did not make derogatory remarks about the complainant. Mr. Beauchamp had provided the employer with factual information about the situation between the complainant and the complainant's former girlfriend. That action did not constitute harassment.

[173] Ms. Brooker stated that she offered the complainant $1500 to settle the matter. Although it was possible that the employer considered Mr. Beauchamp to be acting as vice-president of the bargaining unit when he interceded with the employer on behalf of the complainant's former girlfriend, the union accepted no responsibility for that situation. Ms. Brooker felt sympathy for the complainant because of his distress.

[174] Ms. Brooker testified that the complainant wrote to her on July 16, 2003 indicating that the respondent had breached their December 9, 2002 agreement (Exhibit P-2, at page 73). The complainant had discovered new evidence establishing

that Mr. Beauchamp had harassed him and harmed his reputation. The complainant had discovered the new evidence when he was the acting president of his union local. Ms. Brooker therefore agreed to meet with him on July 30, 2003. He brought someone with him whom Ms. Brooker did not know. The complainant wanted more money because, according to him, the union was entirely responsible for the situation. Ms. Brooker told him that the respondent would not give him any more money. He did not provide her with new evidence about Mr. Beauchamp. The complainant provided an invoice for a consultation that the bargaining unit allegedly had with a legal firm. In Ms. Brooker's opinion, the invoice did not constitute evidence that the respondent had breached the agreement. The complainant threatened to take legal action against the respondent.

[175] Ms. Brooker added that she did not know why the bargaining unit had consulted a legal firm. The documentation provided by the complainant did not specify the subject of the consultation. In any case, it is normal for a bargaining unit to request legal opinions on all kinds of subjects.

[176] Ms. Brooker testified that, at the July 30, 2003 meeting, the complainant did not ask her to file a harassment complaint against Mr. Beauchamp. All he wanted was money.

[177] Ms. Brooker testified that she received the complainant's November 23, 2006 email (Exhibit P-18). She got the impression while reading it that he was still attempting to obtain money. Ms. Brooker emailed Ms. Lemire that same day, informing her of the situation (Exhibit D-7). Ms. Lemire responded one hour later, indicating that she knew nothing about the matter. Ms. Brooker then asked Ms. Lemire to contact Mr. Lavigne. Ms. Lemire later responded that Ms. Enright had told her that the complainant had been dismissed for medical incapacity. Ms. Brooker concluded that the complainant's email was nothing more than a continuation of the lengthy dialogue she had had with him about money. Ms. Brooker did not believe that the purpose of the email was to ask her to file a grievance about the complainant's dismissal.

[178] Ms. Brooker stated that the last email she received from the complainant was on November 23, 2006 (Exhibit P-18). She never received the complainant's December 1, 2006 (Exhibit P-20), December 7, 2006 (Exhibit P-21), December 18, 2006 (Exhibit P-19), December 21, 2006 (Exhibit P-26), January 1, 2007 (Exhibit P-25) or January 22, 2007 (Exhibit P-22) emails or the two February 3, 2007 emails (Exhibits P-23 and P-24).

[179] Ms. Brooker stated that the complainant could have filed a grievance against his dismissal. He had the knowledge and the ability to do so. He had been a union representative and the acting president of his bargaining unit.

[180] Ms. Brooker stated that she offered the complainant $1500 because the situation involved a conflict between two union members, the complainant and Mr. Beauchamp, and because it was in everyone's interest to settle the matter and move on. The complainant was consumed by the matter.

[181] Under cross-examination, Ms. Brooker stated that the possibility of legal action formed part of the context of the release. The release was a compromise for a demand with doubtful justification.

[182] Ms. Brooker stated that she refused to pay all the complainant's invoices, which totalled over $5000, since the union was not responsible for those costs. By offering $1500, the union suggested a reasonable compromise.

[183] With respect to the complainant's August 27, 2002 internal complaint (Exhibit P-2, at page 52), Ms. Brooker stated that she had dismissed it. On the other hand, she left the door open in case the complainant obtained more evidence to support his complaint, as shown by her August 30, 2002 letter to him (Exhibit P-2, at page 53).

[184] Ms. Brooker stated that at the December 9, 2002 meeting the complainant demanded letters of apology from Mr. Beauchamp and Mr. Cashman. She tried to obtain an apology from Mr. Beauchamp, but he did not want to apologize.

[185] Ms. Brooker stated that she did not recall whether she knew that the complainant was on sick leave at the time of the December 9, 2002 meeting; she may have known.

[186] Ms. Brooker added that, in her opinion, the complainant had received fair and equitable representation. She listened to him and spent a great deal of time and energy on him.

[187] During re-examination Ms. Brooker stated that an employee wishing to file a grievance must first contact a bargaining unit representative. The complainant knew that because he had taken training on filing grievances.

[188] Susan Phillips testified for the respondent. She explained that she has worked as the coordinator of finance and operations for the National Component since March 2008. She is responsible for the local computer network maintenance, access and security, as well as management of the internal computer databases. She is also the administrative manager and conference coordinator for the National Component. Before joining the PSAC, Ms. Phillips worked nine years as a communication and electronics engineer for the armed forces.

[189] Ms. Phillips stated that she did not know the complainant.

[190] Ms. Phillips explained that the National Component's computer system is completely separate from the rest of the PSAC. The National Component has its own server. National Component email addresses do not have the same nomenclature as the addresses of other PSAC components.

[191] Ms. Phillips testified that, shortly before this hearing, the respondent asked her to research Ms. Brooker's emails to determine whether she had received emails from the complainant. Ms. Philipps used words contained in the subject lines of the emails as well as the email addresses to conduct the research. She covered the period from 2002 to the date of the search. She found only one email from the complainant to Ms. Brooker, on November 23, 2006 (Exhibit P-18). She found no later emails.

[192] Ms. Phillips explained that she had designed and installed a computer filter for the National Component's computer system. Any pornographic email is filtered as spam and is sent, not to the recipient, but to a spam file. Each week, the spam in the file is permanently deleted, and those emails cannot be recovered.

[193] Ms. Phillips stated that Ms. Brooker would not have received the complainant's December 1, 2006 email (Exhibit P-20) because it contained the words "fuck off." The computer filter would have treated that email as pornographic, and thus, Ms. Brooker would never have received it.

[194] Ms. Brooker would not have received the December 7, 2006 email (Exhibit P-21) either because the computer filter would have treated it as pornographic since it contained the word "bullshit." In addition, it contained the words "fuck off" found in the attached December 1, 2006 email. Mr. Cashman would not have received the December 7, 2006 email either, because his email address was not valid. The email had

been sent to a National Component address but, at that time, Mr. Cashman no longer worked for the National Component.

[195] Ms. Brooker would not have received the December 18, 2006 email (Exhibit P-19) either, because it contained the word "shit." In addition, as previously explained, the December 18, 2006 email had as attachments the previous emails containing the words "fuck off" and "bullshit."

[196] Ms. Brooker would not have received the December 21, 2006 email (Exhibit P-26) either. Although it contained no pornographic words, the emails attached to it contained the words "shit," "bullshit" and "fuck off."

[197] Nor would Ms. Brooker have received the January 1, 2007 email (Exhibit P-25) because it contained the words "fucked up." In addition, the email address of one recipient contained the word "fag." The computer filter would have treated those words as pornographic.

[198] Ms. Phillips testified that Ms. Brooker would not have received the January 22, 2007 email (Exhibit P-22), even though it contained no pornographic words. The computer filter records spam senders' email addresses, puts them on a sort of blacklist and then treats every email from them as spam, even if they do not contain any pornographic words. That is what happened with the January 22, 2007 email. The filter deleted it since the complainant's email address was on its blacklist because of his previous emails to Ms. Brooker. According to Ms. Phillips, Ms. Brooker would not have received the two February 3, 2007 emails from the complainant (Exhibits P-23 and P-24) either, even though they contained no pornographic words, because the complainant's email address was on the filter's blacklist, and the filter treated any email from the complainant's email address as spam.

III. Summary of the arguments

A. For the complainant

[199] The complainant maintained that the union breached its duty of fair representation by allowing Mr. Beauchamp to represent the complainant's former girlfriend against him and to spread uncomplimentary rumours about him from 2001 to 2003 and in refusing to assist him when he lost his job in 2006. The complainant

added that the union's behaviour from 2001 to 2003 made him ill and caused his dismissal for medical incapacity.

[200] The complainant stated that all his problems began when his bargaining unit representatives decided to represent his former girlfriend against him, as shown by the email that Ms. Riopelle sent to him on behalf of Mr. Beauchamp (Exhibit P-2, at page 11).

[201] According to the complainant, Mr. Beauchamp should not have represented a non-member against a union member in good standing.

[202] The complainant emphasized that Mr. Beauchamp never attempted to obtain the complainant's version of the facts about the assault charge that had been brought against him.

[203] The complainant noted that there were no problems with his work schedule or with his former girlfriend's. The complainant spoke to Ms. Peladeau, offering to work nights. Management agreed that he would work nights. On October 31, 2001, Mr. Parent informed the complainant's former girlfriend by email that the complainant would work nights (Exhibit P-2, at page 10). Mr. Beauchamp knew that the complainant would continue to work nights since Mr. Parent had informed him by email on November 5, 2001 (Exhibit P-2, at page 15).

[204] The complainant asked Mr. Cashman to ensure that Mr. Beauchamp stopped representing the complainant's former girlfriend against him.

[205] On February 13, 2002, the complainant met with Mr. Cashman to explain the situation. In a letter to the complainant dated the same day, Mr. Cashman informed him that he did not have enough evidence against Mr. Beauchamp (Exhibit P-2, at page 38). However, in a November 12, 2001 email (Exhibit P-2, at page 20), Mr. Cashman told Mr. Beauchamp the opposite, indicating that Mr. Beauchamp was giving the impression that he was taking the side of the complainant's former girlfriend and that the respondent might be subject to legal action against the bargaining unit executive for breaching the duty of fair representation. Mr. Cashman added that everyone deserves their day in court.

[206] The complainant stated that Mr. Beauchamp wrote to the employer indicating that the complainant was guilty of an offence even though his case had not yet gone to

trial (Exhibit P-2, at page 26). Mr. Beauchamp signed the letter as president of the bargaining unit.

[207] The complainant stated that the rumours about him constituted harassment. He was also physically attacked by employees.

[208] Since Mr. Cashman was doing nothing for the complainant, on December 17, 2001 he wrote to Ms. Turmel, requesting her assistance (Exhibit P-2, at page 28). The complainant did not ask for money; he asked that a stop be put to the situation.

[209] The complainant stated that he never received a letter of apology from Mr. Beauchamp.

[210] The complainant emphasized that, at the March 28, 2002 meeting with the respondent's representatives at the PSAC's head office, he and his friend were escorted out of the building.

[211] The complainant maintained that the fact that Mr. Beauchamp asked the complainant's former girlfriend for a transcript of the audio recording of the complainant's trial shows that Mr. Beauchamp wanted to damage his reputation (Exhibit P-2, at page 44). At that point, the court had acquitted him, dismissing the charges against him.

[212] Mr. Beauchamp continued his attacks against the complainant by writing "What a JOKE" to Mr. Cashman when Mr. Beauchamp learned that the complainant's former girlfriend had filed a harassment complaint against the complainant (Exhibit P-2, at page 45).

[213] The complainant added that, in his opinion, he had been falsely accused of harassment.

[214] The complainant stated that the respondent made his life hell. The respondent destroyed his life, health and career. It is responsible for the loss of his job. He became suicidal because of its behaviour.

[215] The complainant noted that the cumulative effect of the respondent's behaviour caused him to become ill. Dr. LaRue established that the complainant was suffering from post-traumatic stress disorder with secondary depression.

[216] The complainant stated that he could no longer find a job with the federal government. Nevertheless, his performance evaluations established that his work was excellent and that he had a great deal of potential.

[217] The complainant noted that he was on sick leave when he signed the release on December 9, 2002 (Exhibit P-2, at page 65). He was stressed. The release was vague. The respondent wanted him to sign it because it was afraid of legal action.

[218] The complainant maintained that, although the respondent continually told him that he did not have enough evidence that Mr. Beauchamp was harassing him, he provided a great deal of evidence to the National Component.

[219] The complainant did not understand why the respondent did not intervene to ensure that Mr. Beauchamp stopped harassing him. The respondent should have intervened.

[220] The complainant noted that he did not want money. He only wanted to resolve the situation of the respondent harassing him. He wanted peace.

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

[221] On the first day of the hearing of this complaint, the respondent contested my jurisdiction to hear it on the grounds that the *PESRA* contains no provision on the duty of fair representation. When the hearing continued on July 14, 2008, the respondent stated that it withdrew that objection. I explained to the parties that I was nevertheless required to address that issue in my decision since my jurisdiction to hear this case cannot depend on an agreement between the parties.

[222] The respondent maintained that it did not breach its duty of fair representation regarding the events occurring from 2001 to 2003. The burden of proof rested on the complainant. He had the burden of proving that the respondent acted in a manner that was arbitrary, discriminatory or in bad faith. He did not establish that it acted in such a manner.

[223] The respondent noted that Mr. Beauchamp did not represent the complainant's former girlfriend against him. Mr. Beauchamp only wanted to assist her regarding the enforcement of the restraining order. She was going to be transferred to Parliament Hill, and the employer did not want to fail to comply with the restraining order issued

by the court, as shown by the October 30, 2001 email from Mr. Parent (Exhibit P-2, at page 9). Mr. Beauchamp contacted the employer's Human Resources Department to ensure that it would respect the restraining order. He wanted to ensure that the complainant and the complainant's former girlfriend worked in separate locations. Mr. Beauchamp acted out of concern for employees' safety and health. In addition, nothing prevented Mr. Beauchamp from representing the complainant's former girlfriend regarding the restraining order.

[224] The respondent maintained that Mr. Beauchamp never accused the complainant of being a "[translation] woman beater."

[225] The respondent noted that the National Component acted promptly when the complainant complained about Mr. Beauchamp. The November 7, 2001 email from Mr. Cashman to Mr. Beauchamp shows that Mr. Cashman took the complainant's worries seriously. In that email, Mr. Cashman asked Mr. Beauchamp for details about the complainant's situation (Exhibit P-2, at page 16). In his November 12, 2001 email to Mr. Beauchamp and Ms. Riopelle, Mr. Cashman emphasizes the importance of remaining neutral in the matter (Exhibit P-2, at page 20). Thus, the respondent did not act in an arbitrary manner.

[226] The National Component provided the complainant with representation regarding the restraining order and his dispute with Mr. Beauchamp. The National Component selected Ms. Koo to ensure neutral representation. Ms. Koo did not know the complainant or Mr. Beauchamp. She listened to the complainant, contacted him a number of times and offered him advice. She explained his options to him for resolving the situation. She testified that she represented him to the best of her ability.

[227] Ms. Koo testified that the complainant indicated that people were talking behind his back and calling him an attacker, but he did not identify those people. He did not provide evidence to support his allegations.

[228] The complainant told Ms. Koo that D.N. had pushed him, but the complainant also stated that he had contacted the employer about that situation, which had been resolved because D.N. had apologized.

[229] In addition, Mr. Pilon testified that the complainant never asked him to file a grievance or a complaint.

[230] The respondent emphasized that Mr. Cashman had tried to resolve the situation. He met with the complainant on February 13, 2002 to hear his problems. Mr. Cashman considered the documents that the complainant presented to him and concluded that the complainant did not have enough evidence to support his allegations.

[231] Ms. Koo testified that, at the February 13, 2002 meeting, the complainant wanted financial compensation, as shown by the claim he presented to Mr. Cashman on that day (Exhibit P-2, at page 37).

[232] The complainant contacted Ms. Turmel but, as PSAC president, she does not have a mandate to represent members. Ms. Turmel forwarded his letter to the National Component, which has a mandate to advise union members in this type of situation, as shown by article 9 of the PSAC constitution (Exhibit P-15).

[233] Mr. Cashman and Ms. Koo met with the complainant a second time, on March 28, 2002. T.L. and Mr. Beauchamp were also present at that meeting at the PSAC head office. The complainant wanted to be reimbursed for telephone calls unrelated to his dispute with Mr. Beauchamp. Ms. Koo further testified that she had told him to call her using a toll-free number. A security guard had to escort the complainant out of the building because he was angry that Mr. Cashman refused to pay the amounts he demanded.

[234] Thus, the National Component provided the complainant with representation. It provided him with the same representation provided to any other member. The bargaining unit also provided him with representation. In addition, Mr. Cloutier approached the employer in an attempt to have the complainant transferred to another position, as shown by the emails exchanged between Mr. Cloutier and Mr. Parent (Exhibit P-2, at pages 46 to 48). Unfortunately, Mr. Cloutier's attempt was unsuccessful. In addition, the August 30, 2002 letter from Ms. Brooker to the complainant indicates that Mr. Cloutier represented the complainant at that time (Exhibit P-2, at page 53). The October 20, 2002 email from Mr. Cloutier to Ms. Brooker indicates that Mr. Cloutier assisted the complainant in preparing the internal complaint that the complainant filed with the respondent (Exhibit P-2, at page 62).

[235] Ms. Brooker listened to the complainant's problems. In her August 30, 2002 letter to him, she indicates that she met with Mr. Cloutier to discuss the problems that

the complainant was experiencing (Exhibit P-2, at page 53). Ms. Brooker adds that she examined the documents forwarded to her and concluded that there was not enough evidence to justify an investigation. Ms. Brooker did not close the door on the complainant. She wrote to him that she would examine any new evidence presented to her. This behaviour does not show an arbitrary attitude toward him.

[236] The November 18, 2002 email that Ms. Brooker sent to the complainant shows that Ms. Brooker examined new documents that he apparently had presented to her (Exhibit P-2, at page 63).

[237] Ms. Brooker took the trouble to meet with the complainant and Mr. Cloutier on December 9, 2002. The complainant was agitated and demanded that the respondent reimburse him for his invoices. He threatened to take legal action against the respondent. He told Ms. Brooker that he had already consulted a lawyer. Ms. Brooker told him that he did not have enough evidence to support his allegations. It was unclear whether Mr. Beauchamp was acting as president of the bargaining unit or as a concerned citizen when he approached the employer to discuss the restraining order. Ms. Brooker offered the complainant $1500 as compensation. According to the release that Ms. Brooker signed that day, the respondent does not accept any responsibility in the matter (Exhibit P-2, at page 65).

[238] In summer 2003, when the complainant discovered new documents, he renewed his efforts. Ms. Brooker met with him again on July 30, 2003. She again concluded that the new documents that he presented did nothing to indicate that the respondent had breached the December 9, 2002 agreement as he alleged.

[239] The respondent noted that the complainant's complaint was filed outside the time limit for events occurring from 2001 to 2003. He should have filed his complaint when he became aware of the facts giving rise to the complaint. His complaint must be dismissed for that reason. The respondent referred me to a November 9, 2006 letter from the complainant to a lawyer indicating that, when he became Vice-President of his union local, he discovered documents that support his complaint (Exhibit D-3). He should have filed his complaint against the respondent in April 2003 because he was aware of all the details of his complaint at that time. He filed his complaint on February 7, 2007.

[240] The respondent referred me to *Kowallsky v. Public Service Alliance of Canada et al.*, 2007 PSLRB 30. In that decision, the PSLRB emphasizes that it does not have jurisdiction over a union's internal affairs. The entire issue of the assistance provided to the complainant's former girlfriend has to do with the respondent's internal affairs, over which I do not have jurisdiction.

[241] The respondent explained that the *PESRA* contains no provision on time limits for filing a complaint of a breach of the duty of fair representation. The case law has established that, when the legislation sets out no time limit, common law must be referenced, under which an employee may file a complaint within a reasonable time after the facts giving rise to the complaint occurred, unless the employee can establish that exceptional circumstances beyond the employee's control have prevented the employee from doing so. To support that argument, the respondent referred me to *Walcott v. Turmel*, 2001 PSSRB 86 (upheld in 2003 FCA 113). In *Walcott*, the PSSRB refused to hear a complaint of a breach of the duty of fair representation because the employee had waited over three years before filing his complaint.

[242] In this complaint, the complainant waited five years before filing his complaint. That delay is excessive. The complainant never explained why he waited so long. The only explanation in the file is the November 9, 2006 email from the complainant to a lawyer, in which the complainant wrote that he expected to be dismissed for "[translation] exposing" the respondent (Exhibit D-3).

[243] In *Rhéaume v. Public Service Alliance of Canada*, 2004 PSSRB 95, the PSSRB refused to consider a complaint of a breach of the duty of fair representation because the employee had waited three years and nine months before filing her complaint.

[244] In *McConnell v. Professional Institute of the Public Service of Canada*, 2005 PSLRB 140 (upheld in 2007 FCA 142), the PSLRB emphasized that when an employee waits for a period of years before filing a complaint, there is a presumption of prejudice to the respondent solely because of the time elapsed. It is difficult for the respondent to defend itself because the facts occurred too long ago. In *McConnell*, the PSLRB dismissed the complaint of a breach of the duty of fair representation because the employee had waited nearly three years before filing her complaint. In this complaint, there was certainly prejudice to the respondent since the complainant waited five years before filing a complaint about the respondent's conduct from 2001 to 2003.

[245] The respondent maintained that it did not breach its duty of fair representation regarding the complainant's dismissal in 2006. In the November 23, 2006 email (Exhibit P-18), the complainant did not ask the respondent to file a grievance against his dismissal. Ms. Brooker believed that he wanted money because of what had occurred from 2001 to 2003. Ms. Brooker nevertheless took the trouble to learn about the complainant's situation. She asked Ms. Lemire whether she was aware of the complainant's situation. Ms. Lemire was not aware of anything about his situation and asked Mr. Lavigne and Ms. Enright whether they were aware that the complainant had been dismissed. Mr. Lavigne was also not aware of anything. Ms. Enright informed Ms. Lemire that the complainant had been dismissed for medical incapacity. Ms. Lemire informed Ms. Brooker of that fact.

[246] The respondent maintained that the complainant should not have contacted Ms. Brooker because her role did not include defending grievances. In addition, the complainant contacted Ms. Brooker to ask her for money; he never asked to file a grievance.

[247] The complainant was on sick leave starting in November 2003. The October 25, 2006 letter from Mr. St-Louis shows that the employer contacted the complainant a number of times when he was on sick leave but that he never responded (Exhibit P-2, at page 94). Nor did the complainant contact the respondent while he was on sick leave. He should have. As Ms. Lemire explained, at that point the respondent could have requested an extension of the complainant's sick leave.

[248] The respondent argued that it learned of the complainant's dismissal only when he informed Ms. Brooker. Although under clause 31.01 of the collective agreement (Exhibit D-1) the employer was required to notify the respondent of any dismissal, the employer was not required to notify the respondent in cases of dismissal for medical incapacity.

[249] The respondent maintained that the complainant was responsible for requesting its assistance in filing a grievance against his dismissal. The complainant had been a union representative in 2002 and Vice-President of the union local in 2003. He was well aware of how the PSAC works. He could have requested Ms. Lemire's assistance. He had already met her in 2003. The complainant could also have requested Mr. Lavigne's assistance who, at that time, was president of the complainant's bargaining unit. In

addition, the complainant could have requested assistance from Ms. Brooker or from any other bargaining unit representative. He did not.

[250] In addition, the complainant should have filed a grievance himself. He did not need the respondent's approval to file a grievance against his dismissal. The complainant had the necessary knowledge since he had taken a basic course on unions and a course on filing grievances.

[251] The respondent maintained that Ms. Brooker never received the emails that the complainant sent after November 23, 2006. The computer filter treated those emails as spam because some of them contained pornographic words. As for the emails that did not contain such words, the filter also treated them as spam since it no longer accepted emails from the complainant because of the previous emails that contained pornographic words.

[252] The complainant sent copies of the emails to Mr. Cashman and Mr. Ransom, but they did not receive the late 2006 and early 2007 emails because the email addresses used were not valid.

[253] The respondent emphasized that Dr. LaRue is not a psychiatrist and thus cannot make a psychiatric diagnosis.

[254] The respondent also pointed out that Dr. LaRue testified that he did not investigate the facts related by the complainant. The events that the complainant recounted to him had not necessarily taken place. There is no evidence that the complainant's illness is related to the respondent's behaviour.

[255] In *Laferrière v. Hogan and Baillairgé*, 2008 PSLRB 26, a decision that deals with the duty of fair representation, the PSLRB emphasized that a complainant may not criticize a union for not intervening in a matter if the complainant did not inform the union of the facts that would justify its intervention. In this complaint, the complainant did not inform the respondent that he wanted to contest his dismissal.

[256] The respondent added that if I decided that I had jurisdiction to hear this complaint then the only order that I could issue would be to require the respondent to represent the complainant in grieving his dismissal. I could not award compensatory or punitive damages in the case of a complaint involving the duty of fair representation.

C. Reply of the complainant

[257] The complainant stated that if his complaint was filed after the time limit for events from 2002 to 2003 then it was the respondent's fault since it had caused his illness.

[258] The complainant maintained that, in 2001, he had reacted immediately. He approached Ms. Koo to explain his situation to her. The respondent did nothing.

[259] The complainant pointed out that, although the respondent's representatives continually told him that he did not have enough evidence, he provided numerous documents to support his allegations.

[260] The complainant reminded me of Mr. Beauchamp's testimony that he wanted to assist the complainant's former girlfriend because of her physical appearance. Mr. Beauchamp said that he believed that she had been involved in a traffic accident. Yet, the complainant had not encountered his former girlfriend since the day of his trial. How could Mr. Beauchamp attribute her physical appearance to the complainant?

[261] The complainant stated that his actions regarding his dismissal were timely. He was dismissed on November 6, 2006, and he emailed Ms. Brooker on November 23, 2006 (Exhibit P-18). He did not contact Mr. Lavigne because he did not know him and did not want to contact the bargaining unit representatives since Mr. Beauchamp still worked there.

[262] The complainant emphasized that the November 23, 2006 email stated that he had lost his job. Ms. Brooker or Ms. Lemire should have responded to that email and advised him about his dismissal.

[263] The complainant added that he did not know that the National Component's computer filter had deleted the emails that he had sent to Ms. Brooker after November 23, 2006.

IV. Reasons

[264] The complainant alleges that the respondent breached its duty of fair representation by representing a non-member against him in a personal affair. He has also alleged that the respondent failed to file a grievance against his dismissal when he

asked. In addition, he maintained that the respondent acted in bad faith by attempting to have him dismissed starting in 2001.

A. <u>My jurisdiction to hear this complaint</u>

[265] As noted above, the respondent initially contested my jurisdiction to hear this complaint but then later withdrew its objection. I will nevertheless address this issue since my jurisdiction to hear this complaint cannot depend on an agreement between the parties.

[266] The complainant filed a complaint under section 13 of the *PESRA*. Subsection 13(1) of the *PESRA* reads as follows:

> ***13.*** *(1) I shall examine and inquire into any complaint made to it that en employer or an employee organization, or any person acting on behalf of an employer or employee organization, has failed*
>
> *(*a*) to observe any prohibition contained in section 6, 7 or 8;*
>
> *(*b*) to give effect to any provision of an arbitral award;*
>
> *(*c*) to give effect to a decision of an adjudicator with respect to a grievance; or*
>
> *(*d*) to comply with any regulation respecting grievances made by the Board pursuant to section 71.*

[267] Subsection 13(2) of the *PESRA* deals with orders directing compliance that the Board may make following a complaint under subsection 13(1). Sections 6, 7 and 8 of the *PESRA* do not deal with a union's duty of fair representation to its members. Section 6 deals with employer participation in an employee organization, section 7 with discrimination against an employee organization and section 8 with soliciting employee union membership on the employer's premises during working hours. In fact, no provision of the *PESRA* deals with the duty of fair representation. At issue, then, is whether I have jurisdiction to hear this complaint in the absence of a provision in the *PESRA* on the duty of fair representation .

[268] In *Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057*, [1990] 1 S.C.R. 1298, the Supreme Court of Canada explained as follows that the duty of fair representation is a common-law principle (at page 1315):

. . .

> *More importantly, in* Canadian Merchant Service Guild v. Gagnon, supra, *this Court recognized that the duty of fair representation existed at common law, prior to any statutory enactment. To that effect, Chouinard J. for the Court stated at p. 517:*
>
> > *Section 136.1 of the* Canada Labour Code, *like s. 47.2 of the* Quebec Labour Code *and s. 7 of the* British Columbia Labour Code, *is subsequent to the facts giving rise to the issue at bar. It is nonetheless useful to see how this legislation has subsequently been interpreted since, as we shall see below, the Canadian and Quebec courts recognized long before this legislation that a union has a duty to represent its members and that certain obligations follow from that duty.*

. . .

[269] The duty of fair representation was imposed on unions as a counterweight to the restrictions on individual employee rights inherent in the creation of a collective bargaining regime in which the bargaining agent is given exclusive rights to bargain on behalf of all employees in the bargaining unit. Thus, the right to fair representation is a corollary of the bargaining agent's exclusive bargaining right, as the Ontario Labour Relations Board emphasized in *Luis Lopez*, [1989] OLRB Rep. May 464, at para 12.

[270] In *Gendron*, the Supreme Court of Canada specified that the extent of the duty of fair representation was the same in common law as in the codified formulations of this principle. According to this principle, in representing employees who are members of the bargaining unit, a union may not act in a manner that is arbitrary, discriminatory or in bad faith (at page 1327):

. . .

> *The leading case in this area is* Canadian Merchant Service Guild v. Gagnon, supra. *While the facts giving rise to the claim in* Gagnon *occurred prior to statutory codification of the duty, the principles set out by Chouinard J. were based on a review that included both cases based on statutory formulations and those that were not and drew no distinction between the cases based on the different statutory terms which set out the duty. After an impressive and lengthy review of the Canadian jurisprudence, Chouinard J. for the Court lists at p. 527 the principles governing the duty of a union to fairly represent its members:*

> *The following principles, concerning a union's duty of representation in respect of a grievance, emerge from the case law and academic opinion consulted:*
>
> *1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.*
>
> *2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.*
>
> *3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.*
>
> *4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.*
>
> *5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.*
>
> . . .

[271] A number of governments in Canada have codified the duty of fair representation in their labour relations legislation. For example, section 187 of the *Public Service Labour Relations Act* (*PSLRA*) provides that an employee organization has a duty to provide fair representation to the employees who are members of the bargaining unit. In 1992, that duty was introduced into the *Public Service Staff Relations Act* (*PSSRA*). However, as I noted above, the *PESRA* contains no provision on that duty.

[272] In *Canadian Air Traffic Control Association v. The Queen in right of Canada as represented by the Treasury Board*, [1985] 2 F.C. 84 (C.A.), the Federal Court of Appeal ruled as follows that the duty of fair representation existed implicitly in the *PSSRA*, which, at that time, contained no provision on that duty, like the *PESRA* now (at pages 92 and 93):

. . .

> *. . . The duty of a bargaining agent is to represent all employees who may be members of the bargaining unit at any time during the currency of the collective agreement. Those members are required to pay monthly dues to the bargaining agent so long as they are employed in that unit. Based on this circumstance as well as the scheme of the Act, they are, in my view, entitled to be represented by the agent and to receive the benefit of that representation. . . .*
>
> . . .
>
> *It is true, as pointed out by Mr. Justice Chouinard that the* Canada Labour Code *[R.S.C. 1970, c. L-1], as well as several provincial statues contain specific provisions regarding a union's duty to represent its members. However, it is also true as observed by Chouinard J. at page 522 S.C.R.; 650 D.L.R. of the judgment that: "the Canadian cases, following the U.S. precedents, has already recognized the existence of a union's duty of representation and of the resulting obligations." Nevertheless, it is necessary to ask the question--is the generally accepted duty of fair representation imposed on a bargaining agent altered, eliminated, reduced or enhanced by the provisions of the* Public Service Staff Relations Act*? I can find no specific provision in the Act specifically setting out this duty. However, my perusal of the provisions of the statute lead me to conclude that such a duty is, indeed, contemplated and implied (see for example, sections 40 and 90 of the Act).*
>
> . . .
>
> [Emphasis added]

[273] Section 40 of the *PSSRA*, to which the Federal Court of Appeal refers in that decision, dealt with the effect of certification of a bargaining unit. That section provided that a certified union organization had the exclusive right to bargain on behalf of the employees who were members of the bargaining unit and to represent an employee in filing or referring to adjudication a grievance on the interpretation or application of the collective agreement. Section 90 dealt with the right to file grievances and specified that an employee must obtain the approval of the bargaining agent to file a grievance on the interpretation or application of the collective agreement. The wording of the two sections, as they read at the time of the Federal Court of Appeal decision, was nearly identical to the present wording of sections 28 and 62 of the *PESRA*.

[274] In *Morin v. Ford et al.*, PSSRB File No. 148-02-163 (19891017), the PSSRB found that it had jurisdiction to hear a complaint of a breach of the duty of fair representation, even though the *PSSRA*, as it read at the time, contained no provision on that union duty. The PSSRB was founded on subsection 21(1) of the *PSSRA* (as it was worded at the time), which provided that the PSSRB's mandate was to administer the *PSSRA* and that it had the powers implied in carrying out the purposes of the *PSSRA*. Also, in *Albert v. Hawley*, PSSRB File No. 161-02-447 (19871006), the PSSRB found that it had jurisdiction to hear a complaint of a breach of the duty of fair representation even though the *PSSRA* at that time contained no provision on that duty.

[275] What, then, about the *PESRA*? Relying on *Canadian Air Traffic Control Association* and on the similarity between the *PSSRA* and the *PESRA*, in *Charron v. Lafrance et al.*, PSSRB File No. 448-H-4 (19900208), the PSSRB found that it did have jurisdiction to hear a complaint of a breach of the duty of fair representation under the *PESRA*. In *Charron*, the complainant alleged that the bargaining agent had refused to support him in a grievance on a staffing matter. The PSSRB found that it did have jurisdiction to hear such a complaint:

> . . .
>
> *. . . I find that I do have jurisdiction to entertain the instant complaint. . . .*
>
> . . .
>
> *In Canadian Air Traffic Control Association v. The Queen in right of Canada as represented by the Treasury Board [1985] 2 FC. 84, the Federal Court of Appeal found that there was an implied duty of fair representation under the Public Service Staff Relations Act. This finding of the Court would have equal application to bargaining agents under the Parliamentary Employment and Staff Relations Act.*
>
> . . .
>
> [Emphasis in the original]

[276] The Saskatchewan Labour Relations Board also found that it had jurisdiction to hear a complaint of a breach of the duty of fair representation, even in the absence of a legislative provision giving it that jurisdiction. In *Simpson v. United Garment Workers of Canada*, [1980] 3 Can LRBR 136, that Board found that the provisions of its enabling

legislation on unfair labour practices authorized it to hear a complaint of unfair representation, at least when the complaint dealt with filing grievances (at pages 138-139).

[277] In my opinion, since the Federal Court of Appeal determined in *Canadian Air Traffic Control Association* that the duty of fair representation existed implicitly in the *PSSRA*, and since the wording of the *PESRA* today is very similar to the wording of the *PSSRA* as it read at the time of the Federal Court of Appeal decision on the role of the bargaining agent in representing employees in negotiating a collective agreement and filing grievances, it follows that the duty of fair representation exists implicitly in the *PESRA*. Since the PSLRB's mandate is to administer the *PESRA*, it follows that the PSLRB has jurisdiction to hear a complaint on a breach of this duty. In fact, the *PESRA* gives the PSLRB the mandate of administering the *PESRA*:

. . .

> ***10.*** *The Board shall administer this Part and shall exercise such powers and perform such duties as are conferred or imposed on it by, or as may be incidental to the attainment of the purposes of, this Part including, without restricting the generality of the foregoing, the making of orders requiring compliance with this Part, with any regulation made hereunder or with any decision made in respect of a matter coming before it.*

. . .

[278] In *Canadian Union of Postal Workers (CUPW) v. Canada (Public Service Staff Relations Board)*, [1979] 1 F.C. 232 (C.A.), the Federal Court of Appeal ruled that the PSSRB did not have jurisdiction to hear a complaint on the duty of fair representation. In my opinion, however, *Canadian Air Traffic Control Association*, a decision by the same Court, runs counter to *Canadian Union of Postal Workers (CUPW)*, and I am bound by *Canadian Air Traffic Control Association* because that decision is subsequent to *Canadian Union of Postal Workers (CUPW)*.

[279] Therefore, for the reasons mentioned above, I find that I have jurisdiction to hear this complaint.

B. Merits of the complaint

[280] This complaint of a breach of the duty of fair representation covers two periods. I will begin with the complainant's allegations about the respondent's behaviour from 2001 to 2003.

[281] Usually, a breach of the duty of fair representation deals with a refusal by the bargaining agent to represent an employee in his or her relationship with the employer, particularly in filing grievances, or with the quality of that representation. In this complaint, for the period from 2001 to 2003, and particularly the complainant's hours of work, the respondent provided representation to the complainant. Ms. Koo represented him, even though the quality of her representation left something to be desired since she lacked good judgment in failing to inform him that Mr. Beauchamp had made uncomplimentary remarks about him in the May 9, 2002 email about the complainant's former girlfriend's harassment complaint (Exhibit P-2, at page 45). However, in my opinion, the duty of fair representation is not limited to those circumstances. In my opinion, when there is a conflict between a member of a bargaining unit and another member of the same unit or a non-member of the unit, the bargaining agent breaches its duty of fair representation when a member of the bargaining unit executive acts in bad faith by taking the side of one of those persons or by attempting to harm the interests of one of those persons, with no valid reason. In this complaint, the evidence has established that Mr. Beauchamp, acting as president of the bargaining unit, acted in bad faith toward the complainant by taking the side of the complainant's former girlfriend and by using his position in the union to attempt to harm the complainant's reputation and interests with the employer, with no valid reason.

[282] The complainant and his former girlfriend both worked for the House of Commons, the complainant on Parliament Hill in Ottawa and his former girlfriend on Belfast Street, also in Ottawa. His former girlfriend was not a member of the bargaining unit or of any union. In May 2001, she brought a criminal assault charge against him in Gatineau court. That charge was not work related; it had to do with a personal conflict between the two of them. The judge had issued a restraining order against the complainant, ordering him not to go to his former girlfriend's workplace on Belfast Street. The restraining order remained in force until his trial, scheduled for January 29, 2002. The entire affair became complicated when his former girlfriend asked to be

transferred to Parliament Hill starting in the Christmas holiday season in 2001. The restraining order covered only the House of Commons offices on Belfast Street.

[283] Some members of the bargaining unit worked nights, on rotation. The complainant, who was working the night shift at that time, could have gone back to working days at the end of December 2001. On October 25, 2001, Ms. Peladeau accepted his offer to work nights until spring 2002. Mr. Parent informed his former girlfriend of that fact in an October 31, 2001 email (Exhibit P-2, at page 10). It is important to note that, beginning at that time, there were no problems since the complainant would work nights, and his former girlfriend had been informed of that. It should also be noted that the complainant showed himself to be cooperative; he was not obliged to work nights. Nevertheless, on November 2, 2001, on behalf of Mr. Beauchamp, Ms. Riopelle emailed Mr. Parent. That email reads, in part, as follows (Exhibit P-2, at page 11):

. . .

> *The executive of Local 70390 recently met with* [the complainant's former girlfriend] *regarding the above restraining order. After reviewing documents provided we have agreed to accept this case and provide representation as required.*
>
> *Furthermore, as the follow-up to* [the complainant's former girlfriend's] *request to you, the union will require that the employer provide written confirmation that Mr. Luc Beaulne will remain on the 11 p.m. to 7 a.m. shift pending resolution of this matter, which is before the courts.*
>
> *We anticipate that the employer will take the appropriate action in ensuring that the restraining order imposed on one of their employees is adhered to.*
>
> . . .
>
> [Emphasis in the original]

[284] As president of the bargaining unit, Mr. Beauchamp should not have become involved in the case in that manner. Not only was that email unnecessary, in my opinion it also shows that Mr. Beauchamp took the side of the complainant's former girlfriend regarding the complainant's hours of work. In that email, Mr. Beauchamp became directly involved in the debate by, more or less, requiring the complainant to work nights. It is also clear that Mr. Beauchamp became involved in the conflict as

president of the bargaining unit because he cites the bargaining unit executive's decision to provide representation to the complainant's former girlfriend. Even in the absence of that email, it is clear that Mr. Beauchamp was using his position in the bargaining unit to intervene in the matter. When a vice-president of a bargaining unit approaches the employer to discuss the hours of work of a member of the bargaining unit, it goes without saying that the vice-president does so in the capacity of his or her union position. The employer would not have discussed the complainant's conditions of employment with Mr. Beauchamp were it not for his position in the union hierarchy.

[285] The November 2, 2001 email reveals a great deal about Mr. Beauchamp's attitude toward the complainant if one compares it to the email that Ms. Riopelle sent to Mr. Cashman on Mr. Beauchamp's behalf shortly afterward (that email is undated). It reads, in part, as follows (Exhibit P-2, at page 17):

. . .

> *We were approached by* [the complainant's former girlfriend] *regarding a matter that she was unable to resolve because of Staff relations total incompetence and the fact that they were totally ignoring her pleas for her personal safety for which she has a restraining order against Mr. Beaulne.*
>
> *Mr. Beaulne has never approached our union for any representation nor do we see his necessity, as his job is not on the line.*
>
> . . .
>
> [Emphasis added]

[286] In my opinion, these two emails show contempt toward the complainant. In his November 2, 2001 email, Mr. Beauchamp indicated that the bargaining unit representatives had decided to provide representation to the complainant's former girlfriend regarding the complainant's hours of work, but in the email reproduced above Mr. Beauchamp stated that the complainant did not need to be represented, even though his conditions of employment were on the line. The two emails demonstrate that Mr. Beauchamp took the side of the complainant's former girlfriend and that he acted in bad faith toward the complainant.

[287] Mr. Cashman acted wisely in intervening in the matter as soon as he realized that Mr. Beauchamp's behaviour was becoming problematic. On November 12, 2001,

Mr. Cashman emailed Mr. Beauchamp and Ms. Riopelle, warning them that a bargaining unit executive member should not take sides in a conflict involving two bargaining unit members (however, I must point out that the complainant's former girlfriend was not a bargaining unit member). Mr. Cashman also wrote that the bargaining unit representatives' actions could give rise to legal action by the complainant (Exhibit P-2, at page 20):

. . .

> *Brother Beaulne called me 07NOV2001 and raised his concerns. His perceptions may be legitimate. I want to address the e-mail to Bob Beauchamp dated 02NOV2001 (as sent by Teresa).*
>
> *The e-mail reads in part:*
>
> *c) "The executive of Local 70390 recently met with* [the complainant's former girlfriend] *. . . After reviewing documents provided we have agreed to accept this case and provide representation as required.*
>
> *d) "Furthermore, . . . the union will require . . ."*
>
> *The message from Bob as President of the local conveys the message, rightly or wrongly, that the local has taken sides in the dispute. The use of the term "union" further indicates that the PSAC has taken sides or at least one can be left with that impression. It is important that any time in situations involving two or more members in the same workplace, that the local executive not be seen as taking sides. Every case needs to be decided upon its own merits. You have not heard the case from the Brother.*
>
> . . .
>
> *As to the suggestion that that "if and when Mr. Beaulne needs our representation, we are in a position to represent him", given the local's statement in writing, the executive has shown bias. Mr. Beaulne may have good reason to initiate a suit of his own against the local executive for failure to represent. The local has been through a very bitter situation recently where a member was not provided with proper representation. The circumstances are somewhat different this time but the end result is the same. Every one deserves their day in court. No one should automatically declare guilty without a proper hearing.*
>
> *We find ourselves in a situation where a service officer will need to be assigned to help Mr. Beaulne, possibly acting in a situation against a member of the local executive who would*

> *be representing* [the complainant's former girlfriend]. *That cannot look good in the eyes off the membership or of the Employer. The Employer or others could further use this situation to discredit the members of the local executive. No one will benefit from that type of scenario.*
>
> *In future, I would ask that the local executive take greater care and not place itself in such situations. The executive should not take sides in any dispute but allow the normal course of justice to proceed.*
>
> . . .
>
> [*Sic* throughout]
>
> [Emphasis added]

[288] Mr. Cashman's warning should have convinced Mr. Beauchamp to stop taking sides in the matter, but the opposite happened. The vehemence of Mr. Beauchamp's actions against the complainant increased. In a December 5, 2001 email that Mr. Beauchamp sent to Mr. Parent, Mr. Beauchamp suggested that the complainant was the perpetrator of the criminal offence with which his former girlfriend had charged him (Exhibit P-2, at page 26):

> . . .
>
> *Her restraining order only covers Belfast, but management had transferred her to the Confederation Building. What she was concerned about was that if Mr. Beaulne worked days, she would confront him and her request was simply that he remained on nights, until such time as the case was heard. At no time were we representing* [the complainant's former girlfriend], *we were simply trying to intercede on her behalf with Staff Relations.*
>
> *You mentioned in your letter, Management's position – how can you favour the rights of the alleged perpetrator? Again we reiterate you have to look after the safety of all employees, as it is evident that you show no responsibility, nor do you care about the victim.*
>
> *As for Mr. Beaulne cooperating, he has no choice – he's the perpetrator,* [the complainant's former girlfriend] *is the victim.*
>
> *I agree that this is an outside matter and why Mr. Beaulne sees it necessary to be represented is not clear to me, his job is not on the line.*

> *I agree this is not an* [*sic*] *harassment case, but a case of assault and battery, much more serious than an* [*sic*] *harassment.*
>
> *It is quite obvious that you are making a mountain out of a molehill – a simple interceding on behalf of a non-unionized employee has led to you informing the Component on something that is not and has not happened and which is none of your business and what we see again as union interference.*
>
> . . .
>
> [Emphasis added]

[289] It should be noted that, at that time, the complainant's case had not yet gone to trial. According to the evidence, Mr. Beauchamp never contacted the complainant to learn his version of the facts. In a way, Mr. Beauchamp set himself up as judge of the case, deciding that the complainant was guilty as charged. It should also be noted that this email was sent to the employer, which is more serious than if it had been sent to a union co-worker. In my opinion, the email demonstrates once again that Mr. Beauchamp took the side of complainant's former girlfriend and that he attempted to harm the complainant's reputation and interests with the employer. In so doing, Mr. Beauchamp acted in bad faith toward the complainant.

[290] The complainant's trial took place on January 29 and 30, 2002. The complainant was immediately acquitted of all charges, and the trial judge rescinded the restraining order. However, that ruling did not stop Mr. Beauchamp's interference. He wanted to read the transcript of the audio recording of the complainant's trial. Given Mr. Beauchamp's previous actions, the reason he wanted to read the transcript was certainly not to find complimentary passages about the complainant. Here is an excerpt of the May 9, 2002 email from Mr. Beauchamp to the complainant's former girlfriend (Exhibit P-2, at page 45):

> . . .
>
> *Thank you for the information. It doesn't surprise me that an incident occurred. I would appreciate it very much f [sic] you could keep me informed on all further developments regarding your official harassment complaint. As well, <u>if and when you receive the cassette transcript could you be as kind to reproduce it for us</u>?*
>
> . . .

[Emphasis added]

[291] On May 8, 2002, an incident occurred. The complainant was walking down Sparks Street in Ottawa when he encountered his former girlfriend. He had not seen her since the day of the trial. According to his testimony, he allegedly shouted the following at her: "[translation] I am innocent." His testimony is corroborated by the harassment complaint that she filed (Exhibit P-2, at page 42). According to Mr. Cloutier's written testimony to the harassment investigator in that matter, the complainant's former girlfriend responded: "[translation] You goddamn dirty dog, you goddamn dirty dog, it cost you a lot of money" (Exhibit P-2, at page 50). She filed a harassment complaint against him because of his remarks. In a May 9, 2002 email to Mr. Cashman and Ms. Koo, Mr. Beauchamp wrote the following about the harassment complaint filed by the complainant's former girlfriend (Exhibit P-2, at page 45):

. . .

> *This is being forwarded for your information. Would you believe this is the same guy who ran for «PRESIDNET» [sic] of this Local on April 4th 2002. What a JOKE and God help us!!*

. . .

[292] In my opinion, Mr. Beauchamp was not entitled to write "What a JOKE" about the complainant's inoffensive comment of "[translation] I am innocent." Mr. Beauchamp testified that he was not referring to the complainant. On that point, I do not believe him. This email follows up on an email from the complainant's former girlfriend to Mr. Beauchamp in which she refers to the incident on Sparks Street.

[293] This email from Mr. Beauchamp is also troubling because it was sent to Ms. Koo, whom Mr. Beauchamp knew was the complainant's representative. What trust could the complainant have in his bargaining agent if his representative remained silent when confronted with such comments?

[294] I do not know what motivated Mr. Beauchamp's behaviour. He did not even know the complainant. In his testimony, he attempted to justify his involvement by stating that he wanted to ensure that the employer respected the court's restraining order. That explanation is not credible since the restraining order did not cover Parliament Hill where the complainant's former girlfriend was to be transferred. The employer could not amend a court order.

[295] The other reason Mr. Beauchamp cited is that he wanted written assurance from the employer that the complainant would be working the night shift. On October 31, 2001, however, Mr. Parent had already informed the complainant's former girlfriend that the complainant had offered to work nights and that his superior, Ms. Peladeau, had accepted his offer (Exhibit P-2, at page 10). Mr. Beauchamp testified that he wanted written confirmation from the employer, i.e., Ms. Peladeau, not from Mr. Parent. That argument does not hold up either. Mr. Parent worked in the Human Resources Department. That department of a government organization represents the employer in matters having to do with employees' working conditions. Thus, there was no problem, and all Mr. Beauchamp's actions were pointless, as well as being harmful to the complainant.

[296] Mr. Beauchamp testified that he had been moved by the pitiful physical appearance of the complainant's former girlfriend. However, if her appearance was pitiful, Mr. Beauchamp could not attribute that appearance to the complainant since, at that time, the complainant was no longer seeing her. Also, Mr. Beauchamp being moved by the physical appearance of the complainant's former girlfriend does not eliminate his duty to the members of the bargaining unit. Mr. Beauchamp was obliged to not act in bad faith toward the complainant.

[297] In summary, then, for the period from 2001 to 2003, the evidence indicates that Mr. Beauchamp acted in bad faith toward the complainant by taking the side of the complainant's former girlfriend and by using his position as president of the bargaining unit to attempt to harm the complainant's reputation and interests, including with the complainant's employer. It follows that I would have ruled that the respondent breached its duty of fair representation in this complaint if not for the time limit issue, which I will address later.

[298] The respondent maintained that Mr. Beauchamp's behaviour is part of the union's internal affairs. I do not share that opinion. As George Adams notes in *Canadian Labour Law*, 2nd ed., at paragraph 13.210, the duty of fair representation has to do with a bargaining agent's actions regarding the relationship that an employee of the bargaining unit may have with the employer. In this complaint, the situation had to do with the complainant's relationship with the employer because it had to do with whether the complainant was to work the night shift.

[299] However, there is no evidence that Mr. Beauchamp or any other representative of the respondent played a role in the uncomplimentary rumours that the complainant's co-workers were spreading about him. It is true that the complainant testified that a co-worker told him that R.L., a union representative, had met with some employees and told them that the complainant was an attacker. I assign no weight to the complainant's testimony on that point because it is hearsay. An unidentified co-worker gave the complainant that information, and neither that co-worker nor R.L. were present at the hearing to testify. Also, not all words and actions of union representatives can be attributed to the bargaining agent. There is no evidence that R.L. was acting on behalf of the bargaining agent when he made that statement, if he made it.

[300] Nor is there any evidence that Mr. Beauchamp or any other representative of the respondent played a role in the incident in which D.N. pushed the complainant. With respect to the insult that T.L. uttered to the complainant, the evidence does not establish that T.L. occupied a union position at the time of that incident.

[301] I also wish to point out that the evidence has established that only Mr. Beauchamp took actions that could have harmed the complainant's reputation. The members of the National Component played no role in those actions. Mr. Cashman attempted to correct Mr. Beauchamp's behaviour. Mr. Cashman, Ms. Brooker and Ms. Koo listened to the complainant's problems. However, Ms. Koo should have notified the complainant that she had received uncomplimentary remarks about him from Mr. Beauchamp.

[302] I do not believe that it is necessary to determine whether Mr. Beauchamp harassed the complainant. In the context of the duty of fair representation, at issue is whether the respondent acted toward the complainant in a manner that was discriminatory, arbitrary or in bad faith. I have already ruled that, in my opinion, Mr. Beauchamp acted in bad faith toward the complainant.

[303] However, I cannot allow this complaint because the complainant waited too long to file it. Since the *PESRA* does not deal with the duty of fair representation, it sets out no provision about the time limits for filing a complaint of a breach of this duty. As the PSSRB emphasized in *McConnell*, in the absence of a statutory time limit, one must look to administrative law principles and jurisprudence, including the PSSRB's jurisprudence (at paragraph 14).

[304] In *Walcott*, the PSSRB found that complaints of breaches of the duty of fair representation should be filed within a reasonable time following the events on which they are based, unless the employees can establish that circumstances that were exceptional or outside their control prevented them from doing so:

. . .

> *[28] . . . complaints should be filed within a reasonable time frame following the events on which they are based. When such is not the case, the complainants bear the burden of establishing that circumstances which are exceptional or outside of their control prevented them from acting any sooner. They must establish that the delay in filing their complaints is not unreasonable.*

. . .

[305] The purpose of the requirement to act within a reasonable time is to provide a speedy and efficacious forum for the resolution of labour relations disputes, as George Adams points out in *Canadian Labour Law* (quoted in *Horstead v. PSAC et al.,* (PSSRB File No. 161-02-739 (19950711)):

> *. . . The labour relations tribunal is intended to provide a speedy, inexpensive and efficacious forum for the resolution of labour relations disputes. Therefore, to serve this purpose the tribunal must administer its procedure in a fashion that discourages delay as much as possible . . . On the other hand, the need for expeditious proceedings must be balanced against the need to ensure that meritorious claims are heard and the requirements of natural justice are met. . . .*

. . .

[306] In *McConnell*, the PSLRB refused to allow a complaint of a breach of the duty of fair representation because the employee had waited nearly three years before filing her complaint. In *Rhéaume*, the PSSRB considered a delay of three years and nine months before filing a complaint of a breach of the duty of fair representation to be unreasonable.

[307] The complainant was aware of all the facts and documents giving rise to his complaint in April 2003 when he became Vice-President of his bargaining unit. For example, at that time he discovered the December 5, 2001 letter from Mr. Beauchamp to Mr. Parent (Exhibit P-2, at page 26) and the November 12, 2001 email from Mr. Cashman to Mr. Beauchamp and Ms. Riopelle (Exhibit P-2, at page 20). The

complainant filed his complaint with the PSLRB on February 7, 2007, nearly four years later. In my opinion, that delay is not reasonable, and the complainant may not base his complaint on events that occurred from 2001 to 2003. The complainant should have acted earlier.

[308] The complainant has not established that circumstances that were exceptional or outside of his control prevented him from acting sooner. His only explanation is that the matter was the fault of the respondent, which had made him ill. Although Dr. LaRue's testimony has established that the complainant was unwell starting as early as November 2003, that evidence does not establish that the complainant's state of health prevented him from filing a complaint.

[309] It is not clear that the fact that the complainant waited four years before filing his complaint caused prejudice to the respondent's defence, since most of the evidence in this complaint is documentary. However, I believe that when a delay is measured in years it becomes so unreasonable that allowing a complaint to be filed after such a lengthy delay would undermine the speedy and efficacious resolution of labour relations conflicts. By comparison, under the *PSLRA* the time limit for filing a complaint of a breach of the duty of fair representation is 90 days (subsection 190(2)).

[310] It is regrettable for the complainant that this complaint is outside the time limit for the events that occurred from 2001 to 2003 since the result is that he will not receive full redress in this matter. The complainant's frustration is understandable: the role of the bargaining agent was to protect the complainant's interests, and Mr. Beauchamp used his position in the bargaining agent hierarchy to harm the complainant. He did not even receive an apology from Mr. Beauchamp or from the National Component representative. Mr. Cashman's apology is not an apology (Exhibit P-2, at page 67). He apologizes for the fact that the deadlines had not been met, not for Mr. Beauchamp's behaviour. Nor is it clear to which time limits Mr. Cashman is referring. Ms. Brooker testified that she offered the complainant only $1500, a minimal amount to say the least, because it was not clear that Mr. Beauchamp was acting on the respondent's behalf when he approached the employer regarding the complainant's hours of work. As I have explained above, my opinion is that it was clear that Mr. Beauchamp used his position as vice-president of the bargaining unit to attempt to harm the complainant.

[311] I would like to point out that the arguments by the respondent's representative do not refer to the release signed by the complainant on December 9, 2002 (Exhibit P-2, at page 65) and that, as a result, I need not express an opinion on that point. However, I would like to note that the complainant signed the release when he was on sick leave for stress, and it is not clear that he wanted to sign it. He first refused to sign it and attempted to leave the restaurant before eventually accepting Ms. Brooker's offer when two representatives of the respondent caught up with him and persuaded him to sign.

[312] In addition, the complainant has based his complaint on the fact that the union refused to represent him at the time of his dismissal. In my opinion, there was a lack of good judgment on both sides regarding the dismissal.

[313] I point out, first of all, that even though the *PESRA* does not require employees to have their employee organization's approval to file a dismissal grievance, the duty of fair representation applies to dismissal grievances. In *Charron*, a case determined in accordance with the *PESRA*, the PSSRB found that the duty of fair representation covered staffing a position, even though filing a staffing grievance did not require the approval of the bargaining agent:

. . .

> *In the present case, the Association did not have the exclusive right to sponsor grievances, as the subject matter of the grievance did not involve the interpretation or application of the collective agreement, and the complainant could have presented a grievance to the employer without having to seek approval or representation of his Association. The Association, nevertheless, was obliged to provide fair representation to the grievor in the processing of his grievance. It could not arbitrarily or capriciously decide not to. . . .*

. . .

[314] The complainant was dismissed on November 6, 2006 (Exhibit P-2, at page 94). On November 23, 2006, he emailed Ms. Brooker, telling her that he had been dismissed (Exhibit P-18). In the email, he complains of the events occurring from 2001 to 2003 but does not ask Ms. Brooker to file a grievance against his dismissal. Since the complainant told Ms. Brooker that he had been dismissed, in my opinion it would have been more prudent for Ms. Brooker to have asked the complainant whether he wanted to contest his dismissal. Ms. Brooker asked Ms. Lemire for information, who in turn

contacted Mr. Lavigne, but no one contacted the complainant. Ms. Brooker testified that she believed that the complainant wanted money for the events occurring from 2001 to 2003. I understand that Ms. Brooker may have believed that since, in the email, the complainant complained at length about how the respondent had treated him in the past, and over the years he returned to this theme repeatedly. Nevertheless, in my opinion Ms. Brooker lacked good judgment in failing to ask the complainant whether he wanted assistance. The same is true for Ms. Lemire and Mr. Lavigne. Given the seriousness of a dismissal, they should have contacted the complainant to obtain more information about his situation. However, a lack of good judgment does not constitute a breach of the duty of fair representation. Mitchnick and Etherington, in *Labour Arbitration in Canada*, Lancaster House, 2006, state that even simple negligence by the union does not constitute a breach of the duty of fair representation (at page 150):

. . .

> *As noted by the Newfoundland Court of Appeal in* Butt v. U.S.W.A. . . . *The Court also held that « simple » negligence did not engage the common law duty of fair representation: only « serious » or « major » negligence gave rise to a breach of the union's obligations.* . . .

. . .

[315] The complainant, too, was negligent in failing to state clearly that he wanted to file a grievance. As explained above, the complainant spent most of that email complaining about past events. That only added to the confusion about the email's purpose

[316] In the December 1, 2006 (Exhibit P-20), December 7, 2006 (Exhibit P-21), December 18, 2006 (Exhibit P-19), December 21, 2006 (Exhibit P-26) and January 1, 2007 (Exhibit P-25) emails that the complainant sent to Ms. Brooker, he again complained about how the respondent had treated him in the past, but he did not clearly ask her to intervene regarding his dismissal. On the other hand, in his January 22, 2007 email (Exhibit P-22), the complainant clearly asked Ms. Brooker to file a grievance against his dismissal. He wrote the following:

. . .

> *I was strongly advised to contact and ask you that a formal grievance be made against Management for wrongful*

> *termination, I have 90 days to file and my time is almost up, so please reply A.S.A.P.*
>
> . . .

[317] Although the January 22, 2007 email was sent after the 20-day time limit set out in clause 32.07 of the collective agreement for filing a grievance (Exhibit D-1), at that point the union could have requested an extension of the time limit for filing a grievance. The complainant also asked Ms. Brooker to file a grievance against his dismissal in a February 3, 2007 email (Exhibit P-23).

[318] Ms. Brooker testified that she did not respond to the emails that the complainant sent to her after November 23, 2006 because she never received them. Ms. Phillips explained that Ms. Brooker would not have received those emails because in them the complainant used the words "fuck off" (the December 1, 2006 email, Exhibit P-20), "bullshit" (the December 7, 2006 email, Exhibit P-21), "shit" (the December 18, 2006 email, Exhibit P-19), and "fucked up" (the January 1, 2007 email, Exhibit P-25). Ms. Phillips testified that the computer filter would have treated these words as pornographic and would have sent them to the spam file. The computer filter would also have deleted the emails sent by the complainant after January 1, 2007, even if they did not contain pornographic words, because starting on that date the filter recognized the complainant's email address and treated all his emails as spam regardless of their content.

[319] I must first point out that the words used by the complainant do not constitute pornography. They are rude words. At worst they are quite inoffensive swear words. In one of the emails, it is not even the complainant who uses the words "fuck off"; he is quoting someone else. In my opinion the National Component showed a regrettable lack of good judgment in setting up a computer filter that deleted the complainant's emails because of such inoffensive words. The duty of fair representation implies that the members of a union be able to contact their bargaining agent. The respondent should at least have notified the senders of emails of the existence of such a problematic filter. A reasonable person would not suspect that such a filter existed. Ironically, the same filter would delete this decision were I to send it to the National Component, since I quote the words that the filter treats as pornographic. I hope that the bargaining agent will have the wisdom to rectify this situation so that other important emails are not lost in the same manner.

[320] At issue is whether a regrettable lack of good judgment constitutes a breach of the duty of fair representation. The computer filter treats all members in the same way. Thus, the respondent did not act in a discriminatory manner toward the complainant. Nor is there any evidence of bad faith. Furthermore, installing and using the filter does not indicate that the respondent acted arbitrarily. In my opinion, a decision is arbitrary when it is capricious or when it fails to take reality into account (see the *Petit Robert* dictionary). Although in my opinion installing and using the filter without notifying network users constitute a regrettable lack of good judgment, it does not establish arbitrary behaviour by the respondent. I therefore find that the respondent did not breach its duty of fair representation by installing and using the filter.

[321] It is true that this computer filter applied only to the National Component network and that, according to established procedure, the complainant should first have contacted a bargaining unit representative. Had he done so, the filter would not have intercepted his emails. However, in this complaint I cannot blame the complainant for first contacting a National Component representative. He did so because of his past conflict with Mr. Beauchamp; because of that conflict, he directly contacted National Component representatives, i.e., Ms. Koo, Mr. Cashman and Ms. Brooker. Still, those reasons do nothing to change the fact that the respondent's lack of good judgment about the filter does not constitute a breach of the duty of fair representation.

[322] In addition, it would have been more prudent for the complainant to file a grievance himself. The complainant should have known that filing a dismissal grievance does not require the respondent's approval. The complainant had been a union representative and Vice-President of his bargaining unit. He had taken a course on filing grievances. Thus, the complainant had the necessary knowledge and ability to file his grievance. That said, this fact does not directly affect the respondent's duty of fair representation since a union has a duty to represent its members regardless of whether they have the ability to represent themselves.

[323] The complainant provided no valid explanation of why he did not file a grievance against his dismissal. He merely stated he did not do so because the respondent had made him ill. There is no evidence that the complainant's illness was the reason that he did not contest his dismissal.

[324] In addition, the complainant should have paid attention to his employee status well before the date of his dismissal. Starting on December 9, 2004, he knew that his sick leave would run out in November 2006 (Exhibit P-2, at page 92). Well before the date of his dismissal, he should have asked the respondent to extend his sick leave, as Ms. Lemire explained in her testimony.

[325] I reject the complainant's allegation that the respondent attempted to have him dismissed. There is no evidence that the bargaining agent is responsible for the complainant's dismissal.

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

(The Order appears on the next page)

V. Order

[327] The complaint is dismissed.

January 29, 2009.

PSLRB Translation

John A. Mooney,
Board Member