

**Date:** 20110722

**Files:** 561-02-408, 409, 415 and 416  
and 597-02-1, 2 and 5 to 7

**Citation:** 2011 PSLRB 95



*Public Service  
Labour Relations Act*

Before the Public Service  
Labour Relations Board

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BETWEEN

**IRENE JANE BREMSAK**

Complainant and Applicant

and

**PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA ET AL.**

Respondents

Indexed as

*Bremsak v. Professional Institute of the Public Service of Canada et al.*

In the matter of complaints made under section 190 of the of the *Public Service Labour Relations Act* and applications to obtain the consent of the Board referred to in section 205

**REASONS FOR DECISION**

***Before:*** Paul Love, Board Member

***For the Complainant and Applicant:*** John T. Lee

***For the Respondents:*** Geoffrey Grenville-Wood, counsel

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Decided on the basis on written submissions  
dated September 8 and, 17, October 13, 15, 28 and 29,  
November 3 and 10, and December 2, 3, 7 and 21, 2009.

**I. Complaints and applications before the Board**

[1] Irene Jane Bremsak (“the applicant”) has requested that the Public Service Labour Relations Board (“the Board”) find that the Professional Institute of the Public Service of Canada (PIPSC) and named PIPSC employees and members (listed in the appendix to this decision), including of its executive, committed unfair labour practices under section 188 of the *Public Service Labour Relations Act* (“the Act”). She also filed applications for the Board’s consent to prosecute individuals under sections 200 and 202 of the Act for unfair labour practices. Sections 188, 200 and 202 provide as follows:

*188. No employee organization and no officer or representative of an employee organization or other person acting on behalf of an employee organization shall*

*(a) except with the consent of the employer, attempt, at an employee’s place of employment during the employee’s working hours, to persuade the employee to become, to refrain from becoming, to continue to be or to cease to be a member of an employee organization;*

*(b) expel or suspend an employee from membership in the employee organization or deny an employee membership in the employee organization by applying its membership rules to the employee in a discriminatory manner;*

*(c) take disciplinary action against or impose any form of penalty on an employee by applying the employee organization’s standards of discipline to that employee in a discriminatory manner;*

*(d) expel or suspend an employee from membership in the employee organization, or take disciplinary action against, or impose any form of penalty on, an employee by reason of that employee having exercised any right under this Part or Part 2 or having refused to perform an act that is contrary to this Part; or*

*(e) discriminate against a person with respect to membership in an employee organization, or intimidate or coerce a person or impose a financial or other penalty on a person, because that person has*

*(i) testified or otherwise participated or may testify or otherwise participate in a proceeding under this Part or Part 2,*

*(ii) made an application or filed a complaint under this Part or presented a grievance under Part 2, or*

(iii) exercised any right under this Part or Part 2.

**200.** Every person who contravenes subsection 186(1) or (2), section 188, subsection 189(1) or section 195 or 199 is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000.

**202.** (1) Every employee organization that contravenes, and every officer or representative of one who contravenes, section 187 or 188 is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000.

(2) Every employee organization that contravenes subsection 194(1) or (2) or 197(3) is guilty of an offence and liable on summary conviction to a fine not more than \$1,000 for each day that any strike declared or authorized by it in contravention of that subsection is in effect.

(3) A prosecution for an offence under subsection (1) or (2) may be brought against an employee organization and in the name of that organization and, for the purposes of the prosecution, the employee organization is deemed to be a person.

[2] An employee organization is prohibited from taking disciplinary action or imposing any form of penalty by applying disciplinary standards in a discriminatory manner, as outlined in paragraph 188(c) of the Act. Subparagraph 188(e)(ii) prohibits intimidation, coercion or the imposition of a financial or other penalty on a person because the person made an application under the Act.

## **II. Background**

[3] In *Veillette v. Professional Institute of the Public Service of Canada and Rogers*, 2009 PSLRB 64, the PIPSC had temporarily suspended an executive member who had filed an unfair labour practice complaint with the Board. The Board examined the PIPSC's *Policy Related to Members and Complaints to Outside Bodies* ("the Policy"), that the PIPSC later applied to the applicant. On May 29, 2009, the Board allowed Mr. Veillette's complaint in part, ordering the PIPSC to amend the *Policy* to comply with the Act.

[4] The applicant was an elected official with the PIPSC. She filed two complaints with the Board (PSLRB File Nos. 561-34-202 and 339), which were adjudicated in *Bremsak v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 103. The

background to those complaints is set out in that decision as follows, at paragraphs 3 and 4:

*[3] The first complaint started with an email sent by the complainant involving a controversy over a local election within the bargaining agent. The complainant was concerned that another member, who was selected as a successful candidate based on regional representation, did not step aside because of “ethical” issues and “a lack of morals.” The person who had not stepped aside made a complaint to the president of the bargaining agent alleging that the complainant’s comments were harassing and defaming. The bargaining agent’s Executive Committee agreed with the complaint and wrote to the complainant on September 12, 2007, requesting that she apologize. The complainant declined to apologize, and the bargaining agent’s Board of Directors apologized on the complainant’s behalf. The complainant then filed a complaint dated November 16, 2007 with the Public Service Labour Relations Board (“the Board”) alleging that this was a form of penalty and discipline and it was done in a discriminatory manner contrary to paragraph 188(c) of the Act.*

*[4] The second complaint is dated April 11, 2008 (but was filed with the Board on July 8, 2008) and it relates to a decision by the bargaining agent to issue a policy about applications to “outside bodies.” The Board was included as an outside body under that policy. The effect of the policy is that, “. . . where a member . . . refers a matter which has been or ought to have been referred to the Institute’s internal procedure to an outside process or proceeding for consideration, that member . . . shall automatically be temporarily suspended . . .” from any elected or appointed office. On April 9, 2008, the complainant was advised by the bargaining agent’s acting president that, pursuant to that policy and because of her complaint to the Board, she was temporarily suspended from four positions to which she was either elected or appointed. She was also advised that the temporary suspension would cease once the outside procedures had been finally terminated for any reason. The complainant submits that the policy and its application amount to discrimination against her with respect to her membership in an employee organization, it is intimidation and coercion, and imposes a financial or “other penalty” on her because she made an application to the Board, contrary to subparagraph 188(e)(ii) of the Act.*

The Board dismissed the complaint in PSLRB File No. 561-34-202. However, the applicant was successful in part in PSLRB File No. 561-34-339 and the Board ordered the following:

...

[143] *The bargaining agent is directed to rescind the application of its “Policy Relating to Members and Complaints to Outside Bodies” to the complainant.*

[144] *The bargaining agent is directed to amend its “Policy Relating to Members and Complaints to Outside Bodies” to ensure that it complies with the Act.*

[145] *The bargaining agent is directed to restore the complainant’s status as an elected official of the bargaining unit and to advise its members and officials, in the form described in paragraph 131 of the decision, that she has been reinstated to all of her elected and appointed positions subject to the normal operation of the constitution and by-laws of the bargaining agent.*

...

[5] The applicant requested that the Board file 2009 PSLRB 103 in the Federal Court. In *Bremsak v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 159, the Board found that, although the PIPSC had complied with paragraph 144 of 2009 PSLRB 103, it had not complied with paragraphs 143 and 145 and ordered that 2009 PSLRB 103 be filed in the Federal Court. This was done on December 8, 2009.

[6] In a complaint dated December 10, 2009, against the PIPSC and a number of PIPSC employees and members, the applicant challenged among other things her five-year suspension from PIPSC’s membership (PSLRB File Nos. 561-02-430 and 597-02-9, to be heard August 22 to September 2 and October 27 and 28, 2011, as the case may be, with PSLRB File Nos. 561-34-404 and 405 and 597-02-3 and 4).

[7] By letter dated December 31, 2009, the applicant sought a reconsideration of that part of 2009 PSLRB 103 that dismissed her complaint in PSLRB File No. 561-34-202. That application for reconsideration was dismissed in *Bremsak v. Professional Institute of the Public Service of Canada*, 2010 PSLRB 126.

[8] On June 17, 2010, in *Bremsak v. Professional Institute of the Public Service of Canada*, 2010 FC 661, the Federal Court ordered a representative of the PIPSC to appear before the Court at a contempt hearing to deal with the PIPSC’s failure to comply with paragraphs 143 and 145 of 2009 PSLRB 103. On April 1, 2011, in *Bremsak v. Professional Institute of the Public Service of Canada*, 2011 FC 406, the Federal Court issued a stay of the contempt hearing in the following terms:

...

*[10] Clearly, a central aspect of the Institute's defence to a finding of contempt is lawful excuse. During the hearing in Vancouver I had ruled out any evidence by either party on the issue of whether the Executive Committee's decision to suspend her from membership on the basis of the harassment complaint could not be entertained by the Court because the matter of the validity of the Executive Committee's decision was before the PSLRB [PSLRB File No. 561-02-430] and it would be improper for me to adjudicate on the issue which Parliament had mandated the PSLRB, a specialized tribunal in labour matters, to deal with. In my view, success or failure by Ms. Bremsak before that tribunal is material to her success or failure in the contempt hearing. In the interests of justice, I expressed, yesterday, my opinion to the parties that I should stay the proceedings before me until the PSLRB adjudicated on her complaints on her membership suspension or until a judicial review of that decision was determined, a matter which must be dealt with by the Federal Court of Appeal.*

...

[9] To this date, the applicant remains suspended from PIPSC's membership and has not been reinstated to her elected positions within the PIPSC.

[10] The complaints and applications that are the subject of this decision are connected to 2009 PSLRB 103 and were filed by the applicant after that decision was rendered.

### **III. Summary of the parties' positions**

[11] I will now set out the parties' positions on the complaints and applications that are the subject of this decision. The complaint and application in PSLRB File Nos. 561-02-408 and 597-02-1 are dealt with in more detail as the written materials filed by the parties for the other complaints and applications are repetitive.

#### **A. PSLRB File Nos. 561-02-408 and 597-02-1**

[12] The applicant filed a complaint under paragraph 190(1)(g) of the *Act* against five respondents (listed in the appendix to this decision). She provided the following concise statements of the acts or omissions of each respondent:

*June 3, 2009 — The Complainant's Representative informed the Respondents of the 2009 PSLRB 58 and 64 decision that PIPSC Policy Related to Members and Complaints to Outside*

*Bodies (Policy) was ruled to be against the PSLRA section 188 (Mr. Guy Veillette's complaints). This was done before a Vancouver Branch Executive Meeting commenced. The Representative formally requested acknowledgement of these decisions and re-instatement of the Complainant. The Respondents refused. The Representative left prior to the meetings' start.*

*June 29, 2009 — The Complainant filed a PSLRB complaint against the Respondents, file # 561-34-405.*

*June 30, 2009 — The Complainant received a formal harassment complaint from PIPSC from the above Respondents.*

*July 24, 2009 — PIPSC submitted a response to PSLRB complaint 561-34-405 paragraph 13. In it, PIPSC legal representatives state, "At all relevant times, the Respondents [K Kerr, G Kendell, S Ansari, T Peters, Q Jansen] were acting in accordance with the directions and instructions of the Institutes' Board of Directors." Three of the Respondents in the previous complaint are the same as in this one. The fourth Respondent is also a member of the Vancouver Branch executive and was instructed by the Board of Directors.*

*August 26, 2009 — PSLRB ruled, decision 2009 PSLRB 103, that the Policy was illegal and the Complainant was to be immediately re-instated. To date, PIPSC continues to refuse to obey the PSLRB orders.*

*This Respondents' conscious action of filing a harassment complaint against the Complainant is in violation of PSLRA section 188 as a result of the Complainant's complaints. The Respondents have intentionally violated my rights under the PSLRA.*

[Sic throughout]

[PSLRB File No. 561-34-405, to be heard August 22 to September 2 and October 27 and 28, 2011, as the case may be, with PSLRB File Nos. 561-34-404, 561-02-430 and 597-02-3, 4 to 9.]

[13] The respondents' reply sets out that all the individual respondents are members of the PIPSC and hold either elected or appointed positions within the PIPSC. They each filed a harassment complaint against the applicant under the PIPSC's harassment policy before they were notified on July 10, 2009 of the applicant's complaint in PSLRB File No. 561-34-405, and an outside investigator conducted the investigations. The respondents submit that the complaint is devoid of any factual or legal basis that would give rise to the Board's jurisdiction and that it sets out no violation of section

188 of the *Act*. The respondents submit that the complaint is frivolous, vexatious and an abuse of the Board's process and that it should be dismissed summarily, without a hearing. The respondents state that section 188 cannot be interpreted as preventing PIPSC members from making harassment complaints and from having them investigated. The respondents state that section 188 is not an invitation for the Board to involve itself in the internal affairs of an employee organization unless that section was clearly breached.

[14] The applicant's rebuttal sets out her views of earlier Board decisions and her arguments about the application of section 188 of the *Act*. The salient parts of her rebuttal are the following:

- the Board decided two of her complaints in 2009 PSLRB 103;
- those complaints covered violations only up to the date on which each was filed, and she had to submit new complaints for later violations.

I note that the continuing event, which is not in dispute, is that, when she filed this complaint, the applicant had not been reinstated to her positions within the PIPSC.

[15] The applicant also seeks the Board's consent to prosecute the respondents under sections 200 and 202 of the *Act* for breaches of section 188, as follows:

*July 7, 2008 — The Complainant filed a PSLRB complaint against several of the Respondents, file # 561-34-339. On August 26, 2009, the PSLRB ruled in decision 2009 PSLRB 103 that the complaint was allowed.*

*June 3, 2009 — The Complainant's Representative informed the Respondents of the 2009 PSLRB 58 and 64 decision that PIPSC Policy Related to Members and Complaints to Outside Bodies (Policy) was ruled to be against the PSLRA section 188 (Mr. Guy Veillette's complaints). This was done before a Vancouver Branch Executive Meeting commenced. The Representative formally requested acknowledgement of these decisions and re-instatement of the Complainant. The Respondents refused. The Representative left prior to the meetings' start.*

*June 29, 2009 — the Complainant filed a PSLRB complaint against the Respondents, file # 561-34-405.*



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*June 30, 2009 — The Complainant received a formal harassment complaint from PIPSC from the above Respondents.*

*July 24, 2009 — PIPSC submitted a response to PSLRB complaint 561-34-405 paragraph 13. In it, PIPSC legal representatives state, “At all relevant times, the Respondents [K Kerr, G Kendell, S Ansari, T Peters, Q Jansen] were acting in accordance with the directions and instructions of the Institutes’ Board of Directors.” Three of the Respondents in the previous complaint are the same as in this one. The fourth Respondent is also a member of the Vancouver Branch executive and was instructed by the Board of Directors.*

*August 26, 2009 — PSLRB ruled, decision 2009 PSLRB 103, that the POLICY RELATING TO MEMBERS AND COMPLAINTS TO OUTSIDE BODIES was illegal and the Complainant was to be immediately re-instated. To date, PIPSC continues to refuse to obey the PSLRB orders.*

*On September 3, 2009, the stay of proceeding by PIPSC against Mr. Veillette in the Federal Court of Appeal had been denied. PIPSC has continued to refuse follow the PSLRB orders and reinstate Mr. Veillette and removed the current version of the POLICY RELATING TO MEMBERS AND COMPLAINTS TO OUTSIDE BODIES which is also used to illegitimately suspend the Complainant.*

*This Respondents’ conscious action of filing a harassment complaint against the Complainant is in violation of PSLRA section 188 as a result of the Complainant’s complaints. The Respondents have intentionally violated my rights under the PSLRA.*

*PIPSC and the Respondents have intentionally violated my rights as a member with regard to these complaints.*

*To date, PIPSC and the Respondents have continued to disregard the PSLRB orders.*

*[Sic throughout]*

*[PSLRB File No. 561-34-405, to be heard August 22 to September 2 and October 27 and 28, 2011, as the case may be, with PSLRB File Nos. 561-34-404, 561-02-430 and 597-02-3, 4 to 9.]*

I note that the only new point in this application is that the Federal Court of Appeal refused to issue a stay of proceedings with respect to the Board’s order in *Veillette*. The PIPSC had not reinstated the applicant to her positions when the application was filed.

[16] The respondents submit that applications for consent to prosecute are extremely serious and are not routine (*Quadrini v. Canada Revenue Agency and Hillier*, 2008 PSLRB 37). This application is premature, as the Board has not yet determined that the Act was violated. The Board should give considerable weight to the applicant's misconduct in submitting multiple complaints to the Board that are frivolous and vexatious (*Treasury Board v. Power*, PSSRB File No. 194-02-50 (19790116), and *Treasury Board v. Brunet et al.*, PSSRB File Nos. 194-02-14, 17 and 18 (19720922)).

[17] In her rebuttal, the main new points raised by the applicant are the following:

...

*15. Each and every complaint filed by the Complainant is the result of each act which that [sic] the Respondents failed to follow the PSLRA and the 2009 PSLRB 103 orders. As such, none of the complaints filed with the PSLRB are frivolous or vexatious.*

*16. If the Respondents would have followed the PSLRA and obeyed the PSLRB orders, the complaints could have been resolved. It is the refusal by the Respondents to follow the PSLRA that has forced the Complainant to protect her legal rights and file these complaints.*

*17. The clear defiance of the Respondents in refusal [sic] to comply with the orders of the PSLRB makes the circumstances of this particular case serious and exceptional, so that the PSLRB should warrant the granting of the Consent to Prosecute.*

...

**B. PSLRB File Nos. 561-02-409 and 597-02-2**

[18] The applicant filed a complaint under paragraph 190(1)(g) of the Act against six respondents (listed in the appendix to this decision). She provided the following concise statements of the acts or omissions of each respondent:

*June 12 pm [sic], June 13, 2009 all day — PIPSC BC/Yukon Regional Council (PIPSC BC/Yukon Annual General Meeting)*

- *PIPSC acting president - Gary Corbett, Vice President (VP) - Don Burns, VP - David Gray, Director - Dan Jones and Vancouver Office Manager - Evan Heidinger, refused to allow IB to participate in the PIPSC BC/Yukon Regional Council (PIPSC BC/Yukon Annual General Meeting).*

- *The Respondents refused to allow the Complainant to speak on issues or resolutions and to vote on resolutions. This is in violation of PIPSC member's rights.*
- *The Respondents isolated the Complainant by herself, by removing her to the side of the conference room beside the refreshments. They clearly indicated that the Complainant was not to join the delegates, observers and staff and the [sic] no table, no pens, stationary would be provided to the Complainant.*

*Two weeks before the BC/Yukon AGM, the Respondents were aware of Mr. Guy Veillette's decision that the PIPSC Policy Related to Members and Complaints to Outside Bodies (Policy) was found to be against the PSLRA. The Respondents made a conscious decision to continue to enforce this policy against the order of the PSLRB and therefore continue the illegitimate suspension of the Complainant.*

*This conscious act by the Respondents is again another violation of PSLRA section 188.*

*On August 26, 2009, the PSLRB once again ruled in decision 2009 PSLRB 103 that the Policy was illegal and the Complainant was to be immediately re-instated. To date, PIPSC continues to refuse to obey the PSLRB orders.*

*PIPSC has intentionally violated my rights as a member with regard to this complaint.*

The issues about that meeting are noted in another complaint and application (PSLRB File Nos. 561-34-404 and 597-02-3), which will be heard August 22 to September 2 and October 27 and 28, 2011, as the case may be, with PSLRB File Nos. 561-34-405, 561-02-430 and 597-02-4 and 9).

[19] The respondents' reply sets out that all the individual respondents are members of the PIPSC and hold either elected or appointed positions within the PIPSC. They submit that the complaint is devoid of any factual or legal basis that would give rise to the Board's jurisdiction and that it sets out no violation of section 188 of the *Act*. The respondents submit that the complaint is frivolous and vexatious and that it should be dismissed summarily, without a hearing. The respondents submit that the complaint is not properly before the Board because it is an attempt to interpret and apply to the applicant's circumstances an order issued in another matter. Further, the applicant has already filed another complaint (PSLRB File No. 561-34-404) contesting the continuation of her suspension following *Veillette*.

[20] In rebuttal, the applicant sets out arguments that are similar to those in relation to her complaint in PSRLB File No. 561-02-408.

[21] The applicant also seeks the Board's consent to prosecute the respondents under sections 200 and 202 of the Act for breaches of section 188, as follows:

*June 12 pm, June 13, 2009 all day — PIPSC BC/Yukon Regional Council (PIPSC BC/Yukon Annual General Meeting)*

- *PIPSC acting president - Gary Corbett, Vice President (VP) - Don Burns, VP - David Gray, Director - Dan Jones and Vancouver Office Manager - Evan Heidinger, refused to allow IB to participate in the PIPSC BC/Yukon Regional Council (PIPSC BC/Yukon Annual General Meeting).*
- *The Respondents refused to allow the Complainant to speak on issues or resolutions and to vote on resolutions. This is in violation of PIPSC member's rights.*
- *The Respondents isolated the Complainant by herself, by removing her to the side of the conference room beside the refreshments. They clearly indicated that the Complainant was not to join the delegates, observers and staff and the no table, no pens, stationary would be provided to the Complainant.*

*Two weeks before the BC/Yukon AGM, the Respondents were aware of Mr. Guy Veillette's decision that the PIPSC Policy Related to Members and Complaints to Outside Bodies (Policy) was found to be against the PSLRA. The Respondents made a conscious decision to continue to enforce this policy against the order of the PSLRB and therefore continue the illegitimate suspension of the Complainant.*

*This conscious act by the Respondents is again another violation of PSLRA section 188.*

*On August 26, 2009, the PSLRB once again ruled in decision 2009 PSLRB 103 that the POLICY RELATING TO MEMBERS AND COMPLAINTS TO OUTSIDE BODIES was illegal and the Complainant was to be immediately re-instated. To date, PIPSC continues to refuse to obey the PSLRB orders.*

*On September 3, 2009, the stay of proceeding by PIPSC against Mr. Veillette in the Federal Court of Appeal had been denied. PIPSC has continued to refuse follow the PSLRB orders and reinstate Mr. Veillette and removed the current version of the POLICY RELATING TO MEMBERS AND COMPLAINTS*

*TO OUTSIDE BODIES which is also used to illegitimately suspend the Complainant.*

*PIPSC has intentionally violated my rights as a member with regard to this complaint.*

*To date, PIPSC has continued to disregard the PSLRB orders.*

[Sic throughout]

[22] In reply, the respondents submit the same arguments than those in relation to the application for consent to prosecute in PSRLB File No. 597-02-1.

[23] In rebuttal, the applicant submits arguments that are similar to those in relation to the application for consent to prosecute in PSRLB File No. 597-02-1.

**C. PSLRB File Nos. 561-02-415 and 597-02-5**

[24] The applicant filed a complaint under paragraph 190(1)(g) of the *Act* against 20 respondents (listed in the appendix to this decision). She provided the following concise statements of the acts or omissions of each respondent:

*October 15, 2009, 8:45-9:15 am [sic] — PIPSC BC/Yukon Regional Executive Meeting, Wosk Centre (downtown Vancouver) — Dan Jones, on behalf of PIPSC Board of Directors, indicated that the Regional Executive would be following the Board of Directors' decision to continue the illegal suspension of the Complainant, as per decision 2009 PSLRB 103. D Jones stated that PIPSC is not required to obey the PSLRB orders in the said decision as instructed by PIPSC legal counsel.*

*This conscious act by the Respondents is a continued violation of PSLRA section 188. PIPSC has intentionally violated my rights as a member with regard to this complaint.*

[Emphasis in the original]

[25] The respondents' reply sets out that all the individual respondents are either employees of the PIPSC or members of the PIPSC who hold elected or appointed positions within the PIPSC. They submit arguments that are similar to those in relation to the complaint in PSRLB File No. 561-02-409.

[26] In rebuttal, the applicant sets out arguments that are similar to those in relation to her complaint in PSRLB File No. 561-02-408.

[27] The applicant also seeks the Board's consent to prosecute the respondents under sections 200 and 202 of the Act for breaches of section 188, as follows:

*The Complainant's reason for filing with the PSRLB is the continued harassing and retaliatory nature of PIPSC' Policy Relating to Members and Complaints to Outside Bodies (Policy). This Policy was originally put in place to coerce and intimidate the Complainant into dropping her original complaint, Ref# 561-34-202 against the PIPSC President.*

*The complainant filed a second complaint, Ref# 561-34-339, specifically regarding the Policy, which completely violates the PSLRA and the Principle of Nature Justice since there is no mechanism for dispute.*

*On May 29, 2009, 2009 PSLRB 64 decision, the PSLRB ruled that PIPSC' Policy Relating to Members and Complaints to Outside Bodies was unlawful. As such, any suspension resulting from this Policy was also unlawful.*

*On August 26, 2009, the PSLRB once again ruled in decision 2009 PSLRB 103 that the POLICY RELATING TO MEMBERS AND COMPLAINTS TO OUTSIDE BODIES was illegal and the Complainant was to be immediately re-instated. To date, PIPSC continues to refuse to obey the PSLRB orders.*

*On September 3, 2009, the stay of proceeding by PIPSC against Mr. Veillette in the Federal Court of Appeal had been denied. PIPSC has continued to refuse follow the PSLRB orders and reinstate Mr. Veillette and removed the current version of the POLICY RELATING TO MEMBERS AND COMPLAINTS TO OUTSIDE BODIES which is also used to illegitimately suspend the Complainant.*

*October 15, 2009, 8:45-9:15 am — PIPSC BC/Yukon Regional Executive Meeting, Wosk Centre (downtown Vancouver) — Dan Jones, on behalf of PIPSC Board of Directors, indicated that the Regional Executive would be following the Board of Directors' decision to continue the illegal suspension of the Complainant, as per decision 2009 PSLRB 103. D Jones stated that PIPSC is not required to obey the PSLRB orders in the said decision as instructed by PIPSC legal counsel.*

*PIPSC has intentionally violated my rights as a member with regard to this complaint.*

*To date, PIPSC has continued to disregard the PSLRB orders.*

[Sic throughout]

[Emphasis in the original]

[28] In reply, the respondents submit the same arguments than those in relation to the application for consent to prosecute in PSRLB File No. 597-02-1.

[29] In rebuttal, the applicant submits arguments that are similar to those in relation to the application for consent to prosecute in PSRLB File No. 597-02-1.

**D. PSLRB File Nos. 561-02-416 and 597-02-6**

[30] The applicant filed a complaint under paragraph 190(1)(g) of the Act against 25 respondents (listed in the appendix to this decision). She provided the following concise statements of the acts or omissions of each respondent:

*October 7, 2009, 4:30-5:20 pm [sic] — prior to the start of the PIPSC Vancouver Branch Executive Committee Meeting at Moxie's (downtown Vancouver) — once again the above Respondents [Geoff Kendell, Sid Ansari, Stephen Lee, Quinton Jansen and Terry Peters] refused to re-instate the Complainant as a member of the said Executive Committee. G Kendell indicated that their decision was based on the previous decision of PIPSC Board of Directors to continue the Complainant's illegal suspension for having filed a complaint to the PSLRB based on PIPSC Policy Related to Members and Complaints to Outside Bodies (Policy). All above named Respondents were aware of decision 2009 PSLRB 103 which ruled that the policy was against the PSLRA. The Respondents once again made a conscious decision to continue to enforce this policy against the orders of the PSLRB and therefore continue the illegal suspension of the Complainant. G Kendell indicated and viewed a memo sent from PIPSC on his handheld device (Blackberry?) that he specifically, had recently been instructed to maintain the Complainant's suspension as ruled by PIPSC Board of Directors and legal counsel and not allow the Complainant to participate in the Executive meeting.*

*This conscious act by the Respondents is again another violation of PSLRA section 188. PIPSC has intentionally violated my rights as a member with regard to this complaint.*

[31] The respondents' reply sets out that all the individual respondents are either employees of the PIPSC or members of the PIPSC who hold elected or appointed positions within the PIPSC. They submit arguments that are similar to those in relation to the complaint in PSRLB File No. 561-02-409.

[32] In rebuttal, the applicant sets out arguments that are similar to those in relation to her complaint in PSLRB File No. 561-02-408.

[33] The applicant also seeks the Board's consent to prosecute the respondents under sections 200 and 202 of the Act for breaches of section 188, as follows:

*The Complainant's reason for filing with the PSLRB is the continued harassing and retaliatory nature of PIPSC' Policy Relating to Members and Complaints to Outside Bodies (Policy). This Policy was originally put in place to coerce and intimidate the Complainant into dropping her original complaint, Ref# 561-34-202 against the PIPSC President.*

*The complainant filed a second complaint, Ref# 561-34-339, specifically regarding the Policy, which completely violates the PSLRA and the Principle of Natural Justice since there is no mechanism for dispute.*

*On May 29, 2009, 2009 PSLRB 64 decision, the PSLRB ruled that PIPSC' Policy Relating to Members and Complaints to Outside Bodies was unlawful. As such, any suspension resulting from this Policy was also unlawful.*

*On August 26, 2009, the PSLRB once again ruled in decision 2009 PSLRB 103 that the POLICY RELATING TO MEMBERS AND COMPLAINTS TO OUTSIDE BODIES was illegal and the Complainant was to be immediately re-instated. To date, PIPSC continues to refuse to obey the PSLRB orders.*

*On September 3, 2009, the stay of proceeding by PIPSC against Mr. Veillette in the Federal Court of Appeal had been denied. PIPSC has continued to refuse follow the PSLRB orders and reinstate Mr. Veillette and removed the current version of the POLICY RELATING TO MEMBERS AND COMPLAINTS TO OUTSIDE BODIES which is also used to illegitimately suspend the Complainant.*

*October 7, 2009, 4:30-5:20 pm — prior to the start of the PIPSC Vancouver Branch Executive Committee Meeting at Moxie's (downtown Vancouver) — once again the above Respondents [Geoff Kendell, Sid Ansari, Stephen Lee, Quinton Jansen and Terry Peters] refused to re-instate the Complainant as a member of the said Executive Committee. G Kendell indicated that their decision was based on the previous decision of PIPSC Board of Directors to continue the Complainant's illegal suspension for having filed a complaint to the PSLRB based on PIPSC Policy Related to Members and Complaints to Outside Bodies (Policy). All above named Respondents were aware of decision 2009 PSLRB 103 which ruled that the policy was against the PSLRA. The Respondents once again made a conscious decision to*



*continue to enforce this policy against the orders of the PSLRB and therefore continue the illegal suspension of the Complainant. G Kendell indicated and viewed a memo sent from PIPSC on his handheld device (Blackberry?) that he specifically, had recently been instructed to maintain the Complainant's suspension as ruled by PIPSC Board of Directors and legal counsel and not allow the Complainant to participate in the Executive meeting.*

*This conscious act by the Respondents is again another violation of PSLRA section 188. PIPSC has intentionally violated my rights as a member with regard to this complaint.*

*To date, PIPSC has continued to disregard the PSLRB orders.*

[Sic throughout]

[34] In reply, the respondents submit the same arguments than those in relation to the application for consent to prosecute in PSLRB File No. 597-02-1.

[35] In rebuttal, the applicant submits arguments that are similar to those in relation to the application for consent to prosecute in PSRLB File No. 597-02-1.

#### **E. PSLRB File No. 597-02-7**

[36] The applicant also seeks the Board's consent to prosecute 19 respondents (listed in the appendix to this decision) under sections 200 and 202 of the Act for breaches of section 188, as follows:

*The complainant filed a complaint, Ref# 561-34-339, specifically regarding the Policy, which completely violates the PSLRA and the Principle of Nature Justice since there is no mechanism for dispute.*

*On August 26, 2009, the PSLRB ruled in decision 2009 PSLRB 103 that the POLICY RELATING TO MEMBERS AND COMPLAINTS TO OUTSIDE BODIES was illegal and was in violation of Section 188 of the PSLRA the [sic] Complainant was to be immediately re-instated. To date, PIPSC continues to refuse to obey the PSLRB orders.*

*October 28, 2009 — The Federal Court of Appeal dismissed both of the Resppondent's motion for a stay of Execution of the orders of 2009 PSLRB 103.*

*PIPSC has intentionally violated my rights as a member with regard to this complaint.*

*To date, PIPSC has continued to disregard the PSLRB orders.*

*[Sic throughout]*

[37] In reply, the respondents submit arguments that are similar to those in relation to the application for consent to prosecute in PSLRB File No. 597-02-1.

[38] In rebuttal, the applicant submits arguments that are similar to those in relation to the application for consent to prosecute in PSLRB File No. 597-02-1.

#### **IV. Reasons**

[39] I have determined that these complaints and applications can be dealt with appropriately by way of a decision based on the existing materials on file. I exercise my discretion under section 41 of the *Act* to decide these matters without an oral hearing based on the written submissions filed with the Board.

[40] This case is unique. The applicant launched many proceedings. Her initial complaints in PSLRB File Nos. 561-34-202 and 339 arose from an apology that the PIPSC Board of Directors made on her behalf when she refused to apologize for comments that she had made about another PIPSC member and her automatic temporary suspension from her elected PIPSC positions.

[41] This may be a good example of how matters can escalate and become more complicated than necessary. This decision addresses complaints and applications made after the Board rendered 2009 PSLRB 103. The applicant's primary dispute is with the PIPSC, although she has also named persons whom she alleges participated or counselled with the decision to maintain her suspension, including PIPSC staff lawyers.

[42] The applicant complained that the respondents continue to fail to comply with 2009 PSLRB 103 and that they have failed to comply in a variety of ways. Some situations appear, at least from the materials before me, to have resulted from the applicant or her representative showing up at meetings or from encountering executive members of the PIPSC. She appears to have made other complaints and applications because time passed after 2009 PSLRB 103 was rendered, and she was not reinstated. In my view, it is unnecessary and unhelpful to file multiple applications for each alleged transgression when the real issue is whether the order to reinstate the applicant is enforceable and whether the breach of the order continues over time.

[43] It is clear that the applicant wishes to be reinstated to her elected positions within the PIPSC, that she has pressed the PIPSC for reinstatement and that the PIPSC has not reinstated her. However, I find it unnecessary to decide whether the events described by the applicant are true because the complaints and applications subject to this decision must be dismissed. The complaints that are the subject of this decision deal with the same thing —the application of the *Policy* to the applicant. In some sense, the incidents alleged in the complaints can be considered fresh, but really, they all relate to the applicant's underlying point that the *Policy* was invalid, that it was inappropriately applied to her and that she should have the right to resume her PIPSC duties. Her underlying concern is enforcing 2009 PSLRB 103, which clearly follows from paragraphs 16 and 17 of her rebuttal in PSLRB File No. 597-02-1:

*16. If the Respondents would have followed the PSLRA and obeyed the PSLRB orders, the complaints could have been resolved. It is the refusal by the Respondents to follow the PSLRA that has forced the Complainant to protect her legal rights and file these complaints.*

*17. The clear defiance of the Respondents in refusal [sic] to comply with the orders of the PSLRB makes the circumstances of this particular case serious and exceptional, so that the PSLRB should warrant the granting of the Consent to Prosecute.*

Her complaints are essentially about enforcing 2009 PSLRB 103.

[44] The decision in 2009 PSLRB 103 completely disposed of the applicant's underlying concerns that she was unfairly treated by the automatic application of the *Policy* that prevented her from exercising her rights. The factual and legal issues concerning the underlying dispute that gave rise to the application of the *Policy* to the applicant and her effective removal from her PIPSC offices were canvassed in a full and detailed manner by the Board in 2009 PSLRB 103. The Board has pronounced on the dispute between the applicant and the PIPSC, found in her favour, and made orders.

[45] Furthermore, the Board issued 2009 PSLRB 159, which lead to filing 2009 PSLRB 103 in the in Federal Court for enforcement purposes. In rendering 2009 PSLRB 159, the Board found that the PISPC had amended the *Policy* to comply with the *Act*. However, the Board also found that the PIPSC had not rescinded the application of the *Policy* to the applicant, had not reinstated her to her elected PIPSC positions and had

not advised its members and officials, in the form prescribed, that the applicant has been reinstated to all of her elected and appointed positions.

[46] In my view, there is no legitimate labour relations purpose in adjudicating numerous complaints on the same subject matter, between the same parties, after the issuance of 2009 PSLRB 103. The Board has determined the initial complaint (PSLRB File No. 561-34-339) about the *Policy* and its application to the applicant. The real issue, as the Board stated in 2009 PSLRB 159, is whether 2009 PSLRB 103 is enforceable. In my view, the applicant is clearly using the wrong forum for the complaints at hand. Further, the applicant's numerous applications for consent to prosecute indicate a fundamental misunderstanding of the relationship between administrative tribunals, such as the Board, and the Courts.

[47] As the Federal Court wrote in 2010 FC 661, at para 23, "Orders of administrative tribunals are meant to be complied with. . . ." The power to punish for contempt rests generally in the inherent jurisdiction of a superior court as it rests in the ability to invoke the coercive power of the state. Incarceration is a possible punishment for contempt. The Board has no inherent power to punish a party for contempt of one of its orders; it is a creature of statute and has the jurisdiction that its statute bestows on it, which does not include punishing contempt of its orders. Administrative tribunals often rely on a process in which orders are recognized or registered with a court for enforcement purposes. The tribunal's order then becomes an order of the court and is enforceable as such.

[48] The applicant filed a contempt application in the Federal Court (Federal Court File No. T-2049-09). In 2010 FC 661, the Federal Court ordered a representative of the PIPSC to appear before the Court at a contempt hearing to deal with the PIPSC's failure to comply with paragraphs 143 and 145 of 2009 PSLRB 103. A person who disobeys an order may or may not have a legitimate or lawful reason. That question is to be answered by the Federal Court in the contempt application before it. In 2011 FC 406, the Federal Court issued a stay of the contempt hearing until the Board adjudicated on the applicant's complaint on her membership suspension (PSLRB File No. 561-02-430, to be heard August 22 to September 2 and October 27 and 28, 2011, as the case may be) or until that decision had been judicially reviewed.

[49] Other complaints and applications filed by the applicant have been set for an oral hearing to deal with distinct allegations (PSLRB File Nos. 561-34-404 and 405 and

597-02-3, 4 and 9, to be heard August 22 to September 2 and October 27 and 28, 2011, as the case may be, with PSLRB File No. 561-02-430). Those matters may go to the issue of whether the PIPSC has a reason for not reinstating the applicant to her elected PIPSC positions.

[50] Finally, the applicant's allegation that some respondents have filed harassment complaints against her because she had filed complaints with the Board appears to also form part of her complaint in PSLRB File No. 561-34-405. That allegation will therefore be addressed at the hearing in PSLRB File No. 561-34-405, to be held August 22 to September 2 and October 27 and 28, 2011, as the case may be (with PSLRB File Nos. 561-34-404, 561-02-430 and 597-02-3, 4 to 9), and determined in the decision that will follow.

[51] Given that I have dismissed the complaints subject to this decision, the related applications for consent to prosecute are also dismissed.

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

*(The Order appears on the next page)*

**V. Order**

[53] The complaints in PSLRB File Nos. 561-02-408, 409, 415 and 416 and the applications for consent to prosecute in PSLRB File Nos. 597-02-1, 2 and 5 to 7 are dismissed.

July 22, 2011.

**Paul Love,  
Board Member**

APPENDIX

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<b><u>PSLRB File Nos.</u></b>	<b><u>Respondents</u></b>
561-02-408 and 597-02-1	Professional Institute of the Public Service of Canada Kathleen Kerr Geoff Kendell Stephen Y. Lee Siddiq Ansari
561-02-409 and 597-02-2	Professional Institute of the Public Service of Canada Gary Corbett Don Burns David Gray Dan Jones Evan Heidinger
561-02-415 and 597-02-5	Professional Institute of the Public Service of Canada Dan Jones Professional Institute of the Public Service of Canada Board of Directors Gary Corbett Don Burns David Gray Al Ravjiani Helene Rogers Marilyn Best Robert Bowie-Reed Yvon Brodeur Richard Depuis Robert Hunter Pascal Joseph Sean O'Reilly Joe Podrebarac Nita Saville Professional Institute of the Public Service of Canada legal counsel Geoffrey Grenville-Wood Isabelle Roy
561-02-416 and 597-02-6	Professional Institute of the Public Service of Canada Geoff Kendell Sid Ansari Stephen Lee Quinton Jansen Terry Peters Professional Institute of the Public Service of Canada Board of Directors Gary Corbett Don Burns David Gray Al Ravjiani Helene Rogers

Marilyn Best  
Robert Bowie-Reed  
Yvon Brodeur  
Richard Depuis  
Robert Hunter  
Dan Jones  
Pascal Joseph  
Sean O'Reilly  
Joe Podrebarac  
Nita Saville  
Professional Institute of the Public Service of Canada legal  
counsel  
Geoffrey Grenville-Wood  
Isabelle Roy

597-02-7

Professional Institute of the Public Service of Canada  
Gary Corbett  
Helene Rogers  
Don Burns  
David Gray  
Marilyn Best  
Yvon Brodeur  
Stephanie Chevalier  
Richard Depuis  
Robert Hunter  
Sean O'Reilly  
Joe Podrebarac  
Al Ravjani  
Nita Saville  
Geoffrey Grenville-Wood  
Kathleen Kerr  
Geoff Kendell  
Rejean Simard  
Evan Heidinger