Date: 20130802

File: 561-02-607

Citation: 2013 PSLRB 93

Public Service Labour Relations Act

Before a panel of the Public Service Labour Relations Board

BETWEEN

NIALL MICHAEL ZELEM

Complainant

and

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA, GARY CORBETT, NANCY LAMARCHE, AND SIMON FERRAND

Respondent

Indexed as
Zelem v. Professional Institute of the Public Service of Canada et al.

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

REASONS FOR DECISION

Before: John G. Jaworski, a panel of the Public Service Labour Relations Board

For the Complainant: Himself

For the Respondents: Isabelle Roy, counsel

Decided on the basis of written submissions,
filed March 15, April 12, May 15, 17 and 30, June 6, 11, and 19, 2013.

I. Complaint before the Board

[1] On March 15, 2013, Niall Michael Zelem ("the complainant"), filed a complaint against the Professional Institute of the Public Service of Canada ("the PIPSC"), Gary Corbett, Nancy Lamarche and Simon Ferrand (collectively, "the respondents") under paragraph 190(1)(*g*) of the *Public Service Labour Relations Act* ("the *Act").*

[2] The complaint arose out of the representation by the PIPSC in a grievance against the termination of the grievor's employment ("the grievance"), and the details of the complaint are set out in two appendices attached to it.

[3] In December 2012, the PIPSC representative who was representing the complainant in his grievance went on leave for an indeterminate amount of time, and as such, another PIPSC representative had to assume representation with respect to the grievance. The complainant wrote to the PIPSC and requested that he be permitted input into the choice of his new representative.

[4] The PIPSC allegedly did not respond to his request, and the complainant subsequently wrote to Mr. Corbett, reiterating his request. The PIPSC did not accede to his request and assigned Mr. Ferrand as his representative.

[5] The complainant requests as relief that Mr. Ferrand not be his representative in his grievance and that Eric Langlais, another PIPSC representative, represent him instead. In addition, he requests that ". . . all work setting complaints and air quality complaints for the past seven years (date of request December 2012) as requested by my original union representative Mrs. Ross be duplicated and one copy be produced to me while the second copy is stored at P.I.P.S.C." The complainant also seeks compensation in an amount deemed fit by the Public Service Labour Relations Board ("the Board") and the dissolution of the PIPSC.

[6] The respondents filed a response to the complaint on April 12, 2013, and the complainant filed a rebuttal to the response on May 15, 2013.

[7] On May 17, 2013, the complainant forwarded to the Board and the respondents, via email, a copy of his rebuttal to the respondents' written submissions. In forwarding this rebuttal, he added three new names in the recipient line. In addition to adding these names to the recipient line, in the body of the email the complainant states as follows:

> *A copy of letter faxed to all parties on May 15th, 2012 exits below.*
>
> *Three new recipients have been added as parties to my P.S.L.R.B. complaint Reference No. 561-02-607.*

[8] On May 30, 2013, in response to the complainant's May 17, 2013 email, counsel for the respondents emailed the Board, copying the complainant, requesting clarification of the meaning of the complainant's reference to adding respondents.

[9] On June 6, 2013, the Board wrote to the parties and advised the parties as follows:

> *The panel of the Board takes the position that the complainant has not, in his email date May 17, 2013, added any parties or respondents to his complaint. From the language used by the complainant, it appears that he merely intended to add three new recipients to his correspondence and referred to them incorrectly as "parties". In filing his complaint, the complainant clearly identified four respondents (PIPSC, Gary Corbett, Nancy Lamarche and Simon Ferrand), and the addition of any other respondents to the complaint would require the Board's approval after having heard the argument of both parties on the matter of amending the complaint. No such application was made by the complainant, and the respondents remain as identified previously in Board correspondence.*

[10] On June 6, 2013, the complainant emailed the Board and the respondents, as well as the three parties he had added to his email on May 17, 2013. In his June 6, 2013 email, the complainant states as follows:

> *On May 17th 2013 I sent a message indicating that three new respondents have been added, while including three new recipients in the address line of the electronic message. Note, amongst the recipients of the email it was evident that three identified email addresses were distinguishable in that they only reflected employees from my former place of work.*

[11] On June 7, 2013, the Board wrote to the parties, acknowledging receipt of both the respondents' correspondence of May 30, 2013 and the complainant's correspondence of June 6, 2013, and confirmed the Board's position with regard to the complainant's statement that new respondents/parties had been added. The Board's position with regard to the matter remained as set out in paragraph 9 above.

[12] On June 11, 2013, the complainant wrote to the Board and made application to amend the complaint and add as respondents Claude Mathieu, Andre Gelinas and Andrew Strong. The respondents replied to this application to amend on June 19, 2013 and stated that they opposed it.

II. Summary of the evidence

A. The complaint

[13] The complainant was employed at the Canadian Intellectual Property Office, an agency of Industry Canada ("the employer"). He was terminated from his position in April 2011. On October 3, 2012, with the assistance of the PIPSC, he filed the grievance against his termination, numbered as PSLRB File No. 566-02-8286. He was represented in the grievance by Laura Ross, an employment relations officer ("ERO") of the PIPSC.

[14] In late 2012, the complainant learned that Ms. Ross was going on extended leave. He stated that, on December 20, 2012, he wrote to Ms. Ross and requested that he be permitted a say in choosing his new ERO. He states that he suggested to Ms. Ross that she provide him the names of three individuals that she regarded as competent and that he would then choose one of them.

[15] According to the complainant, Ms. Ross confirmed to him that Ms. Lamarche, PIPSC National Capital Regional Office ("NCRO") Regional Representative, had received his message. He stated that his request was ignored. Subsequently, he brought his request forward to Mr. Corbett, PIPSC President and Chief Executive Officer, who he states also ignored it and, in addition, refused to permit Ms. Ross to draft arguments on the complainant's behalf before she left on leave.

[16] According to the complainant, on January 14, 2013, Mr. Ferrand, an ERO in the NCRO, was assigned to represent him in the grievance.

[17] The complainant alleges that Mr. Ferrand's portfolio included the Royal Canadian Mounted Police (RCMP). According to the complainant, there is a readily identifiable conflict of interest when union members are transferred to a representative who has a portfolio including the RCMP, as that compromises the members' ability to contact the RCMP; their right to an unadulterated approach to the RCMP is then tainted. He also alleges that this is a concern as the employer was delaying matters related to the grievance.

[18] In addition to Mr. Ferrand having the RCMP as part of his portfolio, the complainant also states that Mr. Ferrand represents members who are employed by the Correctional Service of Canada ("CSC"), the National Parole Board ("NPB") and the Department of Natural Resources ("DNR").

[19] The complainant alleges that Ms. Lamarche delayed remedying the situation for two months, and so he filed two human rights complaints under the Ontario *Human Rights Code* R.S.O. 1990, c. H. 19. The details and statuses of those complaints are unknown.

[20] The complainant states that he had reason to be upset about treatment he received in 2008. It would appear from his allegations that he was upset with how the PIPSC handled a matter involving employment evaluations, which contributed to the non-facilitating of his departure from work at the time of his sister's death. No further facts were provided.

[21] The complainant also takes issue with actions that the PIPSC may have taken publically about some actions by the federal government. He cited as an example the death of a Department of Justice ("DOJ") lawyer and Mr. Corbett's public response to it. He also takes issue with other actions by the federal government and is of the opinion that the PIPSC and Mr. Corbett should act on them.

[22] The complainant states that he believes that he was sprayed with a chemical at his work. He so notified his employer in December 2006. He states that certain tests were requisitioned by his physician and were carried out in 2008. He states that the results indicated a positive result of a substance. He included in his submissions a photocopy of a laboratory report. The complainant does not disclose the substance for which he stated he had tested positive and cannot state that he was exposed to the substance at work. The laboratory report attached to his submissions has portions redacted, including the results. The complainant believes that the exposure to the substance might have triggered long-term mental health issues that contributed to his inability to return to work.

[23] The complainant states that, in December 2012, Ms. Ross requested certain material from the employer, assumedly with respect to the grievance, about, in his words, ". . . work setting complaints and air quality complaints for the past seven years . . ."

[24] As of May 15, 2013, Mr. Langlais, the PIPSC representative that the complainant originally wanted as his ERO, is representing him in the grievance.

B. Application to amend the complaint to add respondents

[25] In his correspondence of June 11, 2013 requesting the Board to add Messrs. Mathieu, Gelinas and Strong, the only facts to support this request the complainant set out were as follows:

> 1. That these three individuals acted as Section Head managers at some point, between the years 2006 and 2008 while working on his floor.
>
> 2. That they, unlike Accommodation Building Management employees which have responsibility for the entire building encompassing numerous branches of different departments, were likely not inundated with work setting complaints on a daily basis.
>
> 3. They should be capable of recalling any relevant events.

[26] The respondents state that the three individuals, who the complainant is seeking to add, all appear to be individuals who may have been acting on behalf of the employer in their dealings with the complainant.

III. Summary of the arguments

A. Application to amend the complaint to add respondents

1. For the complainant

[27] The complainant argues that the justification for adding the three individuals, Messrs. Mathieu, Gelinas and Strong, is so apparent that it can be articulated void of the specifics of his former employment and current grievance process.

[28] In support of this position he relies on Article 125(s) [*sic*] of the Canada Labour Code (the "*Code*") (which he identified as the Canadian Labour Code) which states ". . . ensure that each employee is made aware of every known or foreseeable health or safety hazard in the area where the employee works." He states that the primary

purpose of this section of the *Code* is to ensure an informed workplace is established, such that the detection and prevention of predictable safety hazards can be accomplished.

[29] The complainant in his argument goes on to state that where a complaint is filed with the Board in which in part relief is sought in the form of work setting and air quality complaints, in accordance with the Code, safety safeguards should be implemented. Noting that he does not wish to be patronizing, he also articulates the response that he believes the Board should have sent him on June 6, and June 7, 2013. He submits that the addition of these three individuals as respondents also provides an ideal safety safeguard.

[30] The complainant argues that since Messrs. Mathieu, Gelinas and Strong all worked on his floor, at some point between 2006 and 2008 as Section Head managers, they should be capable of recalling any relevant events. He goes on to state that:

> *". . . had they followed proper procedure in notifying their superiors of any work setting complaints relating to events on my floor, then they would likely recognized their immunity to non-compliance with Article 125(s) of the Canadian Labour Code, if none compliance exists, making it more likely they would divulge any wrong doing, should wrong doing exist."*
>
> [*sic* throughout]

[31] The complainant states that by adding Messrs. Mathieu, Gelinas and Strong to the complaint, an onus is placed on them to divulge any pertinent information concerning non-compliance with Article 125(s) [*sic*] of the *Code*.

[32] At the conclusion of the motion, the complainant states that the only reason that this request could be denied would be on the basis of delay and that this would not be a justifiable reason for refusal of his motion, given that there are ways that the complaint process could have been accelerated.

2. For the respondents

[33] The respondents highlight the fact that the complaint is filed further to section 190 of the A*ct* and that the complainant alleges an unfair labour practice within the meaning of section 185 of the *Act*. They argue that Messrs. Mathieu, Gelinas and Strong appear to be employees at the management level, and as such, they are not in a

position to speak to their conduct as they are individuals acting on behalf of the employer. On this basis, the respondents state that they do not consent to these individuals being added as respondents in the complaint. Furthermore, the respondents also argue that they are not in a position to speak to the conduct of these individuals acting on behalf of the employer.

[34] The respondents note that the respondents named in the original complaint filed fall within the scope of potential complainants contemplated by section 187 of the *Act*, as they relate to the employee organization, its officers or its representatives. However, they submit that the three additional individuals provided in the June 11, 2013 letter are not within this scope.

[35] The respondents argue that the request should be denied.

B. The complaint

1. For the complainant

[36] The complainant argues that, due to how the PIPSC treated him in 2008 with respect to an issue with his employment evaluations and the death of his sister, for compassionate and ethical reasons, he should be permitted to choose his ERO.

[37] The complainant states that, from his perspective, some PIPSC executives, including Mr. Corbett, have failed to fulfill their obligations. As such, he doubts their ability to fairly appoint an ERO. In support of his position, he states that Mr. Corbett and other PIPSC executives were obligated to take a public stand about the death of a DOJ lawyer. The complainant goes on in his submission to set out what the PIPSC and Mr. Corbett should have articulated in communications sent to media outlets in relation to the death.

[38] The complainant states that, in his mind, the public conduct of PIPSC management raises serious questions as to its ability to appoint an ERO for his grievance in an equitable manner, thus necessitating him to select his own representative from whoever is available.

[39] The complainant argues that, as he had made a complaint about politicians to the RCMP, and as Mr. Ferrand is responsible for the RCMP, the respondents should never, under any circumstances, whether or not a PIPSC member brought a complaint

to the RCMP in the past, transfer a member from his or her original ERO to an ERO holding a portfolio encompassing the RCMP.

[40] The complainant states that he does not know anything about Mr. Ferrand. However, he states that Mr. Ferrand is responsible for the RCMP, the CSC, the DNR, and the NPB and that three of them are related to crime and encompass issues of a physical nature and in his opinion have the highest propensity to be politically controversial among all PIPSC membership categories. He further states that, given that he has been politically active in the past, it is reasonable for him to decline Mr. Ferrand as an ERO and to request someone else.

[41] In Appendix B to his complaint, the complainant states as follows:

. . .

> *. . . Mrs. Ross had requested accounts of work setting complaints and air quality complaints in December 2012 for the past seven years to which as far as I know my former employer had failed to deliver to Mrs. Ross since there was an usual [sic] delay by the health committee member of the employer and a subsequent abrupt transfer of her file by P.I.P.S.C. to Mr. Ferrand. I found that to be a strange sequence of events and sufficient reason to avoid dealing with Mr. Ferrand.*

. . .

2. <u>For the respondents</u>

[42] The respondents submit that the Board is without jurisdiction to consider the complaint as it raises issues solely related to the internal management of a labour union. The complaint does not allege that the complainant was denied representation; nor does it disclose any issues with respect to the quality of the representation. The complainant is still represented by the PIPSC.

[43] The gist of the complaint is that the complainant was not allowed to select the ERO to represent him with respect to his grievance, and he states general issues with the assignment of work by the PIPSC to its staff representatives.

[44] The respondents cite George W. Adams, *Canadian Labour Law*, Second Edition, at paragraph 13.266, as well as *Tucci v. Hindle,* [1997] C.P.S.S.R.B. No. 146 (PSSRB File No. 161-02-840 (19971229)), *White v. Public Service Alliance of Canada*, 2000 PSSRB 62,

and *Bracciale v. Public Service Alliance of Canada (Union of Taxation Employees, Local 00048)*, 2000 PSSRB 88, for the proposition that a labour board's jurisdiction to consider whether a bargaining agent acted in violation of its duty of fair representation does not extend to the labour board an oversight power over the internal affairs or the management of unions.

[45] The assignment of representatives and the distribution of work are matters of the internal management of a union's affairs, and the PIPSC has legitimate authority to determine how work is assigned across its organization. The Board's predecessor, the Public Service Staff Relations Board, opined on that point in *Tucci*, holding that it was outside its jurisdiction to hear a complaint by a union member who contended that it was an unfair labour practice for the union to deny him the representative of his choosing in a hearing.

[46] As the complaint has nothing to do with the complainant vis-à-vis his employer and everything to do with the internal affairs of the PIPSC, the Board is without jurisdiction, and the complaint should be dismissed.

[47] The respondents argue in the alternative that, if the Board concludes that it does have jurisdiction, they acted in a manner that could not be considered arbitrary, discriminatory or in bad faith in their representation of the complainant.

[48] The respondents state that the complainant bears the onus of establishing that they committed some breach of their duty under section 187 of the *Act*, and the complainant has not provided any such evidence.

[49] The respondents rely on *Rayonier of Canada (B.C.) Ltd. V. IWA, Local 1-217,* [1975] 2 Can. L.R.B.R. 196 (B.C.), which states at 201-202 as follows:

. . .

> *. . . The union must not be actuated by bad faith in the sense of personal hostility, political revenge, or dishonesty. There can be no discrimination, treatment of particular employees unequally whether on account of such factors as race and sex (which are illegal under the Human Rights Code) or simple personal favouritism. Finally, a union cannot act arbitrarily, disregarding the interests of one of the employees in a perfunctory matter. Instead, it must take a reasonable view of the problem before it and arrive at a thoughtful*

> *judgment about what to do after considering the various relevant and conflicting considerations.*
>
> . . .

[50] While the complainant makes vague reference in the complaint to the respondents knowing that he has "mental health issues," the respondents have not been provided with any information from the complainant that supports his contention that he cannot be represented by anyone other than Mr. Langlais.

[51] The respondents state that, absent any evidence of an established and substantiated requirement to be accommodated, the PIPSC cannot be held to have violated its duty of fair representation by choosing to deny a member's request to be represented by one staff member over another on the basis of mere suspicions or inference.

[52] The respondents made their decisions in good faith, after considering relevant information. The respondents were not motivated by any personal hostility; nor did they act arbitrarily or discriminate against the complainant.

3. Complainant's reply

[53] The complainant argues that the respondents' arguments are moot as operational activities within a union do fall within the jurisdiction of the Board. He states that the Board's mandate includes evaluating whether bargaining agents or employee memberships engaged in discrimination and, if so, to provide appropriate relief.

V. Reasons

A. Application to amend the complaint to add respondents

[54] During the course of the written submissions, the complainant attempted to unilaterally add three new respondents to the complaint by adding their names to the recipient addresses of his email forwarding his reply submissions on May 17, 2013.

[55] As no application to amend the complaint had been made, I took the position that these three named persons were not parties and the Board wrote to the parties confirming that position.

[56] On June 11, 2013, the complainant formally requested that the Board amend the complaint and add as respondents to the complaint, Messrs. Mathieu, Gelinas and Strong.

[57] The application to amend the complaint to add, as respondents, to the complaint, Messrs. Mathieu, Gelinas and Strong must fail for the reasons that follow.

[58] An unfair labour complaint against a bargaining agent under paragraph 190(1)(*g*) of the *Act,* alleging an unfair labour practice within the meaning of section 185 of the *Act*, means anything that is prohibited by section 187 of the *Act*. Section 187 states as follows:

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

[59] For any of Messrs. Mathieu, Gelinas and Strong to be a respondent to the complaint, they must either be an officer or employee of an employee organization. There is no evidence that any of Messrs. Mathieu, Gelinas and Strong are members of the respondent PIPSC, let alone either officers or employees of the respondent PIPSC. The complainant himself identifies them as employees of the employer at a management level.

[60] There is no evidence how any of Messrs. Mathieu, Gelinas and Strong, as an officer or an employee of an employee organization has acted in a manner which is allegedly arbitrary, discriminatory or in bad faith.

[61] The complainant has not provided any grounds for adding Messrs. Mathieu, Gelinas and Strong as respondents; and has provided no reference under either the *Act* or its regulations or any case law to support his position.

[62] Paragraph 125(1)(*s*) of the *Code,* which the complainant appears to be referring to as support for the addition of Messrs. Mathieu, Gelinas and Strong as respondents, states as follows:

> **125(1).** *Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is*

> *not controlled by the employer, to the extent that the employer controls the activity,*
>
> ***(s)** ensure that each employee is made aware of every known or foreseeable health or safety hazard in the area where the employee works.*

[63] Paragraph 125(1)(*s*) of the *Code* refers to and imposes responsibilities on the employer as defined by the *Code*. The complainant's employer as defined by the *Act* and the *Code*, is the Canadian Intellectual Property Office, an agency of Industry Canada. Paragraph 125(1)(*s*) has no bearing on the within complaint and is not relevant for the purposes of this complaint.

B. <u>The complaint</u>

[64] The respondents objected to the Board's jurisdiction on the basis that section 187 of the *Act* does not apply to the PIPSC's internal affairs.

[65] Since they objected to the Board's jurisdiction, the burden of proof is with the respondents to submit sufficient evidence to convince me that this matter is purely about internal union management. The material before me is insufficient to discharge that burden.

[66] A complaint filed under paragraph 190(1)(*g*) of the *Act* alleges an unfair labour practice within the meaning of section 185, which states as follows:

> ***185.** In this Division, "unfair labour practice" means anything that is prohibited by subsection 186(1) or (2), section 187 or 188 or subsection 189(1).*

[67] The portion of section 185 of the *Act* to which the complainant referred is section 187, which holds an employee organization to a duty of fair representation and states as follows:

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

[68] To be successful, the complainant has to establish that the respondents or their officers or representatives acted, in the course of their representation of him, in a manner that was arbitrary, discriminatory or in bad faith.

[69] The Board has often stated that a complainant has the burden of establishing a prima facie case that an unfair labour practice occurred. (See for example, *Halfacree v. Public Service Alliance of Canada*, 2009 PSLRB 28, *Halfacree v. Public Service Alliance of Canada,* 2010 PSLRB 64, *Baun v. National Component, Public Service Alliance of Canada*, 2010 PSLRB 127.)

[70] The complainant filed a grievance against his employer, which had terminated his employment in April 2011. He was and continues to be represented in this dispute by the PIPSC. In or about December 2012, he became aware that his ERO, Ms. Ross, was going on extended leave, so he wrote to the PIPSC and requested that he be permitted a say in who would replace her. He suggested that Ms. Ross recommend three individuals that she felt were competent and that he would pick one of them.

[71] According to the complainant, Ms. Lamarche knew of his request and did not act on it. As the PIPSC and Ms. Lamarche did not respond to his request, he wrote directly to the PIPSC president, Mr. Corbett. The PIPSC did not accede to the request and instead assigned Mr. Ferrand to represent him in the grievance against the employer. The complainant did not want Mr. Ferrand to represent him and instead wanted Mr. Langlais to be his representative. That action is the basis of the complaint before me.

[72] As it appears that, as of May 15, 2013, Mr. Langlais has replaced Mr. Ferrand in representing the complainant in his grievance, then that renders part of the relief sought in the complaint moot. However, the substance of the complainant's allegations must still be addressed.

[73] The complainant relies on the following three broad arguments to support his complaint:

1. his treatment by the PIPSC in 2008;
2. Mr. Ferrand's portfolio; and
3. the management of the PIPSC.

C. <u>His treatment by the PIPSC in 2008</u>

[74] The complainant states that, due to how he was treated by the PIPSC in 2008, he should be permitted to have a say in who at the PIPSC represents him. The complainant set out vague allegations about representation by the PIPSC in 2008. According to him, the PIPSC did not provide certifiable copies of employment evaluations in the same approximate period when his sister died, which somehow contributed to not facilitating his departure from work in advance of her death. According to the complainant, that demonstrates apathy on the part of the PIPSC and its management, and if they were compassionate and ethical, they would have given him the concession of selecting the ERO to replace Ms. Ross.

[75] Dissatisfaction with how one is treated does not equate to arbitrary, discriminatory or bad faith conduct. The allegations made by the complainant relating to events in 2008 do not in any way establish that somehow the decision to appoint Mr. Ferrand in 2013 was made in an arbitrary or discriminatory fashion or in bad faith. While the complainant might have had reason to be upset in 2008, he has not established that anything that occurred back then had any bearing on his representation in the grievance or the appointment of Mr. Ferrand as his ERO.

D. Mr. Ferrand's portfolio

[76] The complainant states in his submissions that he does not know anything about Mr. Ferrand and that he is not making a personal attack on Mr. Ferrand since he has not dealt with him or learned anything that would suggest that Mr. Ferrand is unethical. In fact, nothing in the material suggests that any action on the part of Mr. Ferrand in his capacity as an ERO of the PIPSC with respect to his representation of the complainant was arbitrary, discriminatory or in bad faith.

[77] The complainant relies heavily on the argument that no member should be required to have Mr. Ferrand as a representative because, as part of his duties, he could represent PIPSC members employed by the RCMP, the CSC, the DNR or the NPB, and those organizations (except the DNR) deal with crime and encompass issues of a physical nature and, in his opinion, have the highest propensity to be politically controversial. The complainant's argument seems to suggest that Mr. Ferrand is not *per se* problematic but that any representative of members employed by those organizations is problematic. The fact that Mr. Ferrand could have those organizations in his portfolio and that he could represent PIPSC members from those organizations,

which the complainant deems politically controversial, is not evidence of arbitrary, discriminatory or bad faith conduct by the PIPSC in relation to his representation.

[78] The complainant specifically singled out the fact that a representative who acts for members employed by the RCMP compromises other members (who are not employed by the RCMP) who may wish to contact the RCMP. He suggests that somehow that fact taints a PIPSC member's unadulterated approach to the RCMP. There is no evidence of that suggestion, and even if there was, it is not clear how this would breach section 187 of the *Act* and render the actions of any of the respondents arbitrary, discriminatory or in bad faith.

E. The management of the PIPSC

[79] The complainant argued that he is not satisfied with how the PIPSC and its executives handled several public issues. He cited as an example the death of a DOJ lawyer in September 2012 and how he felt that there was an inherent obligation on the PIPSC and its executives to make a well-articulated public statement about the incident, as the responsibility for DOJ lawyers falls to the PIPSC. He further argued that, in his opinion, the letter written by Mr. Corbett failed to address key issues and essential points. The complainant stated that that inability of the PIPSC and its management to act in a manner that he deemed appropriate raises questions as to the PIPSC's competency to appoint a representative to act on his behalf. The complainant goes on in his submissions to state what he thought the PIPSC executives should have done.

[80] DOJ lawyers are not represented by the PIPSC but by the Association of Justice Counsel - Association des Juristes de Justice. In any event, the fact that the complainant disagrees with a position taken by the PIPSC and Mr. Corbett does not in and of itself establish that section 187 of the *Act* was breached. The complainant must establish by way of evidence that something that the respondents, or in the case of the PISPC, its officers or representatives, did in their representation of him was in some way arbitrary, discriminatory or in bad faith. The complainant has not provided any such evidence.

[81] The complainant stated he filed two human rights complaints under the Ontario *Human Rights Code*. Other than stating that fact, there does not appear to be any link between those complaints and the alleged violation of section 187 of the *Act*. The

complainant does not elaborate on what rights he alleges were violated and how the alleged violations, if any, were discriminatory.

[82] The documents and facts submitted by the complainant do not establish a *prima facie* violation of section 187 of the *Act*. There does not appear to be any evidence that the respondents acted arbitrarily, discriminatorily or in bad faith in appointing Mr. Ferrand to act as the complainant's representative.

F. Request for documents

[83] The complainant also requested as relief,:

> *". . . documentary production of work setting and air quality complaints for the past seven years (dated [sic] of request December 2012) as requested by my original union representative Mrs. Ross be duplicated and one copy be produced to me while the second copy be stored at P.I.P.S.C."*

[84] From the material provided, it would appear that the complainant believed that he was being sprayed with an unknown chemical at work. He so notified his employer in 2006. From the submissions made by the complainant, that belief appears in part to be the basis upon which he was away from his workplace, and it could be related to the termination of his employment. He stated that certain tests were requisitioned and carried out in 2008. He stated that the results indicated a positive result of a substance, and he attached in his submissions a photocopy of a laboratory report. The material does not disclose the substance that the complainant states he tested positive for, and he admits that he cannot state that he was exposed to the substance at work.

[85] While the complainant might have medical issues, he provided no evidence as to their specifics or as to how they may relate to his complaint under section 187 of the *Act*.

[86] In his submissions, the complainant refers to the "Canadian Labour Code" [*sic*] and to certain rights he has to "work setting complaints and air quality complaints." He provided me with no reference as to what exactly the work setting and air quality complaints are, if they exist or if they ever existed, and upon what sections of the *Canada Labour Code,* R.S.C. 1985, c. L-2 he bases his position.

[87] From what I can gather from the submissions filed, the request made by Ms. Ross is a form of document production request made to the employer as part of

the termination grievance. While there may possibly be merit in the request to produce those documents in the grievance file, the complainant has not demonstrated that the request has any bearing on the unfair labour complaint before me. The existence of those documents and whether they are relevant to the grievance should properly be dealt with in the grievance proceedings.

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

(The Order appears on the next page)

V. Order

[89] The application to add Messrs. Mathieu, Gelinas and Strong as respondents to the complaint is denied.

[90] The objection to jurisdiction is dismissed.

[91] The complaint is dismissed.

August 2, 2013.

John G. Jaworski,
a panel of the Public Service
Labour Relations Board