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*Public Service
Labour Relations Act*



Before a panel of the Public
Service Labour Relations Board

BETWEEN

ALBERT BENOIT

Complainant

and

RON TRIMBLE, JEFF SMITH AND ROBERT CLARKE

Respondents

Indexed as
Benoit v. Trimble

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

Before: Margaret T.A. Shannon, a panel of the Public Service Labour Relations Board

For the Complainant: Himself

For the Respondents: Andrea Tait, Union of Canadian Correctional Officers -
Syndicat des agents correctionnels du Canada - CSN

Heard at Edmonton, Alberta,
February 25 and 26, 2014.

REASONS FOR DECISION

I. Complaint before the Board

[1] The complainant, Albert Benoit, alleged that the respondents, Ron Trimble, Jeff Smith and Rob Clarke (jointly referred to as “the respondents,” individually as “Trimble,” “Smith” and “Clarke”), committed an unfair labour practice within the meaning of section 185 of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”) by sharing correspondence that he wrote with another member of the bargaining unit, resulting in a harassment complaint being filed against him. According to the complainant, the respondents’ correspondence among themselves and with others in the bargaining unit demonstrated bias and bad faith in their dealings as bargaining agent officials with the complainant as a member of the bargaining unit, contrary to section 185 of the Act.

II. Summary of the evidence

[2] The complainant is employed as a correctional officer at the Grande Cache Institution (“the institution”) in Grande Cache, Alberta. His primary assignment is escorting prisoners to appointments outside the institution. He is a member of the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (“the bargaining agent” or “UCCO-SACC-CSN”). At all material times, Smith and Trimble were also employed as correctional officers at the institution, and each held an executive position in the bargaining agent’s local at that institution. Smith was the local’s vice-president; Trimble was its president. At the time, Clarke was Prairie Regional Vice-President for the bargaining agent.

[3] In March 2012, the complainant sent an email to Penny Cooper, Assistant Warden, Operations, at the institution, expressing his concern that a female correctional officer (“CXJ”) was seen in the secure area of the institution without her stab-proof vest and tool belt. The complainant felt that this jeopardized prison security and his personal safety (Exhibit 7). Ms. Cooper copied Trimble, in his role of the bargaining agent’s local president at the institution, on her response to the complainant’s concerns (Exhibit 1, tab 1, at page 2).

[4] Once he received the email from Ms. Cooper, Trimble forwarded it to Smith, who was both the bargaining agent’s local vice-president and in an intimate

relationship with CXJ. In forwarding it, he added his own comments, including: “But that’s Albert ... He’s backkkkkk [sic].”

[5] Trimble also forwarded it to Clarke, who responded as follows: “Wow. He won’t give up on [CXJ]. He doesn’t know what he’s talking about here. I’ll certainly let him know if he contacts me but I’m sure he won’t.”

[6] Trimble also forwarded this response to Smith, who then forwarded the entire email chain to CXJ, who subsequently filed a harassment complaint against the complainant relative to the initial email exchange between the complainant and Ms. Cooper. This was the second harassment complaint that CXJ filed against the complainant during this period related to two issues, one being the email between the complainant and Ms. Cooper. The second harassment complaint was subsequently found to be without merit.

[7] When the complainant became aware of the second harassment complaint, he went to Trimble to find out how CXJ came into possession of the email mentioned in her complaint. Trimble denied any knowledge of how CXJ received the email; he hypothesized that since the complainant was not liked in the workplace, any manager could have sent it to her. He advised the complainant to deal first with the complaint and later with the issue of how CXJ got the email. In Trimble’s opinion, the complainant raising his concerns with CXJ’s dress with the assistant warden, operations, did not amount to harassment.

[8] The complainant received an email from Kevin Grabowsky, the bargaining agent’s prairie regional president. In it, he advised the complainant to pursue the issue of the local vice-president forwarding the email via a discussion with Trimble and Smith in hopes of finding some resolution other than pursuing the matter under the bargaining agent’s constitution (Exhibit 1, tab 6). Since the complainant considered Trimble a good friend and a hunting buddy, the complainant did not question this suggestion. Only after he received a response to his access to information request did the complainant discover that the source of the leaked email was in fact Trimble.

[9] The discussion suggested by Mr. Grabowsky never occurred. At a general meeting of the local called to discuss the progress of the ongoing collective agreement negotiations, the complainant was greeted by Trimble publicly as follows: “Thanks for the fucking heads up on the ATIP [access to information request].” The complainant

did not understand why Trimble was so hostile towards him. Trimble again told the complainant that no one liked him or his wife (who is also employed at the institution) and that they should expect the type of treatment they were receiving. Trimble compared the complainant to another correctional officer who had left the institution because she was not liked.

[10] The following day (June 29, 2012), the complainant received an email from Trimble (Exhibit 14), copied to Brennan Walker, a local steward, which stated the following, among other things:

From: Trimble Ron (PRA)

Cc: Walker Brennan (PRA) Sent: Friday, June 29, 2012 12:41 PM

To: Benoit Albert (PRA)

Subject: FW: Harassment Claim

I started writing this last night after reading your e-mail to Kevin, I had had a few pops in me at the time so I'm king of all over the place. After our meeting today, I know things are worst but it is what it is, as for referring your to [CXW], I meant that all people hear when there with you on post is bad mouthing the union and Smith, you are entitled to your opinion as we all are, but I have members coming to me that they don't want to work with you cause that is all they hear, just like [CXW] with her bitching. . . I apologize because you took it the wrong way, but like you, I'm entitled to my opinion.

So not sure why I'm sending this to you, but I wanted you to know what I think about the charges against you.

Boomer

From: Ron Trimble [mailto:rontrimble@. . . .com]

Sent: Friday, June 29, 2012 7:55 AM

To: Trimble Ron (PRA)

Subject: Harassment Claim

I am writing this to you Albert as if we spoke in person, you would probably try to spin the conversation with your lies and half truths as you can do.. You are a bully and have always been a bully, including this recent election.... You say that you feel that you can't come to me (trust me), I have talked to you, you only hear what you want to hear and block everything else out, I have talked to Darcy, Jessi, Brennan and Adam that if they are the SS on your file, what to say and how to defend the allegation against you.

. . .

But in regards to the union and staff relations side of everything, at times your a prick who would go out of your way to fuck

someone over if you got a hate on for them, I have seen it Al so don't blow smoke up my ass. Both the union and CSC has hassasment policy's as you are well aware of, sometimes the way you interact with staff, would be considered harassment by policy. Would it be considered harassment to most of the Old school gaurds, no, that was the way it was most of the time, but as I said, with the staff were getting and the management teams we have, as much as it hurts to say, are long gone. I have told you this many times Al, you know this, so don't say that we have never talked because we have, so for that statement Albert, fuck you.

So with the [CXJ] case, were you guilty in the old days, no, you were riding someone who you though was weak (right or wrong, that was the way it was done) but these days, a very cloudy yes as you know with your last investigation and how they found you guilty on probalility which was total bullshit, but that was the decision, so now the process is to grieve which is what your doing. My personel opinion is that you should win hands down as it was a very weak decision, but with CSC, you never know. Are you guilty of harassment this time around, absoulty not. Off the record, absoulty yes, another example of you going out of your way to fuck someone who has fucked with you. But officially, you sent a concern to your supervisors on the direction of the unions OSH rep, you did not share this with any of her or your co-workers (officially), so how can they accept a complaint from her, they should have told her no. I have told you this Albert, the day we were outside the Bargin Store, so again, fuck you for saying that I'm not helping you. I have told the same thing to Darcy, Adam, Jessi, Brent and Brennan in the event you picked on of the to be your SS.

As for your claim that a keeper sent Jeff as the VP the e-mail, where did you get this information Albert, your telling everyone who will listen that I told you this, so now you want to get our national President involved because how dare a CM send the VP a e-mail and he shared it with his wife who you have been riding for well over a year..... when we spoke, you asked me how she could have received a copy, I told you that you had to be aware that your not well liked by most of the CM's, so anyone of them could have sent it to Jeff as a heads up. I told you that I was speculating but I didn't really know. So like you do, you hear what you wanted to hear and off you go. Your ATIP request isn't even over, I just sent mine in yesterday (thanks for that by the way), I had until the 28th to submit, you it hasn't even been determined as of yet but you are going around telling them that this is the way it happened. Maybe your right, maybe this is the way he first got it, but you don't know that yet, so rather than ranting about this, fuckin wait until you know all the facts. . .

[Sic throughout]

[11] At that point in time, the complainant still did not believe that Trimble had anything to do with the situation that gave rise to the second harassment complaint

filed against him by CXJ. On August 17, 2012, he received the results of his access to information request, which clearly showed the distribution chain of the email response from Ms. Cooper and the complainant's initial email. At Exhibit 2, tabs 1 and 2, the email chain is shown, with the exception of any email forwarding the Cooper email to CXJ. The complainant concluded based on this that Smith forwarded it to CXJ, knowing the turmoil it would create.

[12] The complainant tried to meet with Trimble at least four times to discuss the situation. He also tried to meet with the national president of the UCCO-SACC-CSN. Not until he filed this complaint on September 26, 2012, did the bargaining agent show any interest in the situation at the institution. A meeting was arranged with Mr. Grabowsky and Pierre Mallette, National President, to discuss the complainant's concerns with Trimble. Trimble refused to attend because he was on annual leave.

[13] The complainant was not the only correctional officer at the institution who had concerns over CXJ's dress while in the secure area of the institution. Exhibits 11 and 12 are two complaints from other correctional officers about their concerns over the matter. A third was sent directly to Trimble (see Exhibit 13).

[14] Following the filing of this complaint, Trimble continued to send what the complainant perceived to be rude, aggressive and threatening emails referring to the complainant. The complainant's partner on escort duty, John Mahon, received an email (Exhibit 15) from Trimble on February 26, 2013, threatening him with a harassment complaint, as follows:

From: Trimble Ron (PRA)

Sent: Tuesday, February 26, 2013 11:10 AM

To: Mahon John (PRA)

Subject: Warning

Hey John, it has come to my attention that you're talking shit about me in front of other staff members while at work. I'm not very surprised as it is quite known among the membership that your just someone's kid and will do and say whatever your told, not a good character trait to have but it happens to the weaker type people I guess.

So if I hear anymore on you trashing my character, I will pursue a harassment complaint against you and it will be you answering to these charges, not your Dad.

If you have any concerns, stop by and see me if your allowed.

Ron

[*Sic throughout*]

[15] The “Dad” referred to in this email is the complainant, according to the complainant’s testimony.

[16] On April 23, 2013, the complaint forwarded a memo (Exhibit 16) to the acting warden of the institution reporting Trimble for misusing the institution’s electronic network. The notation “(PRA)” after a name on the email which the complainant referred to in his memo indicates that it was sent either from or to an email account on the institution’s network. On April 25, 2013, the complainant received another email from Trimble inferring that the complainant was a “rat” for having complained about Smith and another correctional officer dragging their feet as search coordinators and for expressing his concerns about how two correctional officers exchanged a weapon and how certain officers were taking smoke breaks outside their regular scheduled times (Exhibit 17). Trimble then sent an email to all members of the local concerning smoke breaks, warning them that smoke breaks were on management’s radar and that the issue originated from a staff member and not management (Exhibit 18).

[17] The complainant sent two subsequent memos to the acting warden concerning Trimble’s use of the institution’s electronic resources and the contents of his emails (Exhibits 19 and 20). In particular, the complainant notes in exhibit 20 that Trimble is printing his emails to all of the pod printers in the institution:

Paul,

Following my original memo on the same topic dated April 23, 2013 and a second memo dated April 29, 2013, I have recently been advised that Mr Trimble not only sent the email he sent to me on to other shop members of UCCO, but printed it off to all of the pod printers in the institution. . . .

As Mr Trimble does not work the units, there was no logical reason that this was send to all pod printers other than Mr Trimble trying to degrade me, embarrass me, and harass me. . . .

[*Sic throughout*]

[18] The complainant also filed a harassment complaint against Trimble related to the emails (Exhibits 14, 15, 17 and 18). The Correctional Service of Canada (the employer) determined that the allegations related to Exhibits 14 and 17 amounted to

Trimble harassing the complainant (Exhibit 21). Shortly after he was notified that he was the subject of a harassment complaint, Trimble sent an email to all local members, with the exception of the complainant. According to Trimble, he was seeking assistance from his members in defending the complaint (Exhibit 24). Darcy Leblanc, a shop steward, sent an email (Exhibit 23) to all correctional officers 1 and 2 at the institution advising that “. . . it had been brought to the local’s attention that guards were getting bullied and/or harassed by other guards not only at work but also outside of work.” He goes on to write the following:

. . . Most of you have to realize that UCCO is a nation union and when you transfer out the president of your receiving institution will ask Boomer [Trimble] and I what they can expect and were gonna be honest with them just as their honest with us the few times guards transfer into GCI. . . .

[Sic throughout]

[19] The complainant has also been the subject of comments on the institution’s Facebook page, where correctional officers communicate among themselves and discuss events at the institution. Trimble is among these participants and has made comments against the complainant (Exhibit 26).

[20] The complainant concluded that most of his evidence indicates a pattern of behaviour by Trimble that is clearly biased. He included Smith and Clarke in his complaint because at the time the complaint was filed, he was not sure how much they were involved.

[21] On cross-examination, the complainant admitted that he had previously consulted local bargaining agent representatives on employment matters. However, this ended when his email (Exhibit 1, tab 2) was shared with CXJ. The fact that bargaining agent executive members share information among themselves was not of concern to the complainant, but he expects the bargaining agent to act in his best interests when doing so and not act in a way that is unfair or biased. Trimble passed on the memo to Smith knowing that Smith would share it with CXJ, and then he lied about it for three to four months. The outcome of Trimble’s actions was that CXJ filed a harassment complaint against the complainant. Trimble knew that CXJ had already filed a complaint against the complainant and that some of the allegations against him had been upheld.

[22] The complainant is aware that there are methods within the bargaining agent's constitution to address concerns with an elected official's behaviour. However, given the number of new members at the institution, he would be unlikely to get the local membership's support to have Trimble removed from office. Smith has since transferred out of the institution.

[23] The complainant did file grievances related to the disciplinary action taken as a result of the initial CXJ harassment complaint. He was unclear whether they were still live or had been referred to adjudication as he had been advised that the bargaining agent would not support the grievances. Two days after Trimble had been notified of Mr. Benoit's disciplinary hearing following the finding that the first complaint by CXJ was founded in part, the prairie regional president, Mr. Bloomfield, called the complainant at home and advised him that the bargaining agent would not put any more money into his grievances. The complainant could represent himself if he so chose. When he contacted the bargaining agent for assistance with this complaint, he was advised that it did not provide representation to members who have filed unfair labour practice complaints against it.

[24] Trimble testified that he had been the local UCCO-SACC-CSN president for the last 10 years. Previously, he had been the vice-president for two years and had served a term as president from 1997 to 2001. He has worked with the complainant for 26 years. When he received the copy of Ms. Cooper's email in response to the complainant's concerns about CXJ, he sent it to his home email account, from which he forwarded it to Smith, the local vice-president, and Clarke, Prairie Regional Vice-President. A week later, he sent it to the rest of the local's executive. The reason he sent it to Smith was consistent with his practice to keep Smith up to date on local activities and issues in the event he were absent and someone had to deal with them. As he was concerned that the complainant raised the issue of a possible work refusal under the *Canada Labour Code* (R.S.C. 1985, c. L-2), he thought it wise to advise Smith and Clarke.

[25] Trimble has discussed this email and the resulting harassment complaint with the complainant on numerous occasions. The first time was in a local parking lot following a doctor's appointment. The complainant was upset that CXJ had received a copy of his email and wanted to know how she had obtained it. Trimble advised him that he did not know and postulated that perhaps someone that Ms. Cooper copied

had provided it to her. The complainant told him that CXJ had filed another harassment complaint against him because of the email. Trimble advised him to deal with the harassment complaint, and the rest would work itself out. It did not matter how CXJ got the email.

[26] Trimble testified that he lied to the complainant in order to protect him. He was afraid that if the complainant knew the source, he would become so upset that he would not follow the bargaining agent's recommendations on how to deal with the harassment complaint. At a meeting held between the complainant, five shop stewards and Trimble, the complainant walked out. He then requested an emergency meeting with the executive for which Trimble was not available. Nor was he available for a meeting on September 17, 2012, when he was asked to attend a meeting with the national president of the UCCO-SACC-CSN. He books his leave every year before May 1 and he had booked that day for hunting.

[27] Once the complainant filed this complaint, Trimble had nothing further to do with him, on the advice of the bargaining agent's advisors. On June 26, 2013, at a general meeting, the complainant raised his concerns about Trimble's management as the local president and the treatment he had shown the complainant. Trimble testified that he apologized for what he had done but that it was not sincere. He had to because it was brought up at the meeting.

[28] Trimble described his emails as unprofessional, but they were intended to make the complainant aware of how he felt. He did nothing else. He did not harass the complainant or treat him differently than other bargaining agent members. He agreed that it was reasonable for him to foresee the impact of forwarding Ms. Cooper's email to Smith. He did not forward Exhibit 13 (an email from another local member), which also raised a concern with the state of CXJ's dress while in the secure areas, as it made no reference to a refusal to work. He has never refused to assist the complainant with his grievances.

[29] Trimble sent an email to the complainant the subject of which was Glass House:

From: Trimble, Ron (PRA)

Sent: Thursday, April 25, 2013 4:05 PM

To: Benoit, Albert (PRA)

Subject: Glass House

Some people really like to throw the RAT work around hey Al, good thing I'm not a RAT cause if I was, what do I know to be fact:

A senior CX 2 went to the AWO during a 53 search a few years ago and complained about Smith and [CXR] dragging their feet as search coordinators saying that they were constantly going for smoke breaks rather than searching. The AWO then put a CM in charge the next day and pushed the officers to complete the search, a few days later a con gets stabbed up on the unit, glad it wasn't an officer hey!!! My source is the AWO, FYI

A senior CX 2 went to the CMO recently complaining about [CXC] and [CXP] exchanging a weapon on properly and demanded that he dealt with it. My source is the CMO, FYI

A senior CX 2 went to the CMO recently complaining about officers taking smoke breaks outside of the regular scheduled times and told him that he should deal with them. My source is the CMO, FYI

So as you can see, good thing I'm not a RAT because I wonder how this senior CX 2 would spin this 1 among his followers.

On another note, as one of our more senior members, you'll be happen to know that the local will be trying to curb the harassment, intimidation, and the disrespecting of fellow officers on the job site that has been happening in the last few years. I'm sure as an old guard like me this should make you happen so we can come in and do our jobs and go home to our families not so stress out because of how some of our peers treat other members. The only thing we're trying to figure out is how to stop it, as you may have heard; members are being told that if you go to the union, you're a rat. So how do we fix this Al, do we tell our members to do directly to management so they won't be labelled a rat, we're still trying to figure this one out, if you have any suggestions, please le me know?

I know you like to show members my e-mails so you have my permission to show this email to whomever you wish.

Boomer

[Sic throughout]

[30] Exhibit 17, the "glass house" email, which was found to constitute harassment, was printed to all printers in the institution by Trimble. He commonly prints his emails to all printers so that members of the bargaining unit can read them.

[31] Smith is currently employed at Springhill Institution in Nova Scotia. He had previously worked at the institution for more than six years, during which time he was active in the UCCO-SACC-CSN local, holding the positions of shop steward and local vice-president. He received the email at Exhibit 1, tab 1, about the complainant's concerns with CXJ from Trimble. It was not unusual for Trimble to share emails with

him as he would take over as president when Trimble was not available. He forwarded it on to CXJ as she was a bargaining agent member and needed to know about the concerns expressed. When he received the access to information request, he denied having the email as he had deleted it.

[32] At the time, Smith did not consider that there was a conflict of interest between his bargaining agent role and his relationship with CXJ in this matter. He never represented her in any grievances. He told her about the email when he received it and forwarded it to her at her request. He was not concerned about a breach of confidentiality in forwarding the email to his girlfriend; he felt she should know that the complainant had gone to management about her. On cross-examination, he agreed that in retrospect, a conflict of interest may have existed.

[33] Clarke is currently a correctional officer at Bowden Institution in Innisfall, Alberta. He was Regional Vice-President for the Prairie Region, UCCO-SACC-CSN, from 2004 to 2013. He helped chair the regional accommodations committee and chaired the regional joint occupational health and safety committee, and he assisted members.

[34] The complainant sought Clarke's assistance as a result of CXJ's second harassment complaint against him. At the time, the complainant was unaware that Trimble was the source of the Cooper email that CXJ used in her harassment complaint against the complainant (Exhibit 1, tab 1).

[35] The complainant consulted Clarke in order to determine the process to remove an elected official from office. He provided the complainant with the UCCO-SACC-CSN constitution (Exhibit 1, tab 10), which is the bargaining agent's contract with its members on how they will govern themselves. In accordance with the UCCO-SACC-CSN's Harassment Policy, representatives of the bargaining agent are to avoid the perception of bias when dealing with member-versus-member complaints (Exhibit 1, tab 9). Being fair and neutral is part of a representative's obligations to all members. His comment to Trimble in Exhibit 1, tab 1, which was "Wow. He won't give up on [CXJ]," was a flippant remark based on his personal opinion and knowledge of the complainant. Clarke admitted that it was not a professional comment.

III. Summary of the arguments

A. For the complainant

[36] By forwarding the email at Exhibit, 1 tab 1 and 2, the respondents failed in their duty to represent each of their bargaining agent members fairly. Their actions were in bad faith, regardless of the finding of the harassment complaint that resulted from sharing the email. Without this email, CXJ would not have had the grounds to file the second harassment complaint. Trimble's ongoing attacks in the workplace have caused the complainant serious distress and have made his workplace a very negative and difficult place. Due to Trimble's conduct, the complainant was subjected to 16 months of hell while the harassment complaint was investigated. Trimble's campaign against the complainant has continued despite Trimble being found guilty of harassing the complainant, and Trimble has been advised to not have contact with the complainant pending the outcome of this hearing. It is unreasonable for the bargaining agent to expect anyone to participate in an attempt to have him removed given the behaviour he has demonstrated. Given Trimble's behaviour, members are loath to stand up to him as he will then attempt to rally coworkers against them.

[37] The complainant is not seeking disciplinary action against the respondents. It is in the best interests of everyone in the local that the respondents be removed from their bargaining agent offices. The complainant is seeking reasonable damages in compensation for the damage caused to his reputation, the stress that it has caused him and his family, and in recognition of his efforts expended in order to pursue this hearing.

B. For the respondents

[38] The burden of proof was on the complainant to prove that the respondents are guilty of perpetuating an unfair labour practice. He did not do so. What has been proven is that Trimble forwarded an email he received from Ms. Cooper to Smith and Clarke. Trimble initially denied having done so but has since apologized for doing it.

[39] Section 187 of the *Act* deals with how the bargaining agent represents its members. A bargaining agent has the discretion to determine the scope of representation it will provide (*Canadian Merchant Service Guild v. Gagnon et al.*, [1984] 1 S.C.R. 509). Trimble explained his actions and exercised his best judgement at the time. The remark concerning the section 127 refusal to work cannot be taken in total

isolation. It explains why Trimble acted as he did. It demonstrates that there was no malice towards the complainant. The email at Exhibit 1, tab 1 and 2, was shared as part of a standard local practice. It was not arbitrary but rather was part of normal bargaining agent activity. An intertwining of personal knowledge and institutional knowledge led Trimble to handle things as he did. The institution is a small community; lines between social and professional lives are grey, and things that in some environments would be deemed unprofessional are acceptable.

[40] The remedies sought by the complainant deal strictly with the internal operations of the bargaining agent, over which this Board has no jurisdiction.

IV. Reasons

[41] The respondents' argument is based on the fact that regardless of their admittedly unprofessional communication related to the complainant, the UCCO-SACC-CSN continued to pursue the complainant's rights through the grievance and adjudication processes. Pursuant to the *Canadian Merchant Service Guild* case, it was within their discretion, according to the respondents' argument, and how they communicate with each other or to whom they forward emails is irrelevant to the question of fair representation. If I am to accept this argument, I must accept that the extent of the bargaining agent's duty of representation is limited to representing members in the grievance process.

[42] What then is the definition of representation? The *Canadian Oxford Dictionary*, 2nd edition, defines representation as "[t]he act or an instance of representing or being represented." *Black's Law Dictionary*, 8th edition, defines representation as follows: "The act or an instance of standing for or acting on behalf of another. . . ."

[43] The plain meaning of the word "representation" clearly indicates more than the limited focus espoused by the respondents and is not limited to the grievance process. When a bargaining agent is certified as the bargaining agent for a particular group of employees, the certification order is meant to encompass all matters that are coextensive with the extent of the union's authority as exclusive bargaining agent. (See *Lopez v. Canadian Union of Public Employees*, 1989 CanLII 3472 (OLRB)). This includes, among others, matters of representation in the grievance process and the collective bargaining process and in general representing and dealing with its members. In so doing, section 187 of the *Act* requires the following:

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.

[Emphasis added]

[44] Clearly, the complainant has established that the three respondents are officers of the bargaining agent and that they were acting in that capacity during the events that gave rise to this complaint. By their own admission, the three were unprofessional when they communicated concerning the complainant. The fact that Trimble lied to the complainant regarding his role in this matter indicates a degree of knowledge that his actions were improper. In my opinion, their communication, to varying degrees, clearly demonstrated a bias against the complainant, particularly in the case of Trimble, whose communication went far beyond its stated purpose and crossed into being offensive and harassing. His denial of any responsibility for his actions, even though in fact he admitted lying to the complainant, demonstrates a degree of knowledge that his actions were improper. I do not accept his explanation as to why he forwarded the response to the complainant's complaint concerning CXJ's attire to Smith. He testified that he did so in case he were unavailable to deal with any fallout that might occur as a result of this response, and yet, he also testified that he schedules his time away from the workplace in the spring of every year to ensure that he has time off for hunting season. There is no reason for me to believe that this circumstance would have been any different. He knew that he was not scheduled to be away from the workplace. The editorial comments which he attached when he forwarded the email to the other two respondents reveal his intentions in forwarding and contradict his argument that he was just carrying on union business as usual. It is important to note that the complainant was well within his rights to express his concerns if he thought that there was a threat to his health and safety in the workplace. Yet, the respondents treated it as an annoyance.

[45] Trimble forwarded the email in question to Smith, knowing full well that CXJ was Smith's girlfriend. Smith admitted that in retrospect, he was clearly in a conflict of interest in the matter related to the complaint concerning his girlfriend's attire while in the secure area, and yet he chose to forward it to her. He provided no acceptable justification; she was not a member of the bargaining agent executive or the institution's Joint Occupational Health and Safety Committee. He felt that CXJ should

know what the complainant had said about her. It was not shared with her for some legitimate union related purpose. Had the employer thought it appropriate for CXJ to be made aware of the complaint, it would have provided her a copy of it and its response, and yet it did not.

[46] Trimble did not stop at forwarding the email. The exhibits demonstrate an ongoing campaign to discredit the complainant in the workplace and to demean him such that the complainant saw fit to file a harassment complaint against Trimble, which the employer determined was founded. Still, the behaviour did not stop.

[47] Regardless of whether or not this is a case in which personal and institutional knowledge comingled with Trimble's role as president of the bargaining agent local, as argued by the respondents' representative, it was incumbent upon Trimble as the highest elected bargaining agent official in the local to behave in a manner towards his members that was free from bias. He did not. Regardless of the size of Grande Cache Institution, the comingling referred to by the respondent's representative only happened because Trimble was distributing the member's personal information around the institution. The exhibits also demonstrate that Trimble has not reserved this behaviour for the complainant and that he has behaved in a similar fashion when communicating with other members of his local (see Exhibit 15).

[48] In the case of *Beaulne v. Public Service Alliance of Canada*, 2009 PSLRB 10, the Board dealt with a complaint alleging that the respondent in that case acted in bad faith by attempting to have the complainant dismissed and that the respondent slandered, harassed, intimidated and humiliated the complainant to the extent that the respondent's behaviour made the complainant ill and his workplace a hell. At paragraph 281 of the decision, the adjudicator addresses the duty of fair representation as follows:

281 *Usually, a breach of the duty of fair representation deals with a refusal by a 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 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 to attempt to harm the complainant's reputation and interests with the employer, with no valid reason.

[49] The complaint in the *Beaulne* case was rejected on the basis of timeliness, which is not an issue in the case before me. All the respondents testified, and none could provide an adequate answer for his behaviour. Smith and Clarke both admitted that their behaviour was unacceptable. Unfortunately, such was not the case with Trimble, who thought all should be excused because he apologized (which he also admitted he did not do in any worthwhile and sincere fashion).

[50] The ongoing campaign against the complainant by the three respondents, albeit to varying degrees, attacked his credibility in the workplace and resulted in him being subjected to a second harassment complaint filed by CXJ. Despite Trimble's claim that he stopped dealing with the complainant once this complaint was filed, it is clear from the exhibits he continued to make comments and disparaging remarks concerning the complainant in emails circulated to all printers in the institution and on Facebook. Clearly, the respondents, and in particular Trimble, have chosen sides against the complainant, demonstrated a bias against him and were not acting in good faith as representatives of the bargaining agent.

[51] It is neither sufficient nor acceptable for the bargaining agent to argue that despite those actions, the complainant continued to be represented in the grievance process. Section 187 of the *Act* requires that bargaining agent representatives conduct themselves in a manner that is not arbitrary, discriminatory or in bad faith. It is not sufficient for the bargaining agent to argue that if the complainant was truly displeased with his elected representatives that there were processes internal to the bargaining agent available to him to have the representatives removed from office. As the complainant testified, this required that a petition be circulated among bargaining unit members in the local, the same local where Trimble has perpetuated his campaign to discredit the complainant. Thus, the likelihood of any success in circulating the petition was slim. This is particularly so since the evidence of the complainant was that he was not aware that his grievances were live and that it appears that one of the grievances was referred to adjudication only after this complaint was filed (see Exhibit 1, tab 7 and Exhibit 2). It is understandable that the complainant gave up

pursuing his issues through the bargaining agent given the treatment he received at the local and regional levels.

[52] Labour boards, this Board amongst them, have consistently refused to extend the duty of fair representation into matters that are properly characterized as internal union affairs because representation rights with respect to the employer are not involved. This case cannot be characterized as one involving internal union affairs. This case squarely concerns the grievor's representational rights on matters affecting his employment. As proof of this, the grievor testified to the fact that following these events, and despite the fact that he had outstanding unresolved grievances and complaints, he ceased seeking assistance from his bargaining agent. Furthermore, the complainant reasonably had no expectation that if he did seek further assistance, it would be forthcoming from the bargaining agent.

[53] Therefore, I conclude that the respondents have in fact breached their duty of fair representation of the complainant, to varying degrees. The respondent Trimble has perpetrated the most egregious of these violations by his ongoing campaign against the complainant. The respondent Smith acted in such a manner as to put himself in a conflict of interest position between members of the local and participated in the campaign perpetrated by Trimble. Clarke's behaviour is the least offensive of all respondents; however, given his position as a member of the regional executive, he had the wherewithal to prevent any further campaign against the complainant and chose not to do anything to stop Trimble. For this reason, he is part of the campaign waged by Trimble and Smith and must bear his share of the responsibility.

[54] In determining the remedy, I must accept the argument put forward by the respondents' representative that I do not have authority to have the respondents removed from their elected offices, as the complainant requested. I do have the authority to issue a declaration and make any other order I deem appropriate.

[55] In the circumstances, I will make a declaration and will impose conditions on its publication and distribution. Ron Trimble, Jeff Smith and Robert Clarke have demonstrated bias in their communication concerning a member of the Grande Cache Institution Local of the UCCO-SACC-CSN, in violation of their duty of fair representation owed to the members of the bargaining agent as members of its local and regional executive.

[56] In the circumstances, given the impact on the complainant's reputation in the workplace and the impact on his work life, this is an appropriate circumstance in which to award damages. It is also important to emphasize that bargaining agent members acting as its officers owe a duty to act in an unbiased fashion towards fellow employees and members regardless of whether or not that person is popular in the workplace. It is their role to promote harmony, not discord, among their membership.

[57] Given that the respondents were acting as representatives of the bargaining agent, UCCO-SACC-CSN, and that their actions are intimately related to their duties as members of the bargaining agent executive, as is evidenced by the fact that they were represented by a UCCO-SACC-CSN advisor at the hearing, the bargaining agent must bear some responsibility for this violation. The behaviour demonstrated by the respondents in their role as union representatives, particularly the actions of Trimble, was malicious, oppressive and high-handed. (See: *Otto v. Brossard et al.*, 2012 PSLRB 15). Therefore, I award the complainant damages in the amount of \$2000 to be paid by the bargaining agent.

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

(The Order appears on the next page)

V. Order

[59] A copy of this decision shall be posted on all bargaining agent bulletin boards in Grande Cache Institution within 30 days of this decision for a period of 12 months.

[60] A copy of this decision shall be posted on the UCCO-SACC-CSN website within 30 days of this decision for a period of 3 months.

[61] A copy of this decision shall be mailed to each member of the Grande Cache Institution UCCO-SACC-CSN Local within 30 days of this decision, accompanied by a letter signed by the UCCO-SACC-CSN national president advising that this Board has determined that the bargaining agent failed to meet its duty of fair representation to one of its members.

[62] A copy of this decision shall also be delivered within 30 days to the warden, deputy warden and assistant warden, operations, of Grande Cache Institution, accompanied by a letter signed by the UCCO-SACC-CSN national president, advising that this decision has been provided to them pursuant to an order of this Board, for their information.

[63] The bargaining agent, the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN, shall pay damages in the amount of \$2000 to the complainant within 90 days of the date of this decision.

[64] I will retain jurisdiction to deal with matters arising out of this order for a period of 90 days from the date of this decision.

April 15, 2014.

**Margaret T.A. Shannon,
a panel of the Public Service
Labour Relations Board**