Date: 20150423

File: 561-34-652

Citation: 2015 PSLREB 36

Public Service Labour Relations and Employment Board Act and *Public Service Labour Relations Act*

Before a panel of the Public Service Labour Relations and Employment Board

BETWEEN

MARILYN GIBBINS

Complainant

and

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Respondent

Indexed as
Gibbins v. Professional Institute of the Public Service of Canada

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

Before: Kate Rogers, a panel of the Public Service Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Isabelle Roy, counsel

Decided on the basis of written submissions filed November 20, 2013, and January 6, February 21, June 24, and July 16 and 31, 2014.

[1] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board ("the new Board") to replace the former Public Service Labour Relations Board (PSLRB or "the former Board") as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to section 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*) before November 1, 2014, is to be taken up and continue under and in conformity with the *Public Service Labour Relations Act* as it is amended by sections 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*. Further, pursuant to section 395 of the *Economic Action Plan 2013 Act, No. 2*, a member of the former Board seized of this matter before November 1, 2014, exercises the same powers, and performs the same duties and functions, as a panel of the new Board.

I. Complaint before the Board

[2] On October 30, 2013, Marilyn Gibbins ("the complainant") filed a complaint under section 190 of the *PSLRA* against her union, the Professional Institute of the Public Service of Canada (PIPSC or "the union"). Although the complainant filed her complaint using Form 16, as required by the formerly named *Public Service Labour Relations Board Regulations* (SOR/2005-79; "the *Regulations*"), the statement of the acts that were the subject of her complaint consisted of a series of documents of more than 69 pages attached to the complaint form. She stated that the complaint was based on alleged violations of paragraphs 190(1)(*a*),(*b*),(*c*),(*d*),(*e*),(*f*) and (*g*) of the *PSLRA*.

[3] On November 1, 2013, the PSLRB Registry wrote to the complainant to ask for a clarification of the subject matter of the complaint. In particular, the complainant was asked to specify the particular provisions of the *PSLRA* that applied to her complaint against the union and to explain how those provisions related to the particulars of her situation.

[4] The complainant responded on November 5, 2013, as follows: "For my complaint against PIPSC, the union, I believe it should be considered under 191(g) and

Section 185, particularly Sections 186, 187, 188, and 189 as set out in my lengthy document previously submitted to the PSLRB."

[5] It should be noted that the complainant also filed an unfair labour practice complaint against the Canada Revenue Agency ("the employer"; see *Gibbins v. Canada Revenue Agency*, 2015 PSLERB 17), at the same time that she filed her complaint against the union, which was dealt with separately.

[6] As noted, the complaint is a lengthy document. It appears to have at its source the complainant's belief that the union failed to represent her properly in settlement negotiations with the employer arising from a complaint filed with the Canadian Human Rights Commission (CHRC). However, it follows no thematic or chronological form. Rather, it bounces from allegation to allegation and back again, with no factual detail, time frame or context. There are allegations that the union failed to assist the complainant following workplace accidents that took place before 2009. There are allegations that it did not help her obtain disability benefits and that it failed to represent her in workers' compensation matters. There are allegations that it failed to file harassment and discrimination complaints in 2011. There are allegations that it failed to attend mediation sessions and that it failed to respond to pleadings concerning the CHRC complaint.

[7] Paragraphs 172, 173 and 174 of the complaint exemplify the breadth, style and issues covered in the document. They state as follows:

> *172. The union did not assist me to obtain Sun Life disability benefits, CPP benefits or Medical Retirement and did not formulate an Offer to Settle despite promising to for many, many months. The union ensured that I hit a brick wall whenever I attempted to educate myself, seek assistance, or move forward with a resolution. I was with absolutely no income for over 7 months, and still the union did not represent me or care. They degraded me, tried to convince me I was worthless, that I deserved nothing, and that I was the problem and they said these things to me directly. They more or less called me a liar at every juncture, tricked me, and twisted around their negligence and tried to blame me.*
>
> *173. Mrs. Roy wrote me two letters pretending the union had done a lot for me, and that I was the problem, and totally misrepresented the entire situation. Ms. Dolenc stated in March 2011, that I "was the problem" despite not having discussed the issues with me, and not having read my*

> *harassment or discrimination complaints. This manner of intimidating me into dropping my complaints while degrading me, in is bad faith and total failure of duty of fair representation. The union harassed me and played mind games with me, and added to the harassment and discrimination that occurred with my employer. They cooperated with CRA to keep me from returning to work, sided with them, and did not represent my best interests.*
>
> *174. Their representation of me went from totally and admittedly non-existent, from 2009 to 2011, then to failure of duty of fair representation from March 2011 for a few months, then to totally non-existent again, then to arbitrary and in bad faith, and then total failure in their duty of fair representation and acting in bad faith again when their representation ceased once again in July 2013 when the actions of Mr. Englemann clearly indicated PIPSC had no intentions of assisting with my return to work, or making any effort to negotiate a settlement or even see if the original settlement I garnered was back on the table, or to assist me with my Sun Life Appeal and an appointment with Dr. Sudaby.*
>
> [*Sic* throughout]

[8] The first three pages of the long attachment to the complaint is a statement of the remedy sought by the complainant. However, she included a brief statement of the remedy sought on the complaint form, as follows:

> *My grievance proceed to arbitration; the union fairly represent me by negotiating or accepting a settlement and/or return to work arrangement or accommodation; and/or the union to obtain & pay for physical and psychological assessments & APPEAL my Sun Life disability being denied & to obtain med. retirement should back to work arrangements not materialize. Pursue WSIB appeals as promised. Act in a manner that is fair, not arbitrary, not in retaliation or due to ill-will & personal hostility & intimidation; cease violating the Privacy Act, cease acting in a discriminatory manner or in bad faith. Cease saying they are "too busy" for 4 years. Stop refusing to attend mediations or meet with employer & myself.*
>
> [*Sic* throughout]

[9] The grievance that the complainant referred to was attached to the complaint. It concerned an allegation of harassment and discrimination on the ground of physical disability, and although she and a union representative signed it on May 20, 2011, it

may have been filed on May 24, 2011. Copies of emails, hand-written notes and other documents referred to in the complaint were not attached.

[10] On January 14, 2014, PSLRB staff asked the complainant to provide copies of the documents referred to in the complaint to the PSLRB and to the union by January 28, 2014. Between January 14 and January 28, 2014, she filed a large number of documents related to her complaint. It should be noted that she did not identify them specifically as being the ones referred to in her complaint. For the most part, the documents submitted were copies of emails from her to individuals in the union that echoed the allegations in her complaint.

[11] On November 20, 2013, the union wrote to the PSLRB concerning the complaint and advised that it did not believe that a mediation of the complaint would be advisable. It also raised a number of procedural issues. Specifically, the union asserted that the complaint was unfocused, vague, repetitive and hard to follow. The union also noted that it appeared that many of the complainant's allegations were untimely as they concerned events that happened outside the 90-day time limit prescribed in subsection 190(2) of the *PSLRA* for unfair labour practice complaints. The union contended that the only matter that fell within the 90-day limit was its decision to withdraw its representation of the complainant, which was communicated to her on August 2, 2013.

[12] The union requested that the complainant be required to provide a concise statement of the timely allegations that formed the substance of the complaint so that it could better respond to it. The union also asked for an extension of the time to reply to the complaint, given the issues that it had identified.

[13] The union's letter of November 20, 2013, was forwarded to the complainant. She was asked to provide any further submissions necessary to respond to the issues that the union raised, by December 5, 2013. At her request, that time limit was extended until January 6, 2014.

[14] On January 6, 2014, the complainant sent a 2-page email with an 18-page attachment that dealt with both her complaint against the employer and her complaint against the union. The document is, as she admitted, "rambling." The submissions are not arranged either chronologically or thematically. There are few dates to assist in

arranging a sequence of events. It is not a document that lends itself to summarization.

[15] However, what emerges from the submission is that the complaint is based on the complainant's belief that the PIPSC failed to represent her fairly because it did not, to use her word, "endorse" a settlement agreement that she alleged she made with the employer in October 2013. She alleged that the union agreed to represent her in the matter of the settlement with the employer in February 2013 but that it then failed to.

[16] The complainant also stated that the union failed to represent her for a number of years, both before and after she was, as she described it, forced out of her job. According to her submission, the union agreed to represent her only after she negotiated the settlement with her employer with the assistance of the CHRC. She stated that, at some point, the union agreed to retain outside counsel to assist her in the settlement negotiations with the employer but only if she gave up some of her rights. She alleged that the lawyer retained to represent her by the union violated her trust by not acting in her best interests and then refused to continue to represent her. She further alleged that then the union dropped her. She alleged that the union's intention was to get rid of her so that it would not have to deal with the employer. The complainant also addressed the issue of the timeliness of her complaint.

[17] On May 28, 2014, the parties were asked to provide written arguments of no more than 10 pages on issues not already addressed in their previous submissions, according to an established timetable. The parties were advised that once all the submissions were received, the matter would be referred to a panel of the PSLRB, who could render a decision based on the submissions filed or, if necessary, ask for further submissions or determine that an oral hearing was required.

[18] Rather than file the submissions requested, the complainant filed what she described as a second complaint against the union on June 24, 2014. However, the alleged complaint was not filed in the manner prescribed by section 2 of the *Regulations*, and therefore, the PSLRB did not accepted it as a new complaint. Furthermore, the complainant noted in the cover letter that, because she had been limited to 10 pages, she had not been able to address all the issues she had wished to address, which suggested that the document was, in fact, part of the written argument process.

[19] I have treated that document and the complainant's subsequent rebuttal to the union's written argument as the written submissions provided in response to the former Board's request of May 28, 2014, and not as a second complaint, even though a large part of the submissions concerns events subsequent to the filing of her complaint on October 30, 2013. In my view, the issues she raised flowed from the facts giving rise to the complaint filed on October 30, 2013, rather than from a new and discrete issue.

[20] The union's objections based on timeliness and the complainant's failure to particularize the complaint will not be dealt with separately. I have chosen to summarize the evidence and the arguments relating to timeliness, the failure to provide particulars and the merits of the complaint from the parties based on the sum of their submissions, to avoid repetition. I also note that the complainant filed large numbers of documents in no particular order and with no identification scheme. When referring to those documents in this decision, I have simply indicated their dates rather than their submission dates. Documents submitted by the union were included in their submissions and identified by tab number, and I have used their submission dates and tab numbers to identify them when I have specifically referred to them.

II. Summary of the evidence

[21] Between 2003 and 2006, the complainant suffered two workplace accidents that resulted in injuries to both her feet. Complications arose because of the foot injuries, and her work was affected. At some point between 2009 and 2011, she went on paid sick leave.

[22] The complainant alleged that she sought the union's assistance during that period because when she was at work, she was being harassed and discriminated against on the grounds of her disability, and the employer failed to accommodate her disability. However, she stated that the union failed to represent her during that period despite her requests for assistance. In particular, she alleged that the union representative assigned to assist her in the winter of 2011, Marija Dolenc, was hostile and unhelpful and failed to provide appropriate representation on her harassment complaint.

[23] During this period, the complainant filed two appeals to the Workplace Safety and Insurance Board (WSIB), a workplace harassment complaint and a harassment grievance.

[24] On April 7, 2011, Patrizia Campanella, union counsel, advised the complainant that, based on her review of the files, she believed that there was no reasonable prospect of success for the WSIB appeals and that, therefore, she did not recommend pursuing them. However, she left the door open for a further review of the complainant's appeal for loss of earnings benefits if the complainant provided the detailed medical report requested by the WSIB (union submissions of February 21, 2014; Tab 2).

[25] On May 19, 2011, Ms. Dolenc wrote to the complainant concerning her harassment complaint and her accommodation issues (union submissions of February 21, 2014; Tab 3). She noted the difficulty in their working relationship, writing as follows:

> *I think we can both agree that our dealings have not progressed well, and that our working relationship has been severely strained. You have consistently accused me of failing to properly represent your interests and of acting in an unprofessional manner towards you. Your criticism has not been confined to me, but has also included other PIPSC staff who have attempted to deal with you. . . You have forbidden me to have contact with representatives of the employer to discuss your case, unless I have your express permission. You have refused to cooperate in providing medical information to the employer, contrary to my advice and that of my predecessor, thus frustrating the accommodation process. In general, you have expressed an unwillingness to accept and follow my labour relations advice, or to answer questions from me which I believe to be relevant to your case.*

[26] Ms. Dolenc advised the complainant that she believed that most of the incidents in her workplace harassment complaint were untimely or were likely to make her complaint unsuccessful. She stated that she had recommended that the PIPSC cease representing the complainant in all current files other than the most recent verbal complaint, which the union had not yet had an opportunity to evaluate.

[27] Following Ms. Dolenc's letter to the complainant on May 19, 2011, the complainant wrote to Isabelle Roy, the union's general counsel, and requested a

different representative. She outlined her many issues with the representation being provided to her by Ms. Dolenc, including her belief that Ms. Dolenc was not supportive and that she had violated the complainant's rights and breached her confidentiality. She also indicated that she had contacted an employment lawyer and "the Labour Relations Board," as well as the "HRC" (neither body was identified in the letter), and that she had provided copies of the documentation concerning the PIPSC's failure to represent her. She stated that the HRC and the labour relations board had told her that they would investigate if the PIPSC failed to represent her properly.

[28] Ms. Roy responded to the complainant on June 17, 2011, confirming the recommendations made by Ms. Campanella, Ms. Dolenc and other representatives that the union cease representing her on her WSIB appeals and her workplace harassment complaint (union submissions of February 21, 2014; Tab 1). In addition, Ms. Roy noted the following:

> *Finally, we find it truly regrettable that we have to address with you the tone of your communication with our staff, but we notice that the bulk of the correspondence we have reviewed from you to various members of our staff is quite aggressive, accusatory, and at times plainly disrespectful. The Institute prides itself on the professionalism of its staff and members and, in that spirit, we would urge you to consider a more respectful approach in your future dealings with our staff.*

[29] In late June 2011, the employer changed the complainant's leave status to sick leave without pay, apparently because she had not provided the requested medical information. Although she approached the union for assistance, both she and the union agree that the working relationship remained troubled.

[30] On July 19, 2011, Ms. Roy wrote again to the complainant (union submissions of February 21, 2014; Tab 4). She noted that the union had tried to provide advice and assistance to help the complainant deal with the change in her status but that the complainant had resisted the advice with respect to the need to provide detailed medical information to the employer. Ms. Roy advised her that under the circumstances, the union could provide no further assistance to her until she provided the required medical information.

[31] The complainant's perspective of the situation was quite different. On July 13, 2011, she emailed Ms. Dolenc, contending that the medical information sought

by the employer was based on questions to her physician that were improper and misleading. She alleged that the union failed to represent her or to intervene in her situation, and therefore, the employer believed it could do whatever it wanted to force her out of her job. In a further email to Ms. Dolenc on July 19, 2011, she noted that, after consulting with her employment lawyer, she wanted a formal response as to why the union had not grieved the employer's decision to place her on leave without pay.

[32] In emails to Ms. Roy on July 20, 2011, and to Ms. Dolenc on July 22, 2011, the complainant continued to insist that the questions that the employer wanted her doctor to answer were inaccurate and that the union was using the delay obtaining the medical information as an excuse to avoid dealing with her problems. In her email to Ms. Dolenc, she concluded as follows:

> *And may I state that you have not supported me or offered advice to me, other than to merely insist I blindly cooperate with Management, regardless of me having been injured three times due to Management's deliberate negligence. You have refused to request that Management retain he [sic] status quo of me being accommodated to work at home until the doctor can answer the questions.*
>
> *This documentation as well as the inaccurate letter from Ms. Roy, will be forwarded to the Labour Relations board as part of the continuing documentation of PIPSC refusing to cooperate or assist me.*
>
> *Should you decide to suddenly become ethical and professional and deal with the truth and the facts as they exist, and properly assist me as is the mandate of your job, please contact me.*

[33] In August 2011, the complainant wrote to her Member of Parliament in an attempt to have him intercede with her employer and the union. In an email to him on August 10, 2011, she noted that she had contacted the labour relations board (not identified) but had been told that an investigation would take months, if not years. She said that she was waiting for a response from a law firm in Toronto, Ontario, about filing a lawsuit against the union for unfair labour practices but that the process would be lengthy and costly.

[34] On August 11, 2011, the complainant sent another email to her Member of Parliament. In it, she stated that all the lawyers that she consulted had told her that she could file an unfair labour practice complaint against the union but that only 15%

of such complaints were successful. She stated that filing such a complaint would be costly and that she believed that if the union were found at fault, it would then be even harder to deal with.

[35] Between August 2011 and February 2013, the complainant continued to request that the union provide her with representation. In a letter written on February 22, 2013 (which the union stated was incorrectly dated February 22, 2012), Ms. Roy summarized the union's contact with the complainant over the period in question (union submission of February 21, 2014; Tab 5). She noted that the complainant had been told in November 2011 that the union would not provide further assistance to her until she complied with its directions to her. She noted further that in July 2012, the complainant sought advice from her about an offer of settlement made during the mediation of a complaint against the employer filed at the CHRC, which Ms. Roy stated was filed without the union's knowledge and input. Ms. Roy noted that she asked the complainant for a copy of the complaint but that she did not receive one and that before she could take further action, she received a copy of an email from the complainant to the employer rejecting the proposed settlement.

[36] Ms. Roy also noted that on July 13, 2012, the complainant again asked the union to provide representation on a number of issues, including about filing a grievance against the employer's decision to place her on leave without pay, the request for medical information and the mediation process taking place with the CHRC's assistance. Ms. Roy advised the complainant that the union would not provide further assistance until she cooperated with its request for the medical information that it deemed necessary to facilitate its assistance.

[37] In March 2013, the complainant again approached the union for assistance. In an email to Ms. Roy on March 13, 2013, she told Ms. Roy that the negotiations with the employer under the auspices of the CHRC continued but that the employer refused to deal with her directly and instead demanded that the union become involved.

[38] The complainant had filed her complaint with the CHRC without the union's assistance or knowledge, and it had not been involved in any settlement negotiations that had taken place before the complainant asked it for assistance in March 2013.

[39] Correspondence from the CHRC to the complainant on April 5, 2013, indicated that the initial investigation report had been released to the parties and that their submissions on that report were due at the end of April 2013.

[40] On April 22, 2013, the union undertook to represent the complainant in the settlement discussions and to take any other actions that it deemed necessary to resolve the CHRC complaint. The complainant signed an authorization to that effect (union submissions of February 21, 2014: Tab 6).

[41] On May 4, 2013, the complainant emailed Ms. Roy and Linelle Mogado, her union representative, to complain about the representation being provided by Ms. Mogado and, in particular, about the time that the union was taking to act on her file. Among other issues, she noted that her disability benefits had been cut off, leaving her without income. She stated that she hoped that fact would spur the union to act on her behalf, but instead, she stated that there were "more unnecessary delays."

[42] On May 10, 2013, Ms. Mogado and another union representative met with the complainant to discuss a number of issues, and they offered help filing an appeal against the cessation of the complainant's disability benefits. However, on May 13, 2013, the complainant emailed Ms. Mogado, instructing her to prioritize the CHRC complaint settlement over her disability benefit complaint.

[43] By June 2013, it was clear that the settlement negotiations relating to the CHRC complaint were reaching their conclusion. It appears that the discussions concentrated on a lump-sum payment and the complainant's retirement on medical grounds. The employer had rejected the complainant's demands and had made a counter offer, which she wanted to reject.

[44] On June 27, 2013, Ms. Roy wrote to the complainant and advised her that she believed that the employer's counter offer was probably the best that could be achieved in light of all the facts of the case. She advised the complainant to accept the offer and put her on notice that if she rejected it, the union would not represent her further in negotiations to resolve the complaint. Ms. Roy told the complainant that, in the union's opinion, if she rejected the employer's settlement offer, the only issue left to be resolved with the employer would be her return to work and disability accommodation, which would require medical information. Ms. Roy also reminded the complainant that the union was not providing representation for her in any matter

other than the settlement discussions relating to her CHRC complaint and that, on her rejection or acceptance of the employer's offer to settle, the union's representation would conclude.

[45] On June 28, 2013, the complainant unilaterally rejected the employer's offer to settle the CHRC complaint. As a consequence, on July 4, 2013, Ms. Mogado advised both the CHRC and the employer that the union no longer represented the complainant on matters relating to her CHRC complaint.

[46] On July 11, 2013, the union decided that it would retain outside counsel to assist the complainant on outstanding issues relating to her ". . . impending cessation of employment or return to work at Canada Revenue Agency ('CRA')" (union submissions of February 21, 2014; Tab 12). In its letter to the complainant, the union noted the difficulties that it had faced in developing a trusting relationship with her and expressed its hope that by it providing representation by experienced outside counsel, she would finally find a solution to her employment situation.

[47] However, the union also noted in the July 11, 2013, letter that the scope of the representation provided by the lawyer retained on the complainant's behalf would be limited and would not include representation on WSIB matters, the harassment grievance filed on May 24, 2011, or the CHRC complaint filed on November 16, 2011. Counsel would only be authorized to help the complainant negotiate a settlement that would result in the termination of her employment or, in the alternative, to assist her reintegration into the workplace by resolving such issues as workplace accommodation.

[48] The letter of July 11, 2013, setting out the scope of representation by outside counsel, also noted the following (union submissions of February 21, 2014; Tab 12):

> *. . . We have discussed on a number of occasions that medical documentation will be required to support any accommodation that you may need to return to work. Medical documentation may also be relevant in relation to any settlement discussions with the CRA. Should you agree with the proposed terms of representation . . .* [counsel] *will be discussing the issue of medical documentation with you and will provide fresh authorizations for your signature permitting them to acquire information from your medical practitioner(s).*

[49] A letter of authorization that the union required the complainant to sign before outside counsel would be authorized to act on her behalf was attached to the letter of July 11, 2013, and she signed it that same day. It specifically referred to the scope of representation set out in the accompanying letter and included the following statement (union submissions of February 21, 2014; Tab 13):

> *As the Institute is agreeing to pay the costs associated with this matter, I recognize that it reserves the right to withdraw such support, should it be determined that it is in the best interest of the membership to do so.* [Counsel] *will advise the Institute if I am not cooperating or creating unnecessary barriers or complications in terms of my representation, at which point, the Institute may decide to withdraw* [counsel's] *services. I understand that I will be advised of this decision and of the reasons for the withdrawal.*

[50] Unfortunately, the relationship between the complainant and the lawyer retained to assist her was plagued with many of the problems that seemed to dog her relationship with the union. On July 31, 2013, she sent an email to him, which included the following statement:

. . .

> *To be frank, I am suspicious of the Institute's retaining of your services and I believe they have done so for their own interests and likely not mine. The reason I believe this is because I cannot see any purpose in them doing so, if you are not able to pursue Sun Life on my behalf, or are not able to pursue the Harassment complaints or even negotiate a settlement with CRA. Therefore I believe that the Institute has hired you to obtain proof that I cannot return to work, and that will absolve both the Institute and CRA of all responsibility towards me and my situation. . . .*

[51] Between July 31 and August 2, 2013, the complainant sent a deluge of lengthy emails to counsel in which she insisted that, among other things, he provide her with written confirmation that he would follow the demands and instructions that she set out, including a demand that he and the union "properly represent" her in her appeal against the denial of her disability benefits and on her harassment issues. She was concerned about delaying negotiations with the employer until the medical reports counsel had requested were received because she did not see the necessity of providing the medical information.

[52] Despite the explanations provided to her, the relationship between the complainant and counsel retained to assist her deteriorated to the point that she refused to allow her medical information to be released to him and accused him of "duping," "manipulating" and deceiving her for the purpose of forcing her to accept medical retirement.

[53] On August 2, 2013, counsel advised the union that he could not continue to work on the file in the face of the complainant's accusations and obvious mistrust (union submissions of February 21, 2014; Tab 16). As a consequence, the union withdrew its representation of the complainant. In a letter dated August 2, 2013, Ms. Roy wrote as follows (union submissions of February 21, 2014; Tab 15):

> *. . . We are extremely disappointed at this turn of events and take issue with the accusations made against the Institute and its staff. In contrast to your serious allegations, the Institute has, over the years, taken steps above and beyond its duty to you as a member to attempt to assist you. Our last attempt was to hire an experienced and renowned labour and human rights lawyer to represent you. Instead of cooperating and moving forward, this has culminated into further accusations and unreasonable demands.*
>
> *Over the past few days, you have sent several emails wherein you express, in no uncertain terms your complete lack of trust in the Institute, any of its staff who have tried to provide you with assistance and advice and, most recently, the external lawyers retained to assist you. You also allude to having retained your own "legal advisor". The Institute does not provide representation to members in relation to issues for which they retain their own counsel. It follows for all these reasons that the Institute must now withdraw its representational services entirely in relation to your ongoing workplace issues. . . .*

[54] Following the union's withdrawal of its representation of the complainant, she continued to seek its assistance in resolving her ongoing workplace dispute, even after filing this complaint.

[55] On January 17, 2014, after receiving a number of emails from the complainant concerning her employment situation, the union wrote to her, noting that the issues of concern were the same as those that it had been trying to help her resolve with the assistance of counsel. It reiterated its decision to withdraw its representational services, as communicated in the letter of August 2, 2013, on the basis that there was

no evidence that their working relationship would be any more productive than it had been in the past.

[56] However, in a letter to the complainant dated January 30, 2014, the union left the door open to assist her with any accommodation issues she might encounter on her return to work. However, its support was conditional on the required medical information being made available and on its analysis of whether assistance was necessary and possible, given the circumstances.

[57] On March 14, 2014, the complainant wrote to Ms. Roy and an employer representative to demand that the union represent her in her workplace issues, including her disability benefits appeal and her WSIB appeal and to arrange an appointment with a physician.

[58] In May 2014, the employer contacted the complainant for the purpose of resolving the outstanding dispute based on its understanding that she had decided to return to work. To facilitate that decision, the employer required a fitness-to-work assessment. She again sought the union's assistance, stating in an email sent on June 12, 2014, that she "required" it to intervene.

[59] The union replied to the complainant's request on June 27, 2014. It summarized its understanding of her position with respect to her return to work and, in particular, noted that she continued to insist that she would not provide the necessary medical information to the employer until it met her stipulated conditions. The union responded as follows (union submissions of July 16, 2014; Tab A):

> *. . . you seek the Institute's assistance in advancing your position. In order to assist its members in circumstances like yours, the Institute requires the cooperation of members in providing evidence of medical disability and limitations so that we may assess their cases and advise members with respect to their accommodation issues. Your refusal to provide medical evidence with regard to your fitness to work and accommodation requests has made it impossible for the Institute to assess your case and determine what course of action, if any, we can take on your behalf. Case law is clear to the effect that an employer may request, in cases where an employee is returning to work after an extended absence, confirmation that the employee is in fact medically fit to return to work.*

> *If an employee, in these circumstances seeks accommodation upon their return to work, case law also clearly supports the notion that the employer is also entitled to some medical information confirming the existence of a disability and any limitations or restrictions arising therefrom. Finally, there is ample jurisprudence establishing that employees who are able to establish that they require accommodation are entitled to* reasonable – *not perfect – accommodation.*
>
> *Regretfully, we must, at this time, reiterate that we cannot assist you unless you decide to cooperate with us and the employer in dealing with your return to work and accommodation requests. The Institute is certainly able and willing to consider assisting you in some fashion upon your provision of the information referred to herein.*

III. Summary of the arguments

A. For the complainant

[60] The complainant's submissions are extensive and mix fact, assertion and argument in a manner that makes them difficult to summarize. Furthermore, the thrust of the focus of her concerns shifted from submission to submission. However, as I understand her position, she believes that the union violated the *PSLRA*, in particular paragraph "191(*g*)" (likely meaning paragraph 190(1)(*g*)) and sections 185, 186, 187, 188 and 189, through its failure to represent her in accordance with her directions between 2009 and 2011 on WSIB matters, a harassment complaint and a harassment grievance, through its failure to represent her in settlement discussions relating to her CHRC complaint in the summer of 2013, through its requirement in 2012 that she sign a document giving up her right to pursue certain issues before the union would provide representation, through its decision to withdraw its representational services on August 2, 2013, through its failure to enforce the settlement that she believed had been negotiated, and through its continued refusal to represent her with respect to the workplace issues that remain outstanding.

[61] The complainant argued that between 2009 and 2011, the union's representatives were not supportive of her, missed deadlines and refused to represent her on the issues that she believed should be pursued, such as her WSIB appeals and a harassment grievance and complaint. She stated that the union ultimately chose not to represent her on those issues and that that decision exemplified its unethical tactics and bad faith.

[62] The complainant contended that she was left to act on her own but that when she negotiated a settlement under the auspices of a CHRC mediation process in 2013, the union refused to endorse it. She alleged the union told her that she should receive more money in the settlement but then did not negotiate on her behalf. As a consequence, she alleged that she was put in the position of having to create a settlement offer on her own, which the union presented to the employer without any discussion. She also alleged that when the employer turned that offer down and made a counter offer, the union told her to accept it.

[63] The complainant alleged that, having failed to negotiate a higher settlement for her, the union then forced her to sign a document giving up her right to union representation for her disability benefits appeal in return for representation by an outside lawyer in the ongoing settlement discussions. She believed that the fact that the union was prepared to retain a lawyer was a sign that it believed that she should not settle for the lower amount proposed by the employer.

[64] Even though the union retained a lawyer to represent her, the complainant alleged that he would not act in a timely fashion to assist her. She stated that the lawyer did not negotiate a higher settlement for her and that he did not assist her with her possible return to work or ensure that, if she retired on medical grounds, she would get the money that she had negotiated with the employer during the CHRC settlement process. She contended that the lawyer made false statements to her, would not answer her questions and would not tell her how he planned to proceed. She argued that his actions demonstrated that he had been retained by the union to force her to retire on medical grounds and that there was never any intention of ensuring that she receive the settlement she had negotiated with the employer during the CHRC mediation process or ensuring that she would have help in her return to work. She argued that his actions showed that the union's representation of her was arbitrary, done in bad faith and discriminatory and that it was intended only to get rid of her. The complainant submitted that the fact that the union continues to refuse to assist her is further proof that it is acting in bad faith.

[65] On the issue of timeliness, the complainant argued that she submitted her complaint within the time limits because the letter from the union stating that it would not represent her was dated August 2, 2013, and she filed her complaint on October 30, 2013. She argued that everything that happened before that incident was

linked to it. She also alleged that she could not have filed a complaint earlier because every time she threatened to file a complaint, the union agreed to represent her but then did not. She stated that the union misled and deceived her as to what it was actually doing on her file. However, she also stated that she received advice from a labour board other than the PSLRB that a complaint against the union would not have been appropriate because it appeared that her human rights complaint was being resolved. Furthermore, she believed that since she had a settlement with the employer, a complaint against the union was unnecessary.

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

[66] The union objected that, with one exception, all the matters that apparently form the basis of the complaint are untimely and should be dismissed on that basis. Subsection 190(2) of the *PSLRA* provides that complaints under subsection 190(1) must be made to the Board no later than 90 days after the date on which the complainant knew, or should have known, of the circumstances giving rise to the complaint. PSLRB jurisprudence has been consistent in finding that the requirement to file a complaint within the 90-day time limit is mandatory.

[67] Citing *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78, *Sigmund v. Public Service Alliance of Canada*, 2011 PSLRB 115, and *Boshra v. Canadian Association of Professional Employees*, 2011 FCA 98 (upholding 2009 PSLRB 100), the union argued that the Board does not have the jurisdiction to extend the time limit to file a complaint under subsection 190(2) of the *PSLRA* and that the failure to observe the time limit has been considered a bar to proceeding before the Board.

[68] The union noted that this complaint was filed on October 30, 2013. Therefore, only events subsequent to August 1, 2013, could form its basis. Actions or circumstances occurring before August 1, 2013, must be found untimely. Although the complainant did not specifically identify the union's letter of August 2, 2013, withdrawing its representational services, as being the source of her complaint, that was the only event described in the complaint filed on October 30, 2013, falling within the time limit set out in subsection 190(2) of the *PSLRA*.

[69] The union also alleged that even if the complainant had concerns about its representation of her between 2009 and 2013, she was aware of her right to file complaints, as she contacted a labour relations board with a view to filing a complaint

in May 2011 and made threats to file complaints against the union in 2012 and 2013 but did not. Furthermore, the complainant gave up her right to challenge the union's representation of her before July 2013, when she agreed to accept the limited representation set out in the representation agreement signed on July 11, 2013. The union argued that if she was concerned about the limited representation provided, she should have filed a complaint within the time limit related to that event, but she did not.

[70] The union also argued that the requests made on January 23, March 14 and June 12, 2014, which formed the basis of the complainant's so-called "second complaint" filed on June 24, 2014, should be characterized as part of an ongoing allegation rather than as a new complaint. The union noted that the submission of June 24, 2014, was not filed in accordance with section 2 of the *Regulations* and that it did not meet the procedural requirements for filing complaints. Furthermore, the union stated that those requests related to the same subject matter and circumstances as those that gave rise to the letter of August 2, 2013. In essence, the complainant simply asked the union to reconsider the decision that it made on August 2, 2013, to withdraw its representation, which should not have formed the basis of a new complaint.

[71] The union also argued that the complaint filed on October 30, 2013, should be dismissed on the ground that it failed to set out the particulars of the acts that formed the basis of it or to link those acts to the specific sections of the *PSLRA* that the complainant asserted that the union breached. Her assertions were vague, repetitive and wide-ranging. The complaint was lengthy and consisted of generalized and bald assertions. Despite the hundreds of pages of documents she filed, most of which were copies of her emails and letters to the union repeating the same allegations found in the complaint, she failed to establish how the union's actions violated the provisions of the *PSLRA* or breached the duty of fair representation. Procedural fairness required that the complainant articulate a clear case to which the union could respond.

[72] The union argued that the complainant failed to establish the basis of an arguable case for a violation of the *PSLRA*. Citing *Therrien v. Canadian Association of Professional Employees*, 2011 PSLRB 118, the union noted that the failure to articulate all the elements of the complaint, to link the complaint to the specific legislative

provisions at issue and to provide sufficient evidence to support a *prima facie* case should result in the dismissal of the complaint.

[73] In *Therrien*, as in this case, the complainant based his complaint on allegations of violations of sections 185, 186, 187, 188, 189 and 190 of the *PSLRA* but failed to provide particulars, despite having provided hundreds of pages of documents and submissions. In that case, the Board Member found that the failure to particularize the complaint resulted in ". . . nothing more than vague and incoherent statements and references that could not form the basis of an arguable case for a violation of the [*PSLRA*]." The complaints were dismissed.

[74] The union also noted that a number of the allegations that appear to form part of the complaint do not fall within the scope of the duty of fair representation. Citing *Vilven et al. v. Air Canada Pilots Association*, 2011 CIRB 587; *Elliott v. Canadian Merchant Service Guild et al.,* 2008 PSLRB 3; *Barbeau v. Health Sciences Association of British Columbia*, 2012 CanLII 51963 (BCLRB), and *Semancik (Re)*, BCLRB No. B520/99, the union contended that, in particular, issues relating to the settlement of the complainant's CHRC complaint, WSIB appeals and disability benefit appeals fall outside the scope of the duty of fair representation. The fact that the union tried to assist the complainant in those matters did not give rise to a legal obligation to do so; nor did the union's efforts trigger the duty of fair representation.

[75] The union argued that even if all elements of the complaint were found timely, sufficiently particularized and within the scope of the duty of fair representation, the complainant failed to establish that it breached its duty to her. The jurisprudence has established that unions have considerable discretion to determine whether to provide representation for grievances. Provided that the union exercises its discretion in good faith, without arbitrariness or discrimination, and after weighing both the interests of its membership and the significance of the grievance to the employee, it is entitled to decide not to represent an employee on a grievance.

[76] Citing *Cox v. Vezina*, 2007 PSLRB 100, and *Mangat v. Public Service Alliance of Canada*, 2010 PSLRB 52, the union argued that as long as it thoroughly investigated a grievance or other matter and considered the issues raised in it before concluding that it would have little chance of success, it fulfilled its obligation under the *PSLRA.*

[77] Citing *Bahniuk v. Public Service Alliance of Canada,* 2007 PSLRB 13, the union argued that the duty of fair representation does not require it to follow the direction of individual members in deciding whether to support a grievance or in its approach to the grievance. The right of individuals to be represented by the union is not unlimited. As long as the union exercises its judgement fairly, without discrimination or arbitrariness, it is entitled to decide how to allocate its resources.

[78] The union's withdrawal of its representational services on August 2, 2013, followed a long and difficult relationship with the complainant. Between 2011 and August 2, 2013, the union had attempted to assist the complainant with a number of issues. It assessed the WSIB decisions relating to the complainant's claims in April 2011 and concluded that, because there was no reasonable prospect of success, it could not recommend pursuing the two appeals that the complainant wanted to file.

[79] Similarly, In July 2011, the union provided advice to the complainant on her disability benefit appeals. She refused to accept the advice. In May 2013, the union attempted to assist her with an appeal she filed against the termination of her disability benefits. However, she refused to provide the medical information necessary to support her appeal. The medical information that the union sought would have been of assistance in relation to the complainant's departure from the workplace and any related settlement discussions or her reintegration and accommodation in the workplace, in addition to her appeals against the termination of her disability benefits. For that reason, despite her refusal to provide it, the union continued to be willing to assist her with her disability benefit appeal if she provided the required information. She did not.

[80] The union also attempted to assist the complainant with respect to the negotiations with the employer arising from the CHRC complaint that she filed without the union's knowledge. She refused to accept the union's advice concerning a proposed offer of settlement and, despite the union's participation, communicated directly with the employer to reject the offer. Under the circumstances, the union's withdrawal of its representation was reasonable.

[81] In the spring of 2011, the union attempted to assist the complainant with a number of issues, including workplace accommodation and a harassment complaint that she filed without its assistance or knowledge. She refused to follow its advice and

frustrated its ability to provide effective representation. For that reason, the union withdrew its representation at that time, although it did file a harassment grievance on her behalf to preserve her rights. However, in light of the ongoing difficulties of representation, the union determined that it could not provide her with representation on the grievance.

[82] The union's withdrawal of its representational services in August 2, 2013, must be considered in the context of the many failed attempts made at representation before that date. In July 2013, the union undertook to assist the complainant following the failed CHRC settlement negotiations. Because of its difficult relationship with her, it retained outside legal counsel to represent her.

[83] The scope of representation was limited by an agreement that the complainant signed on July 11, 2013. The representation agreement specifically provided that the representation could be withdrawn if she did not cooperate or if she created unnecessary barriers or complications to the representation. By signing the representation agreement, she agreed to it.

[84] The union argued that, having agreed to the terms of the representation agreement, the complainant could not then complain about its decision to withdraw representational services made in accordance with that agreement. The union attempted to assist her, but its efforts were frustrated by her refusal to cooperate. The decision to withdraw representation cannot be characterized as discriminatory, made in bad faith or arbitrary. It was an informed decision based on the limited scope of representation to which the complainant had agreed, the terms on which representation would be provided, the breakdown of her relationship with counsel and the union's resulting inability to properly represent her.

[85] The union noted that over the years that it had attempted to assist the complainant, she consistently refused to provide the medical information that it believed necessary to assess her issues in relation to her return to work and accommodation or, alternatively, her departure from the workplace through either medical retirement or a settlement.

[86] The union's requirement that the complainant provide the necessary medical information to support her demands was reasonable. The case law is clear that employers are entitled to request some confirmation of fitness to work after a lengthy

absence and that workplace accommodation requests and related issues must be supported by some medical documentation. The union indicated that it remained willing to assist the complainant but that it could only if she provided the information that it considered necessary to assess her situation and to determine an appropriate course of action.

[87] The union stated that the complainant's allegations that she was treated unfairly were not supported by the evidence. There is no evidence that the union acted in bad faith or that it engaged in arbitrary or discriminatory conduct. The onus was on the complainant to establish a violation of the relevant sections of the *PSLRA*. She failed. Therefore, the complaint should be dismissed.

IV. Reasons

[88] The complainant filed this complaint on October 30, 2013, alleging violations of paragraphs 190(1)(*a*) to (*g)* of the *PSLRA*. In subsequent correspondence with the PSLRB, she clarified that her complaint against the union concerned sections 185, 186, 187, 188 and 189 and paragraph "191(*g*)". Because there is no paragraph 191(*g*), I assume that she meant paragraph 190(1)(*g*).

[89] Paragraph 190(1)(*g*) of the *PSLRA* provides for filing a complaint concerning an allegation that the employer, the union or any person had committed an unfair labour practice within the meaning of section 185. That section defines "unfair labour practice" as anything prohibited by subsections 186(1) and (2), section 187 or 188, or subsection 189(1). The complainant identified all those provisions in her complaint.

[90] However, it seems that the complainant's concerns relate to her perception of problems arising from the union's representation of her on a number of issues, which would be covered by section 187. The complaint is not against the employer, and therefore, section 186 (unfair labour practices by the employer) does not apply. She made no allegation that her union membership was affected by any action of the union or its officers or that the union disciplined her in any manner; therefore, section 188 (unfair labour practices by the union relating to membership in the union or discipline by the union) is not engaged. There also seems to have been no suggestion made that she was intimidated or coerced by any person in any manner designed to affect her membership in the union or to prevent her from exercising a right under Part 1 or Part 2 of the *PSLRA*; therefore, section 189 does not appear to have been engaged.

Therefore, it appears that the complaint filed under paragraph 190(1)(*g*) concerns only allegations arising under section 187, which provides 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.*

[91] The complainant is responsible for ensuring that the subject matter of her complaint is clear and that the provisions of the legislation engaged are properly identified. Recent PSLRB decisions, such as *Therrien* and *Russell v. Canada Employment and Immigration Union*, 2011 PSLRB 7, have confirmed that obligation. In *Russell*, the PSLRB held as follows at paragraph 48:

> ***[48]*** *A complaint under section 190 of the* Act *need not include the full details of the complainant's case when it is filed with the Board, as is made apparent by section 4 of Form 16 (*Complaint under Section 190 of the Act*), which asks for a "[c]oncise statement of each act, omission or other matter complained of … " Nonetheless, a complainant is expected to provide sufficient information in Form 16 or, when subsequently asked for clarification, to reveal the essential subject matter of the complaint so that the Board can be satisfied (1) that it has been properly filed under the identified paragraph of subsection 190(1), and (2) that there is, or could be, an arguable case for a violation of the provision of the* Act *to which that paragraph refers. As a matter of procedural fairness, the requirement to provide sufficient information is also vital to permit the named respondent to understand the basic dimensions of the case against which it must defend.*
>
> [Emphasis added]

[92] Although both the PSLRB and the union asked the complainant to provide the particulars and a clarification of the nature of her complaint, she did not. The complaint is a lengthy and rambling document. Subsequent submissions, while somewhat briefer, fall far short of providing the concise statement required. Furthermore, the complainant submitted hundreds of pages of documents in support of her complaint without making any attempt to link them to the allegations she made in her complaint. For the most part, the documents are copies of emails from her to the union repeating the same assertions that she made in her complaint.

[93] It is not up to a panel of the new Board to sift through the voluminous documentation and assertions made by a complainant in an attempt to make sense of an issue. It was the complainant's responsibility to provide a coherent statement of how she believed the *PSLRA* was breached. In *Murphy (Re)*, [2005] B.C.L.R.B.D. No. 33 (QL), quoted at paragraph 28 of *Reid v. Canadian Union of Postal Workers,* 2013 CIRB 693, the British Columbia Labour Relations Board noted the following:

> *. . . I agree with the original panel that a party bringing a complaint before the Board is obliged to provide coherent submissions setting out relevant facts and cannot simply file volumes of documents and expect the Board to search through them to find some evidence that might be relevant.*
>
> *[10] I would add that it is not enough for a complainant to raise a bald allegation of impropriety and attach a body of documents and expect that the Board will divine how these documents demonstrate a breach of the* Code *or support the bald assertions of impropriety.*

[94] In this case, the complainant failed to provide a coherent statement of how she believed the legislation was breached, despite two requests that she provide clarification and particulars. I believe that on that basis alone, the complaint should be dismissed. However, other issues in the complaint, identified by the union, should be addressed, in the interests of fairness.

[95] Subsection 190(2) of the *PSLRA* requires that complaints filed under subsection 190(1), such as this one, be made within 90 days of the date on which the complainant knew or ought to have known of the circumstances giving rise to the complaint. The complaint was filed on October 30, 2013. For the complaint to be timely, the circumstances giving rise to it must have occurred on or after August 1, 2013.

[96] PSLRB jurisprudence has consistently held that the time limit set out in subsection 190(2) of the *PSLRA* is mandatory and cannot be extended (for example, see *Castonguay* and *England v. Taylor et al.*, 2011 PSLRB 129). As noted in *England*, the only possible discretion that arises under subsection 190(2) is the determination of when a complainant knew, or ought to have known, of the circumstances giving rise to the complaint, which requires that the complaint's essential character be identified (see *Boshra*).

[97] Given the incoherent nature of the complaint, identifying its essential character is not a simple matter. Broadly speaking, it appears to concern the complainant's belief that the union's representation of her on a wide variety of issues breached the duty of fair representation set out in section 187 of the *PSLRA*. However, the complainant identified specific events going back to 2009. She argued that those events should be found timely because they were part of a larger problem and because every time she complained to the union or threatened to take action, it promised to represent her.

[98] I do not accept the complainant's position on timeliness. In my opinion, the complaint can be reduced to a series of separate allegations occurring over a long period, and each allegation could have formed the subject of a complaint. Furthermore, based on copies of emails provided by the complainant, it is evident that she believed that she had grounds for a complaint long before this complaint was filed because she attempted to file complaints with a labour board in May 2011 and made threats to the union about filing complaints in 2012 and 2013. Therefore, she knew of the circumstances giving rise to a complaint on those issues long before August 1, 2013.

[99] Furthermore, I agree with the union that the complainant waived her right to complain about some of the issues that seem to form part of her complaint when she signed a representation agreement on July 11, 2013, which specifically set out those issues the union would provide representation for and those for which it would not. Although the complainant asserted that she was coerced into signing that agreement, she did not file a complaint in relation to it within the time limit stipulated in the *PSLRA* and therefore was barred from complaining about it in the complaint that she filed on October 30, 2013. I would add that, even if the matter were timely, she provided no evidence to support her allegation of coercion.

[100] The only event identified in the complaint that falls within the time limit set out in subsection 190(2) of the *PSLRA* is the union's letter to the complainant dated August 2, 2013, withdrawing its representational services. She had the onus to demonstrate how, in withdrawing its representation of her, the union breached its duty of fair representation. In my opinion, she failed to satisfy that onus. Leaving aside the complete lack of coherent and rational argument linking that event to a breach of the *PSLRA*, there is simply no evidence to support the allegation.

[101] Bearing in mind the complainant's longstanding and frequently expressed lack of trust in the union and its representatives, the union retained experienced outside counsel to represent her on the issues specified in the representation agreement that she signed on July 11, 2013.

[102] Within a matter of weeks, it became clear that the complainant's lack of trust in the union had carried over to the lawyer it retained to represent her. The working relationship became impossible. The lawyer believed that he needed to have a detailed medical report from the complainant's physician in order to determine the best course of action to deal with her issues with the employer. She refused to provide the information. She began making demands that counsel take action in areas that were not covered by the representation agreement, and when counsel refused, she deluged him with emails that accused him of dishonesty and unethical behaviour. In those circumstances, counsel determined that he could not effectively continue to represent her and withdrew from the case. Following that, the union determined that it could do no more for her.

[103] Nothing in the circumstances surrounding the union's withdrawal of its representation of the complainant supports an allegation that it acted in bad faith or in an arbitrary or discriminatory manner. The tone, content and frequency of her correspondence with the union and, later, with the counsel retained by the union bordered on the abusive. It is evident from the correspondence that she believed that her approach to her case was the only correct approach, despite her obvious lack of knowledge of the law governing her situation. It is also apparent that she believed that the union was obligated to represent her, no matter how weak or tenuous her case and no matter how she behaved.

[104] But, as noted in *Bahniuk*, the union is not obligated to follow the direction of its members in determining the proper course of its representation as long as it is not acting in bad faith or in an arbitrary or discriminatory manner. Furthermore, I believe that the union is not obligated to represent an employee who will not cooperate with it or whose lack of trust is so corrosive that the relationship is not functional. In those circumstances, its representation would not be productive and therefore would not be in the best interests of the membership as a whole.

[105] I do not believe that it is necessary to deal with the union's argument that a number of the issues raised by the complainant were not covered by the duty of fair representation because they did not fall within its exclusive jurisdiction. None of those incidents fell within the time limit to file a complaint.

[106] For the reasons that I have given, I find that the complainant failed to provide a coherent statement setting out the grounds of her complaint and therefore failed to establish a *prima facie* case of a breach of the *PSLRA*. In the event that I am wrong about that fact, I also find the only incident that falls within the time frame stipulated by subsection 190(2) to make a complaint is the union's withdrawal of its representation on August 2, 2013. On that matter, I find that the complainant failed to establish that the union's withdrawal of its representation was made in bad faith or in an arbitrary or discriminatory manner.

[107] Finally, I find that the union's continuing refusal to represent the complainant unless she cooperated with the direction set out in the letter of August 2, 2013, was not a separate complaint but was subsumed within its original decision to withdraw its representation, which was communicated to the complainant on August 2, 2013. No new facts were adduced that would have separated the subsequent letters from the original complaint, and it was not filed with the PSLRB in compliance with the *Regulations.*

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

(The Order appears on the next page)

V. Order

[109] The complaint is dismissed.

April 23, 2015.

Kate Rogers,
a panel of the Public Service Labour Relations and Employment Board