Date: 20170501

File: 561-34-761

Citation: 2017 PSLREB 46

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

ELIZABETH BERNARD

Complainant

and

CANADA REVENUE AGENCY

Respondent

and

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Bargaining Agent

Indexed as
Bernard v. Canada Revenue Agency

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

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

For the Complainant: Herself

For the Respondent: Caroline Engmann, counsel

For the Bargaining Agent: Patrizia Campanella, counsel

Decided on the basis of written submissions, filed August 24 and October 9 and 26, 2015.

I. Complaint before the Board

[1] On July 9, 2015, Elizabeth Bernard ("the complainant") filed a complaint against the Canada Revenue Agency (CRA) under s. 190(1)(g) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"). The complaint stated as follows:

> *On Apr 20/15 CRA advised PIPSC bargaining unit members that it would provide their home contact information to PIPSC. By doing so, CRA is (1) participating in the administration of PIPSC and (2) participating in PIPSC's representation of employees. This is a violation of PSLRA 186(1)(a).*

[2] The Professional Institute of the Public Service of Canada (PIPSC) is a bargaining agent that represents employees in the Audit, Financial, and Scientific (AFS) Group at the CRA.

[3] As corrective action, the complainant requests under s. 192 of the *Act* that the Public Service Labour Relations and Employment Board ("the Board") issue an order to the CRA to stop providing employee home contact information to the PIPSC and that it stop participating in the PIPSC's administration and in its representation of employees.

[4] The CRA filed its reply to the complaint on August 24, 2015. It objected to the jurisdiction of the Board to entertain this matter on the ground that the complainant lacks standing to file the complaint. It further submitted that the complaint relates to a notice issued by the employer, in compliance with an order of the Board. Accordingly, it argued that this action cannot constitute participation or interference in the administration of the bargaining agent and its representation of employees.

[5] The PIPSC was identified under s. 4 of the *Public Service Labour Relations Regulations* (SOR/2005-79) as a ". . . person who may be affected by the proceeding", and as such, it was instructed that it could file a response to the complaint no later than August 25, 2015. The PIPSC requested an extension of time to file its response, which was granted. It filed its response on October 9, 2015. The PIPSC objected to the Board's jurisdiction to hear the matter, as the complaint was filed without its permission and consent and further, that it is without merit. The PIPSC also submitted that the complaint should be summarily dismissed based on the doctrines of issue estoppel and abuse of process.

[6] The complainant replied to the CRA's reply and the PIPSC's response on October 26, 2015, limiting her comments to refuting the jurisdictional arguments raised by the CRA and the PIPSC

[7] For the reasons that follow, I find that the complainant is without standing to file this complaint and further, even if the complaint had the requisite standing, that this issue has already been determined and the filing of this complaint constitutes an abuse of process. Accordingly, the complaint is dismissed.

II. Background

[8] As PIPSC indicated in its reply, and I accept, at all material times, the complainant is and has been a CRA employee and is in the AFS bargaining unit, which is represented by the PIPSC. However, she is not a member of the PIPSC but is a Rand formula employee in the bargaining unit.

[9] The complaint form stated that on April 20, 2015, the CRA advised the PIPSC bargaining unit members that it would provide their home contact information to the PIPSC. The CRA, in its reply, indicated that the basis for the complaint appears to be a message issued by the employer to employees in the bargaining unit represented by PIPSC on April 20, 2015, informing them that the home contact information for all employees in the bargaining unit would be disclosed to PIPSC pursuant to an order of the Public Service Labour Relations Board. The CRA attached a copy of the notice to its submissions, reproduced below:

> ***Message to Employees in the Bargaining Unit Represented by the Professional Institute of the Public Service of Canada (PIPSC)***
>
> ***April 20, 2015***
>
> *In compliance with the Public Service Labour Relations Board's (PSLRB) requirement to notify employees, this message is for employees in the bargaining unit represented by the PIPSC.*
>
> *With the introduction of the* Public Service Labour Relations Act (PSLRA) *bargaining agents who conduct strike votes must now permit all employees in the bargaining unit to participate in those votes, not merely members of the union in good standing, as was previously the case.*

> *In order for the PIPSC to comply with its obligations under the* PSLRA *to give proper notice of strike votes to all employees, and also to fulfill its other duties in accordance with the* PSLRA*, it is necessary that the employer disclose to the PIPSC the home contact information for all employees in the bargaining unit.*
>
> *The provision of this information is governed by an order of the PSLRB. The information provided to the PIPSC will be used for the legitimate purposes of the union and its security is to be carefully maintained. The PSLRB order sets out the privacy and security safeguards to which your information will be subject.*
>
> *To this end, it is in every employee's interest that their contact information be kept up to date with their bargaining agent. You are therefore encouraged to submit your current contact information to the PIPSC and to advise your union of any changes to that information that may occur in the future.*
>
> *You can provide your contact information via the PIPSC website or by communicating with the PIPSC at 1-800-267-0446.*
>
> *Thank you for your attention and cooperation. Should you have any questions arising from this message, please do not hesitate to communicate with the PIPSC at the above number.*
>
> [Emphasis in the original]

. . .

[10] The notice had its genesis in an application brought before the Board's predecessor, the Public Service Labour Relations Board (PSLRB), in File No. 525-34-29, which was a complaint the PIPSC filed against the CRA and the Treasury Board (TB) alleging that the CRA and TB had committed an unfair labour practice under s. 185 of the *Act* by failing to bargain in good faith (under s. 106 of the *Act*).

[11] In its decision on that file (2008 PSLRB 13), the PSLRB held that there was no failure to bargain in good faith. However, it found that the CRA and TB had interfered with the PIPSC's representation of employees, viewed against the obligations established by ss. 183 and 184 of the *Act*, by failing to provide the PIPSC with necessary employee contact information. Therefore, the PSLRB found that such interference constituted an unfair labour practice within the meaning of s. 186(1)(a) of the *Act*.

[12] As a result of the decision in 2008 PSLRB 13, the PSLRB convened a hearing to determine the remaining issues. At the hearing, the PIPSC, TB, and CRA reached an agreement. By letters to the PSLRB dated July 14, 2008, they requested that the terms of that agreement be incorporated into an order of the PSLRB, which then issued two orders, with only the one in *Professional Institute of the Public Service of Canada v. Canada Revenue Agency*, 2008 PSLRB 58, having any bearing on the complainant.

[13] The relevant portions of the order in 2008 PSRLB 58 required the CRA to provide the home mailing addresses and home telephone numbers of employees in the PIPSC's AFS bargaining. The relevant portions of the order are as follows:

. . .

> *[5] The employer will:*
>
> > *1. on a quarterly basis, disclose to the bargaining agent the home mailing addresses and home telephone numbers of its employees belonging to the AFS bargaining unit, that the employer possesses in its human resources information systems. The employer will endeavour to provide this information to the bargaining agent within 3 months of the PSLRB Order endorsing this MOA;*
> >
> > *2. subject to the receipt of an express written consent from the Public Service Alliance of Canada (PSAC) granting permission to use the business process and system developed for the PSAC (*Public Service Alliance of Canada v. Canada Revenue Agency*, 2008 PSLRB 44) for the sole purpose of transmitting employee home contact data to the bargaining agent, the employer agrees to provide the data as outlined in paragraph 1;*
> >
> > *3. provide the data in a flat file comma delimited formatted specified in Appendix A (field lengths to be confirmed);*
> >
> > *4 prior to the initial disclosure of the information outlined in paragraph 1 above, the employer and the bargaining agent will jointly advise employees that the information will be disclosed. The message will explain the reasons why the information is being disclosed. Attached to the joint message will be the Board Order. Any questions concerning the disclosure will be directed to the bargaining agent. The joint message is attached to this agreement as Appendix B.*

[6] The bargaining agent will:

1. withdraw complaint 561-34-177;

2 agree that this is a full and final settlement of all claims they have, or shall have in respect of home contact information for employees in the bargaining unit, against Her Majesty in right of Canada, Her employees, agents and servants arising out of this application and, subject to the provisions of the PSLRA*, agrees not to take any proceeding of any manner with respect to them;*

3. ensure that the disclosed information is used solely for the legitimate purposes of the bargaining agent in accordance with the PSLRA*;*

4. ensure that the disclosed information will be securely stored and protected;

5. respect the privacy rights of the employees in the bargaining unit;

6. acknowledge that the employer is bound by the Privacy Act *with respect to the protection of personal information as defined in that* Act*. The bargaining agent shall manage the personal information disclosed under this Memorandum of Agreement in accordance with the principles of fair information practices embodied in the* Privacy Act *and the* Privacy Regulations*. Specifically, it will keep private and confidential any such personal information disclosed by the employer to the bargaining agent under this Memorandum of Agreement.*

7. for the sake of clarity, the bargaining agent shall among other things:

a. not disclose the personal information to anyone other than bargaining agent officials that are responsible for fulfilling the bargaining agent's legitimate obligations in accordance with the PSLRA*;*

b. not use, copy or compile the personal information for any purposes other than those for which it was provided under this agreement;

c. respect the principles of the Government Security Policy *at http://www.tbs-sct.gc.ca/pubs_pol/gospubs/TBM_12A/gsp-psg_e.html for the security and disposal of this personal information; and*

> *d. ensure that all bargaining agent officials that have access to the disclosed information comply with all the provisions of this agreement;*
>
> *8. recognize the sensitivity of the information being disclosed with respect to personal security of employees, especially where inadvertent mishandling/disclosure of this information could result in serious safety concerns, and accordingly will ensure vigilant management and monitoring controls on this information at all times in light of these potential risks to employees and their families;*
>
> *9. recognize that the information provided from the employer's database in place at the time of disclosure was provided by employees and that the employer will not be held liable should a strike vote be challenged. The bargaining agent is responsible for updating its own database.*

[7] The terms and conditions of this agreement are made without prejudice or precedent.

[8] It is expressly understood and expressly agreed that neither implementation of the terms of settlement nor acceptance of this agreement constitutes any admission of liability on behalf of any of the parties and that such liability is expressly denied in this or any other matter.

. . .

Appendix B

Message to Employees in Bargaining Units Represented by the Professional Institute of the Public Service of Canada (PIPSC)

With the introduction of the Public Service Labour Relations Act, *bargaining agents who conduct strike votes must now permit all employees in the bargaining unit to participate in those votes, not merely members of the union in good standing, as was previously the case.*

In order for the PIPSC to comply with its obligations under the PSLRA *to give proper notice of strike votes to all employees, and also to fulfill its other duties in accordance with the* PSLRA, *it is necessary that the employer disclose to the PIPSC the home contact information for all employees in the bargaining unit.*

The provision of this information is governed by an order of the Public Service Labour Relations Board, which is attached. The information provided to the PIPSC will be used for the legitimate purposes of the union and its security is to be

> *carefully maintained. The PSLRB order sets out the privacy and security safeguards to which your information will be subject.*
>
> *To this end, it is in every employee's interest that their contact information be kept up to date with their bargaining agent. You are therefore encouraged to submit your current contact information to the PIPSC and to advise your union of any changes to that information that may occur in the future.*
>
> *You can provide your contact information via the PIPSC website at http://www3pipsc.ca/portal/page/portal/website/memberservices/membership or by communicating with the PIPSC at 1-800-267-0446.*
>
> *Thank you for your attention and cooperation. Should you have any questions arising from this message, please do not hesitate to communicate with the PIPSC at the above number.*

. . .

[14] The complainant applied for judicial review of the order in 2008 PSRLB 58, arguing that requiring the CRA to provide her home address and home telephone number to the PIPSC violated her privacy rights as well as her constitutional right to freedom of association. The Federal Court of Appeal (FCA) found that the Board erred in failing to consider the privacy issues raised by its decision. It set aside the PSLREB's order in 2008 PSLREB 58 and sent the matter back for redetermination.

[15] As a result of the judicial review, the complaint in File No. 525-34-29 was reheard on November 1, 2, 16, and 17, 2010, and the complainant, representing herself, was an intervenor. In addition, the TB, the Canadian Food Inspection Agency, the National Research Council, the Canada Parks Agency, the Canadian Association of Professional Employees, and the Public Service Alliance of Canada were also intervenors.

[16] The PSLRB issued a further decision on PSLRB File No. 525-34-29, on March 21, 2011 (2011 PSLRB 34). It ordered that the consent order in 2008 PSLRB 58 (at paragraphs 180 and 181) be amended as follows:

. . .

> *[180] … The portion of the order setting out the employer's obligations is amended to add the two following paragraphs:*

> *5. Home contact information transmitted from the employer shall be password protected or encrypted to ensure its safe transmission;*
>
> *6. Subsequent to initial appointment to a position in the bargaining unit represented by the PIPSC, an employee shall be notified by the employer that his or her home contact information will be shared with the bargaining agent.*
>
> *[181] The portion of the order setting out the bargaining agent's obligations is amended to add the following paragraph:*
>
> *10. Home contact information provided by the employer shall be appropriately disposed of after it has been replaced by current home contact information.*
>
> . . .

[17] The complainant sought judicial review of 2011 PSLRB 34, which the FCA dismissed (*Bernard v. Attorney General of Canada*, 2012 FCA 92).

[18] The complainant appealed 2012 FCA 92 to the Supreme Court of Canada (SCC), which dismissed the appeal on February 7, 2014 (*Bernard v. Attorney General of Canada*, 2014 SCC 13), stating as follows:

> . . .
>
> *[21] It is important to understand the labour relations context in which Ms. Bernard's privacy complaints arise. A key aspect of that context is the principle of majoritarian exclusivity, a cornerstone of labour relations law in this country. A union has the* exclusive *right to bargain on behalf of* all *employees . . . The union is the exclusive agent for those employees with respect to their rights under the collective agreement. While an employee is undoubtedly free not to join the union and to decide to become a Rand employee, he or she may not opt out of the exclusive bargaining relationship, nor the representational duties that a union owes to employees.*
>
> *[22] The nature of the union's representational duties is an important part of the context for the Board's decision. The union must represent all bargaining unit employees fairly and in good faith. The* Public Service Labour Relations Act *imposes a number of specific duties on a union with respect to employees in the bargaining unit. These include a duty to provide all employees in the bargaining unit with a reasonable opportunity to participate in strike votes and to be*

notified of the results of such votes (s. 184). According to the Board, similar obligations apply to the conduct of final-offer votes under s. 183 of the Act.

[23] This is the context in which to consider the reasonableness of the Board's findings that disclosure of home contact information is required under the Public Service Labour Relations Act *and authorized by s. 8(2)(a) of the* Privacy Act . . . .

[24] The Board found that the employer's refusal to disclose employee home contact information constituted an unfair labour practice because it interfered with the union's representation of employees. Two rationales fueled this conclusion. The first is that the union needs effective *means of contacting employees in order to discharge its representational duties. This was explained in* Millcroft, *where the Ontario Labour Relations Board extensively reviewed a union's duties and concluded that the union "must be able to communicate effortlessly with the employees" and "should have [their contact information] without the need to pass through the obstacles suggested by the employer" in order to discharge those representational duties: para. 33.*

[25] The Board explained why work contact information was insufficient to enable the union to carry out its duties to bargaining unit employees: it is not appropriate for a bargaining agent to use employer facilities for its business; workplace communications from bargaining agents must be vetted by the employer before posting; there is no expectation of privacy in electronic communications at the workplace; and the union must be able to communicate with employees quickly and effectively, particularly when they are dispersed.

[26] The second and more theoretical rationale for the employer's obligation to disclose home contact information is that the union must be on an equal footing with the employer with respect to information relevant to the collective bargaining relationship. Disclosure of personal information to the union is not like disclosure of personal information to the public because of the tripartite relationship between the employee, the employer and the union. To the extent that the employer has information which is of value to the union in representing employees, the union is entitled to it. . . .

[27] The Board's conclusions are clearly justified. The union's need to be able to communicate with employees in the bargaining unit cannot be satisfied by reliance on the employer's facilities. As the Board observed, the employer can control the means of workplace communication, can implement policies that restrict all workplace communications, including with the union, and can monitor

communications. Moreover, the union may have representational duties to employees whom it cannot contact at work, such as employees who are on leave, or who are not at work because of a labour dispute.

[28] The second rationale – equality of information between the employer and the union – further supports the Board's conclusion. The tripartite nature of the employment relationship means that information disclosed to the employer that is necessary for the union to carry out its representational duties should be disclosed to the union in order to ensure that the union and the employer are on an equal footing with respect to information relevant to the collective bargaining relationship.

[29] Moreover, an employee cannot waive his or her right to be fairly – and exclusively - represented by the union. Given that the union owes legal obligations to all *employees – whether or not they are Rand employees - and may have to communicate with them quickly, the union should not be deprived of information in the hands of the employer that could assist in fulfilling these obligations.*

. . .

[32] The Board concluded that the union needed employee home contact information to represent the interests of employees, a use consistent with the purpose for which the government employer collected the information, namely, to contact employees about the terms and conditions of their employment. The information collected by the employer was for the appropriate administration of the employment relationship. As the Board noted, "[e]mployees provide home contact information to their employers for the purpose of being contacted about their terms and conditions of employment. This purpose is consistent with the [union]'s intended use of the contact information in this case": *para. 168 (emphasis added).*

[33] In our view, the Board made a reasonable determination in identifying the union's proposed use as being consistent with the purpose of contacting employees about terms and conditions of employment and in concluding that the union needed this home contact information to carry out its representational obligations "quickly and effectively": para 167.

. . .

[40] In the case before us, providing Ms. Bernard's home contact information to the union was reasonably found by the Board to be a necessary incident of the union's representational obligations to her as a member of the

> *bargaining unit. Based on the Court's jurisprudence, therefore, Ms. Bernard's freedom from association claim has no legal foundation.*
>
> . . .

[19] On March 7, 2014, the complainant brought a motion to the SCC requesting a rehearing of her appeal in 2014 SCC 13. On April 16, 2014, the SCC dismissed the motion, with costs.

[20] On April 24, 2014, the complainant filed a reconsideration application pursuant to s. 43 of the *Act* requesting that the PSLRB reconsider the decision in 2008 PSLRB 13. That was the original decision that ultimately led to the consent order in 2008 PSLRB 58, which the complainant sought judicial review of, was successful, and after that, participated in proceedings before the PSLRB, the FCA, and ultimately the SCC, which dealt with the employer (CRA) disclosing home contact information to the bargaining agent (PIPSC).

[21] 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 Board to replace the former PSLRB as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 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 s. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Act* before November 1, 2014, is to be taken up and continue under and in conformity with the *Act* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[22] The Board dismissed the complainant's reconsideration application (2015 PSLREB 59). She sought judicial review of that decision, which the FCA dismissed in *Bernard v. Canada (National Revenue)*, 2017 FCA 40, stating as follows:

> . . .
>
> *[10] Following* Bernard SCC [2014 SCC 13], *on April 24, 2014, the applicant requested that the Board reconsider* PIPSC 1 [2008 PSLRB 13]. *In the decision under review, the Board dismissed the applicant's reconsideration request on the basis that: the applicant did not have standing; the applicant's request was untimely; the evidence or argument on which the applicant sought to rely would not have a material and determining effect on the outcome of* PIPSC 1*; and the*

> *request was an attempt to reopen* Bernard SCC.
>
> . . .
>
> *[17] Further, in my view, the Board reasonably concluded that the applicant is seeking to reopen* Bernard SCC. *While* PIPSC 1 *was not explicitly under review in* Bernard SCC, *the SCC clearly determined that disclosing home contact information was required under paragraph 186(1)*(a) *of the* PSLRA *and authorized under the* Privacy Act. *After a total of four proceedings, before the Board, the Federal Court of Appeal, and the SCC, all of which the applicant participated in, the SCC definitively addressed the applicant's long-standing concern with the disclosure of her home contact information to the union . . . Yet, this concern remains at the core of the application's reconsideration request. . . .*
>
> . . .

[23] The notice giving rise to this complaint is virtually the same notice that is the subject matter of the original order in 2008 PSLRB 58, which was subject to the FCA's decision that led to amending that order. The PSLRB issued that amended order in 2011 PSLRB 34. It was upheld by the FCA in 2012 FCA 92 and by the SCC in 2014 SCC 13. The complainant appeared and acted for herself at all those hearings and is well aware of the background and of the decisions rendered.

[24] The PIPSC did not authorize the complainant to file a complaint under s. 186(1) of the *Act*.

III. Summary of the arguments

A. For the CRA

[25] The jurisprudence has firmly established that only an employee organization or bargaining agent or a duly authorized representative has standing to file a complaint in respect of the prohibitions set out in s. 186(1)(a) of the *Act*. The CRA referred me to *Bialy v. Heavens*, 2011 PSLRB 101, *Laplante v. Treasury Board (Department of Industry and the Communications Research Centre)*, 2007 PSLRB 95, *Merriman v. MacNeil*, 2011 PSLRB 87, and *Verwold v. Treasury Board (Correctional Service of Canada)*, 2015 PSLREB 66.

[26] Nothing in the complaint suggests that the bargaining agent authorized the complainant to file it.

[27] The basis for the complaint is the notice informing the employees in the bargaining unit represented by the PIPSC that the home contact information for all of them would be disclosed to the PIPSC pursuant to an order of the PSLRB.

[28] The fourth paragraph of the notice provides that the provision of the employee home contact information to the PIPSC ". . . is governed by an order of the PSLRB." This is in reference to the PSLRB's decision and order in 2011 PSLRB 34, for which the FCA dismissed an application for judicial review in 2012 FCA 92, and the SCC dismissed an appeal in 2014 SCC 13. The SCC upheld the PSLRB's conclusion, which was that requiring an employer to provide home contact information about bargaining unit members to a bargaining agent was reasonable.

B. For the PIPSC

(i) Jurisdiction

[29] The statutory language set out in s. 186(1) of the *Act* is in place to provide protection and recourse to employee organizations. The question as to whether an individual is allowed to file a complaint of interference with union business has already been decided by decisions of this Board and its predecessors, which have confirmed that individuals cannot file complaints under s. 186(1) of the *Act*. In this regard, the PIPSC referred me to *Bialy*, *Laplante*, *Merriman*, and *Verwold*.

[30] The PIPSC has obtained through litigation the right to access employees' contact information. Not only is the CRA not undermining the PIPSC by sharing the contact information in question, but also, the PIPSC had taken the position that the CRA had the obligation to provide employee contact information to allow the PIPSC to discharge its duty of fair representation in the context of bargaining and ratification votes.

[31] The PIPSC's position is that the Board does not have jurisdiction to deal with the complaint as it was filed without the PIPSC's permission and consent.

(ii) Issue Estoppel/Abuse of Process

[32] The complainant implies that the complaint is based on new evidence that includes the notice dated April 20, 2015. The PIPSC submits that the complaint is another improper attempt to relitigate a matter that the SCC has already dealt with. The SCC settled the issue and confirmed that the employer providing home contact

information to the bargaining agent is a use consistent with the purpose for which the employer collected that information. The SCC stated as follows in 2014 SCC 13:

. . .

> *The union needs effective means of contacting employees in order to discharge its representational duties. . .*
>
> *The union needed employee home contact information to represent the interests of employees, a use consistent with the purpose for which the government employer collected the information, namely, to contact employees about the terms and conditions of their employment. The information collected by the employer was for the appropriate administration of the employment relationship. This purpose is consistent with the union's intended use of the contact information.*

. . .

[33] The notice refers to the litigation dealt with in 2008 PSLRB 58, 2011 PSLRB 34, 2012 FCA 92, and 2014 SCC 13 and states the following:

. . .

> *In order for the PIPSC to comply with its obligations under the* PSLRA *to give proper notice of strike votes to all employees, and also to fulfill its other duties in accordance with the* PSLRA, *it is necessary that the employer disclose to the PIPSC the home contact information for all employees in the bargaining unit.*
>
> *The provision of this information is governed by an order of the PSLRB. The information provided to the PIPSC will be used for the legitimate purposes of the union and its security is to be carefully maintained. The PSLRB order sets out the privacy and security safeguards to which your information will be subject.*

. . .

[Emphasis in the original]

[34] The PIPSC submits that the doctrine of issue estoppel should be applied to prevent the complainant from seeking to relitigate the PSLRB's findings, as confirmed by the SCC. In this regard, the PIPSC relies on the preconditions the SCC set out in *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 at para. 25, as follows:

> *25 . . .*
>
> *(1) that the same question has been decided;*
>
> *(2) that the judicial decision which is said to create the estoppel was final; and*
>
> *(3) that the parties to the judicial decision . . . were the same persons as the parties to the proceedings in which the estoppel is raised . . . .*

[35] The parties to this complaint are the same as those in the litigation history. The decision that it is said to create the estoppel was final, as it was settled by the SCC. And while the complainant advances her complaint under the auspices of s. 186(1) of the *Act*, the corrective action sought is to prevent the CRA from sharing home contact information with the PIPSC.

[36] The PIPSC submits that the doctrine of issue estoppel prevents the complainant from advancing this complaint, as it has already been determined with finality.

[37] At paragraphs 18 and 19 of *Danyluk*, the SCC set out as follows the important purposes that the doctrine of issue estoppels fulfils in the common law:

> *18 The law rightly seeks a finality to litigation. To advance that objective, it requires litigants to put their best foot forward to establish the truth of their allegations when first called upon to do so. A litigant, to use the vernacular, is only entitled to one bite at the cherry. . . An issue, once decided, should not generally be re-litigated [sic] to the benefit of the losing party and the harassment of the winner. A person should only be vexed once in the same cause. Duplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided.*
>
> *19 Finality is thus a compelling consideration and judicial decisions should generally be conclusive of the issues decided unless and until reversed on appeal. . . estoppel is a doctrine of public policy that is designed to advance the interests of justice. . . .*

[38] The doctrine of issue estoppel should apply to prevent the complainant from bringing this complaint in her attempt to have "one [more] bite at the cherry", with the result that the respondents will be "vexed [more than] once in the same cause."

[39] The doctrine of issue estoppel was applied in the federal public service labour relations sphere in *Sherman v. Canada Customs and Revenue Agency*, 2004 PSSRB 125,

a case in which the Public Service Staff Relations Board (PSSRB), a predecessor of the current Board, concluded that it was bound by a final decision rendered by a third-party independent reviewer between the same parties.

[40] Allowing the complainant to proceed with this complaint would amount to an abuse of process. It would permit her to circumvent the final and binding decisions of the PSLRB, which were rendered after a formal adjudicative process that culminated in lengthy litigation up to the SCC.

[41] In *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at para. 37, the SCC adopted the following description of the doctrine of abuse of process:

> . . .
>
> *The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. It is a flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel. . . .*
>
> *One circumstance in which abuse of process has been applied is where the litigation before the court is found to be in essence an attempt to relitigate a claim which the court has already determined.* . . .
>
> [Emphasis in the original]

[42] The PIPSC submits that in accordance with the rationale set out by the SCC in *Toronto (City)*, the complainant should not be allowed to proceed with this complaint. She is abusing the Board's process and is attempting to relitigate the question of the employer sharing employee contact information with the bargaining agent, which the Board's predecessor already considered.

(iii) Vexatious litigant

[43] The PIPSC requests the Board to preclude the complainant from filing any further complaints attempting to prevent the employer from sharing employee contact information with the bargaining agent, without first seeking leave of the Board.

[44] The PIPSC submits that no obstacles in the legislation would prevent the Board from exercising its general remedial powers to this effect and that the Board possesses

an inherent jurisdiction to control its own processes. The PIPSC refers me to *Nedelkopoulos v. CAW-Canada, Local 222*, [2006] OLRB Rep. Jan/Feb 89, application for judicial review dismissed in [2008] OLRB Rep. Mar/Apr 314.

[45] The PIPSC submits that an order would be justified in the circumstances since the complainant has already litigated this issue up to and including the SCC, and since that time has not only filed a motion at the SCC asking for a reconsideration of its decision but has also initiated three proceedings on this exact same question (two with the Board and its predecessors and one with the FCA). The complainant is putting the CRA and the PIPSC to unnecessary cost and expense and has repeatedly required the Board and its predecessors to unnecessarily use its resources on the same matter.

C. <u>For the complainant</u>

[46] The complainant submits that in its previous decisions, the Board and the PSLRB wrongly interpreted Parliament's intent with respect to employees' standing when making complaints under s. 186(1) of the *Act*. She submits that in the alternative, if she is wrong, then those previous decisions can be distinguished as they relate to employer interference as opposed to her complaint, which is about employer participation in the administration of the bargaining agent or in its representation of employees.

[47] The complainant submits that the PSLRB's order that the CRA disclose home contact information to the PIPSC is of no force and effect since the legislation is clear that the Board and its predecessors had and have no jurisdiction to order the CRA to participate in the administration of the bargaining agent or in its representation of CRA employees.

[48] The complainant refers me to *Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, in which the SCC recognized that there is only one rule of statutory interpretation:

. . .

> *Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.*

. . .

[49] The complainant submits that the Board and its predecessors have applied that approach to statutory interpretation in many of its decisions, including *Treasury Board v. Professional Institute of the Public Service of Canada*, 2010 PSLRB 60.

[50] The words in s. 186(1)(a) of the *Act* mirror those in s. 94(1) of the *Canada Labour Code* (R.S.C., 1985, c. L-2; *CLC*), and as such, Parliament intentionally based the unfair labour practice provisions in the *Act* on the provisions in the *CLC*.

[51] Neither s. 186(1)(a) of the *Act* nor s. 94(1) of the *CLC* contains any language that would prevent individual employees from making complaints. When the *Act* limits individual employees' rights, it says so expressly; for example, s. 209(2) states that"[b]efore referring an individual grievance related to matters referred to in paragraph (1)(a), the employee must obtain the approval of his or her bargaining agent to represent him or her in the adjudication proceedings."

[52] Section 190(1)(g) of the *Act* does not contain any restrictions as to who can make complaints. It states as follows:

> ***190 (1)*** *The Board must examine and inquire into any complaint made to it that*
>
> . . .
>
> ***(g)*** *the employer, an employee organization or any person has committed an unfair labour practice within the meaning of section 185.*

[53] In *A&M Transport Ltd. v. Black*, [1983] F.C.J. No. 930 (QL), the FCA stated as follows when it considered a provision similar to s. 190(1):

> . . .
>
> *Under subsection 187(1) of the Canada Labour Code the only requirements are that a complaint of the kind here in question be made by a person, that it be in writing and that it be made to the Board within the ninety-day period prescribed by subsection 187(2). These requirements have been met. Under subsection 188(1) the Board, upon receiving such a complaint, is authorized to assist the parties to settle the complaint and failing that is required to hear and determine the complaint.*
>
> . . .

[54] The complainant also refers me to *113239 Canada Ltd. (c.o.b. Hill's Limousine Service)* (1996), 103 di 1, in which an employer complained that the union involved had not filed the complaint at issue on behalf of the employees; nor did the union appear as an interested party — one of the complainants appeared and represented the employees. The decision held that while that type of complaint was usually filed by a union, the *CLC* does not prevent an employee or employees from filing complaints; the right is not restricted to trade unions.

[55] The complainant submits that the unfair labour practice provisions in the *Act* are based on those in the *CLC* and that the Canada Industrial Relations Board and its predecessor, the Canada Labour Relations Board (CLRB), never denied an individual employee standing to make a complaint under s. 94(1) of the *CLC*. In *Wackenhut of Canada Limited* (1994), 94 di 173, the CLRB stated as follows: "Normally complaints of this nature are filed by trade unions. For an individual to complain without the support of his union is somewhat rare." However, the CLRB proceeded to hear the complaint.

[56] The complainant also refers me to *Khan*, 2006 CIRB 357, *Canadian National Railway Company* (1990), 83 di 29, and *Ottawa-Carleton Regional Transit Commission* (1993), 91 di 84.

[57] The complainant's position is that there is no reason that federally regulated employees subject to Part I of the *CLC* have the right to be heard while public service employees regulated by the *Act* are denied that right.

[58] The complainant submits that for over 15 years, employees in the AFS bargaining unit have been trying to change their bargaining agent. She refers to s. 5 of the *Act*, which guarantees that employees may join the employee organization of their choice and participate in its lawful activities. She further submits that the PIPSC has deliberately ignored this provision and that it has attempted to muzzle dissenting employees by punishing those it has been able to identify, in some cases with a lifetime membership ban. The complainant alleges that by participating in the administration of the PIPSC, the CRA is breaching the duty of neutrality it is required to act with.

[59] The complainant states that labour boards and courts have recognized employees' right to be heard in cases in which their interests are adverse to those of a bargaining agent.

[60] The complainant also submits that as the *PSLRA* gives every employee a right to a workplace that is free from employer participation or interference in the formation or administration of an employee organization or the representation of employees by that employee organization, the Board, bound by the *Canadian Bill of Rights* (S.C. 1960, c. 44), does not have any authority to interpret the *PSLRA* in a manner that abrogates, abridges or infringes the right of individual employees' to be heard.

[61] With respect to issue estoppel, the complainant submits that the conditions required to make a finding of issue estoppel do not exist.

[62] The complainant also states that the statutory interpretation of s. 186(1)(a) of the *Act* was not before the SCC when it dealt with the issue of disclosing home contact information.

[63] The complainant submits that the PIPSC has resorted to name-calling and legal gymnastics in an attempt to muzzle her. She states that she has the right to be heard and to receive a decision.

[64] The complainant refers me to *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, *Télévision Saint-François Inc.* (1981), 43 di 175, *Ganeca Transport Inc.* (1990), 79 di 199, *Canadian Imperial Bank of Commerce* (1979), 34 di 651, *General Aviation Services Limited* (1979), 34 di 791, *La Sarre Air Services Ltd.* (1982), 49 di 52, *Canada Post Corporation* (1994), 96 di 48, *Island Tug & Barge Limited* (1997), 104 di 1, *Garda Security Screening Inc.*, 2012 CIRB 620, and *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1.

IV. Reasons

[65] For the reasons that follow, the complaint is dismissed.

A. Standing

[66] In the first instance, the Board lacks jurisdiction for the reasons that follow.

[67] The complaint was filed under s. 190(1)(g) of the *Act*, which states as follows:

> ***190 (1)*** *The Board must examine and inquire into any complaint made to it that*
>
> . . .

> ***(g)*** *the employer, a bargaining agent or any person has committed an unfair labour practice within the meaning of section 185.*

[68] Section 185 states that "unfair labour practice" means anything that is prohibited by ss. 186(1) or (2), 187, 188, or 189(1) of the *Act*.

[69] In her complaint, the complainant specifically states that the employer is in breach of s. 186(1)(a) of the *Act*, which states as follows:

> ***186 (1)*** *Neither the employer nor a person who occupies a managerial or confidential position, whether or not the person is acting on behalf of the employer, shall*
>
> > ***(a)*** *participate in or interfere with the formation or administration of an employee organization or the representation of employees by an employee organization . . . .*

[70] As set out in the jurisprudence cited by the respondents, the Board and its predecessors, the PSLRB and the PSSRB, have been consistent in holding that only an employee organization or its duly authorized representative may base a complaint on an alleged violation of s. 186(1)(a) of the *Act*.

[71] As set out in *Bialy* (and as followed by this Board in *Verwold*), the PSLRB stated as follows at paragraphs 16 and 19:

> ***16*** *In my view, only an employee organization or a duly mandated representative may complain of a violation of the prohibitions set out in paragraph 186(1)*(a) *of the new* Act.
>
> . . .
>
> ***19*** *The prohibition set out in paragraph 186(1)*(a) *of the new* Act *is directed at protecting an "employee organization" from interference by the employer. This interpretation is reinforced by the wording of paragraph 186(1)*(b) *that, like paragraph 186(1)*(a)*, refers to an "employee organization" as opposed to a "person," referred to in subsection 186(2).*

[72] Subsection 186(2) of the *Act* states as follows:

> ***186 (2)*** *Neither the employer nor a person acting on behalf of the employer, nor a person who occupies a managerial or confidential position, whether or not that person is acting on behalf of the employer, shall*

> ***(a)*** *refuse to employ or to continue to employ, or suspend, lay off or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment, or intimidate, threaten or otherwise discipline any person, because the person*
>
> > ***(i)*** *is or proposes to become, or seeks to induce any other person to become, a member, officer or representative of an employee organization, or participates in the promotion, formation or administration of an employee organization,*
> >
> > ***(ii)*** *has testified or otherwise participated, or may testify or otherwise participate, in a proceeding under this Part or Part 2,*
> >
> > ***(iii)*** *has made an application or filed a complaint under this Part or presented a grievance under Part 2, or*
> >
> > ***(iv)*** *has exercised any right under this Par or Part 2;*
>
> ***(b)*** *impose, or propose the imposition of, any condition on an appointment, or in an employee's terms and conditions of employment, that seeks to restrain an employee or person seeking employment from becoming a member of an employee organization or exercising any right under this Part or Part 2; or*
>
> ***(c)*** *seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a financial or other penalty or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of an employee organization or to refrain from*
>
> > ***(i)*** *testifying or otherwise participating in a proceeding under this Part or Part 2,*
> >
> > ***(ii)*** *making a disclosure that the person may be required to make in a proceeding under this Part or Part 2, or*
> >
> > ***(iii)*** *making an application or filing a complaint under this Part or presenting a grievance under Part 2.*

[73] I accept and agree with the reasoning as set out in *Bialy* and *Verwold*. As such, I find that s. 186(1)(a) of the *Act* is meant to protect the bargaining agent and a complaint under this provision of the *Act*, can only be brought by the bargaining agent or a duly authorized representative.

[74] The complainant has submitted that the Board has wrongly interpreted Parliament's intent, suggesting that any person may file a complaint regarding a potential violation under s. 186(1)(a) of the *Act*. I do not accept this argument. A literal interpretation of the section as suggested by the complainant would mean that any one could bring a complaint even if they were not involved whatsoever with the employer, the workplace, the bargaining unit or the bargaining agent. That would and could lead to an absurdity, and would not be an appropriate use of resources. It is also not consistent with a reading of the *Act* as a whole. By limiting the use of s. 186(1)(a) of the *Act*, to bargaining agents or their authorized representatives, the Board is interpreting the section in a manner that is consistent with the preamble of the *Act*.

[75] The complainant appears to suggest in her submissions that there is a distinction between interference and participation. In *Bialy*, at paragraph 26, the Board did not limit its comments to only interference:

> *I am not convinced that section 190 and subsections 186(1) and (2) of the new* Act *lead to a different result when deciding who has standing under paragraph 186(1)(a). Just as under the former regime, I am of the view that the statutory rights under s. 186(1)(a) were established by Parliament to protect employee organizations and not individual employees against interference by the employer.*

[76] The complainant referred to and relied on *A&M Transport Ltd. A&M Transport Ltd.* is based on a different legislative scheme with markedly different facts and in an entirely different context. The complainants in that case were employees who were terminated from their employment and alleged their termination was the result of an unfair labour practice. The complainants had the support of their bargaining agent, which complaint was submitted by the bargaining agent and signed off by the bargaining agent representative. The issue raised by the employer was whether the complaint was valid because it had been signed by the bargaining agent representative as opposed to the complainants, as per the regulations governing the complaint process. The FCA was not, in that context, pronouncing that any person had the right to file any complaint; it was stating that the bargaining agent representative could sign and submit the complaint and that a technical defect in the regulation's requirement could be remedied and would not deprive the decision maker of jurisdiction.

[77] The complainant has submitted that all employees have a right to be heard. In this regard she has also referred to the *Bill of Rights*. In the federal public service

labour relations context, an employee in a bargaining unit can and will be heard through the representations of his or her bargaining agent. As set out earlier in this decision, the SCC in addressing this very complainant in 2013 SCC 13 has stated that: "the union must represent all bargaining unit employees fairly and in good faith. The *Act* imposes a number of specific duties on a union with respect to employees in the bargaining unit."

[78] Parliament, in the preamble of the *Act*, has recognized the exclusive right of a bargaining agent to represent all employees in the bargaining unit for which it is certified. The right to represent employees as set out in the *Act* continues to be applicable irrespective of how any particular employee views collective bargaining. Parliament has determined that, in this context, the right to be heard is exercised by the legislated representative, the employee's bargaining agent.

B. Issue estoppel and abuse of process

[79] If I am incorrect that the complainant was without standing to file this complaint, it is clear that the complaint is nothing more than a further attempt on her part to stop her home contact information from being divulged to the PIPSC. However, and more to the point, the CRA is doing nothing more than complying with an order of the PSLRB with respect to providing employee home contact information originally in 2008 PSLRB 58 and later amended by 2011 PSLRB 34, which was upheld by the FCA in 2012 FCA 92 and finally by the SCC in 2014 SCC 13.

[80] I find that this complaint meets the test for issue estoppel as outlined by the SCC in *Danyluk*.

[81] Both the CRA and the PIPSC have argued that the real issue that the complainant is attempting to address is the disclosure of her home address and home telephone number to the bargaining agent, which is an action that the jurisprudence discloses she has been fighting since 1992. I agree. This is exactly what the complainant states in her complaint; she alleges that the CRA is participating in the administration of the PIPSC and is participating in its representation of employees by advising bargaining unit members that it would provide the PIPSC with home contact information. As relief, she requests an order of the Board stopping the CRA from providing this information to the PIPSC.

[82] As set out earlier in this decision, the notice, dated April 20, 2015, is part of what the PSLRB ordered posted, and it arose out of an unfair labour practice complaint filed in 2007 by the PIPSC against the CRA. In the decision on the original complaint (2008 PSLRB 13), the PSLRB found that the CRA had breached s. 186(1)(a) of the *Act* and that it had interfered with the PIPSC by failing to provide it with the home contact information of its employees (bargaining unit members).

[83] The PSLRB ordered the parties (the CRA and the PIPSC) to attempt to reach a voluntary agreement, which they did. It was incorporated into 2008 PSLRB 58.

[84] After the PSLRB issued the order in 2008 PSLRB 58, the complainant entered the fray with the PIPSC and the CRA and sought judicial review of that order. The FCA (2010 FCA 40) partially allowed her judicial review application, which led to rehearing the order. The finding of an unfair labour practice in 2008 PSLRB 13 was neither judicially reviewed nor set aside.

[85] Pursuant to 2010 FCA 40, the PSLRB conducted a rehearing in which the complainant was granted full participation rights as an intervenor. A decision was rendered in which the order in 2008 PSLRB 58 was not only upheld, but amendments were also made. The notice attached to the original order was left intact and was made part of that order. That did not end the matter. The complainant referred that decision for judicial review, which the FCA dismissed (2012 FCA 92). She appealed that decision to the SCC (2014 SCC 13). The SCC dismissed the appeal, stating as follows:

. . .

> *[22] The nature of the union's representational duties is an important part of the context for the Board's decision. The union must represent all bargaining unit employees fairly and in good faith. The* Public Service Labour Relations Act *imposes a number of specific duties on a union with respect to employees in the bargaining unit. These include a duty to provide all employees in the bargaining unit with a reasonable opportunity to participate in strike votes and to be notified of the results of such votes (s. 184). According to the Board, similar obligations apply to the conduct of final-offer votes under s. 183 of the* Act.
>
> *[23] This is the context in which to consider the reasonableness of the Board's findings that disclosure of home contact information is required under the* Public Service Labour Relations Act *and authorized by s. 8(2)(a) of*

> *the* Privacy Act. . . .
>
> *[24] The Board found that the employer's refusal to disclose employee home contact information constituted an unfair labour practice because it interfered with the union's representation of employees. Two rationales fueled this conclusion. The first is that the union needs* effective *means of contacting employees in order to discharge its representational duties. This was explained in* Millcroft, *where the Ontario Labour Relations Board extensively reviewed a union's duties and concluded that the union "must be able to communicate effortlessly with the employees" and "should have [their contact information] without the need to pass through the obstacles suggested by the employer" in order to discharge those representational duties: para. 33.*
>
> *[25] The Board explained why work contact information was insufficient to enable the union to carry out its duties to bargaining unit employees: it is not appropriate for a bargaining agent to use employer facilities for its business; workplace communications from bargaining agents must be vetted by the employer before posting; there is no expectation of privacy in electronic communications at the workplace; and the union must be able to communicate with employees quickly and effectively, particularly when they are dispersed.*
>
> . . .
>
> *[32] The Board concluded that the union needed employee home contact information to represent the interests of employees, a use consistent with the purpose for which the government employer collected the information, namely, to contact employees about the terms and conditions of their employment. The information collected by the employer was for the appropriate administration of the employment relationship. As the Board noted, "[e]mployees provide home contact information to their employers for the purpose of being contacted about their terms and conditions of employment.* This purpose is consistent with the [union]'s intended use of the contact information in this case": *para. 168 (emphasis added).*
>
> . . .

[86] Obviously not satisfied with the SCC's decision, which upheld the PSLRB's decision to order the CRA to disclose the home contact information to the PIPSC, the complainant brought a reconsideration application to the PSLRB on April 24, 2014, under s. 43 of the *Act*. That application was her request to reconsider the decision in 2008 PSLRB 13, which was the original decision that led to the order in 2008 PSLRB 58, which she had sought judicial review of and had obtained a new hearing for in the first

place. The Board dismissed the reconsideration application in a decision dated June 29, 2015 (2015 PSLREB 59); it characterized the complainant's reconsideration application as follows:

. . .

> ***9*** *At the heart of her request for reconsideration is the applicant's determined attempt to prevent the disclosure of her personal information to the union. Although her battle on this issue began in 1992, when she filed a complaint to the Office of the Privacy Commissioner (OPC), the recent skirmish began in 2008 and ultimately involved three PSLRB decisions, two decisions of the Federal Court of Appeal (FCA), a decision of the Supreme Court of Canada (SCC) and a request for a reconsideration of the SCC decision. This request for a reconsideration of* PIPSC 1 [2008 PSLRB 13] *cannot be considered in isolation from the extensive litigation history between the parties to it.*
>
> . . .
>
> ***77*** *It seems to me that this application is a thinly disguised attempt to reopen an issue already decided by the highest court of the land. Although the applicant claims that she was denied an opportunity to present evidence relating to the legislative history of the provisions examined in PIPSC 1* [2008 PSLRB 13] *because she was not a participant in that proceeding, in fact, the interpretation of the relevant statutory provisions was a recurrent theme through all the subsequent litigation, in which she was an active participant. The SCC decided the issue finally and completely (in 2004 SCC 13) when it upheld as "clearly justified" the finding in* PIPSC 3 [2011 PSLRB 34] *". . . that the employer's refusal to disclose employee home contact information constituted an unfair labour practice because it interfered with the union's representation of employees."*
>
> . . .

[87] The complainant sought judicial review of the Board's decision on her reconsideration application (2015 PSLREB 59) to the FCA, which dismissed the judicial review (2017 FCA 40), stating, at paragraph 17, the following:

> *[17] Further, in my view, the Board reasonably concluded that the applicant is seeking to reopen* Bernard SCC. *While* PIPSC 1 [2008 PSLRB 13] *was not explicitly under review in* Bernard SCC, *the SCC clearly determined that disclosing home contact information was required under paragraph 186(1)(*a*) of the* PSLRA *and authorized under the* Privacy Act.

> *After a total of four proceedings, before the Board, the Federal Court of Appeal, and the SCC, all of which the applicant participated in, the SCC definitively addressed the applicant's long-standing concern with the disclosure of her home contact information to the union . . . Yet, this concern remains at the core of the application's reconsideration request. . . In addition to waiting until after* Bernard SCC [2014 SCC 13] *was issued to bring her request, the applicant's proposed 'new' evidence relates to the disclosure of home contact information.*

[88] The complainant now has come to this Board alleging that the CRA is in breach of the *Act* and is participating in the PIPSC's administration and representation of its employees by doing what the PIPSC originally asked the CRA to do in 2007, which the PSLRB ordered the CRA to do. The FCA and the SCC upheld that order. The CRA was required to do it. It is patently obvious that this complaint is just another disguised attempt to relitigate the same issue that this Board and the PSLRB already dealt with on several occasions. Indeed, on the first occasion, when she sought judicial review of 2008 PSLRB 58, in which the PSLRB made the order with the order's wording included, the FCA sent the matter back such that the complainant could be heard on the matter, which she was. The matter has since been dealt with by the FCA, the SCC, this Board, and the FCA yet again, all with her full participation.

[89] As the SCC set out in *Toronto (City)*, the doctrine of abuse of process engages the inherent power of the Court to prevent the misuse of its procedure in a way that would be manifestly unfair to a party to the litigation before it or that would in some other way bring the administration of justice into disrepute. It is clear that the complaint falls within this characterization.

[90] Under s. 36 of the *Act*, the Board has the power to administer the *Act* and may exercise powers that are incidental to the attainment of the objects of the *Act*, including making orders requiring compliance with the *Act*, the regulations made under it, or decisions made in respect of a matter coming before the Board. In this regard, I find that this complaint is an abuse of process.

C. <u>Vexatious matter</u>

[91] Given all the facts that have been set out and the findings that have been made in this decision, it is clear to me that the complainant is not prepared to leave this matter alone, despite the rulings made thus far, including by the SCC. Clearly, she is

attempting to relitigate the same issue that has long been dealt with fully and finally, and her actions are unnecessarily putting costs and expenses to the CRA, the PIPSC, and the Board to which they should not be subjected. As such, I find that the complaint in these proceedings is vexatious. Accordingly, the complainant will not be allowed to bring any further proceedings before this Board with respect to the issue of the disclosure of home contact information to bargaining agents without first seeking leave of the Board.

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

(The Order appears on the next page)

VI. Order

[93] The complaint is dismissed.

[94] The complainant is barred from bringing forward any further proceedings before this Board with respect to the disclosure of home contact information to a bargaining agent without first seeking leave of the Board.

May 1, 2017.

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