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1096 to 1102,
1105 and 1106

Citation: 2001 PSSRB 41

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

JEAN DESROSIERS *et al.*

Complainants

and

**THE PUBLIC SERVICE ALLIANCE OF CANADA AND
THE UNION OF SOLICITOR GENERAL EMPLOYEES**

Respondents

RE: Complaints under section 23 of the
Public Service Staff Relations Act

Before: [Yvon Tarte, président](#)

For the Complainants: [Maurice Laplante, Counsel](#)

For the Respondents: [Jean Ouellette and Rachel Dugas, Public Service Alliance of
Canada](#)

(Decided without an oral hearing.)

DECISION

[1] Considerable delays occurred in the processing of the 134 complaints in this case. These delays were due to the following factors: two applications for postponements of hearings submitted by the Public Service Alliance of Canada (PSAC) and the Union of Solicitor General Employees (USGE) due to the health of their witnesses and one of their representatives; the parties' availability; objections; a preliminary objection on jurisdiction submitted a week and a half before the date scheduled on the third notice of hearing; written representations concerning that objection; two changes of representatives; an application for leave to amend the complaints; written submissions concerning that application; and a number of applications for extensions of deadlines.

Facts

[2] In this case, the complainants (see Appendix) filed 134 complaints, between May 10 and June 16, 1999. At that time, the complainants were correctional officers employed by Correctional Service of Canada and members of the Correctional Services group (CX) bargaining unit, for which PSAC is the bargaining agent. USGE is the authorized PSAC component for correctional officers. The complainants were members of PSAC.

[3] Also at that time, the UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN was trying to obtain the support of enough correctional officers to become the bargaining agent for the CX group bargaining unit.

[4] In their complaints, the complainants alleged that PSAC and USGE (the respondents) failed to observe the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the *Public Service Staff Relations Act (PSSRA)*. Specifically, they alleged that a PSAC representative suggested to them that, if they did not sign new PSAC membership cards, they would no longer: take PSAC training courses; receive strike pay; attend PSAC or USGE conferences or meetings; attend meetings of locals; be members of the union executive or local committees; sit on PSAC or USGE committees; vote in strike votes; attend bargaining conferences; or vote on contract claims.

[5] Subparagraphs 8(2)(c)(i) and (ii) of the *PSSRA* read as follows:

8. (2) Subject to subsection (3), no person shall

...

(c) seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or any other penalty or by any other means to compel an employee

(i) seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or any other penalty or by any other means to compel an employee

(ii) to refrain from exercising any other right under this Act.

[6] In June 1999, the respondents denied any failure to observe the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the *PSSRA, supra*. As well, on August 28, 2000 they submitted the following preliminary objection on jurisdiction:

[Translation]

...

6. We shall raise an objection to the complaint [sic] ... that Mr. Jean Morin failed to observe the prohibitions contained in section 8. It has been established in Public Service Staff Relations Board case law that section 8 prohibits employers from intervening in union matters or discriminating against unions. Section 8 does not apply to this case. Specifically, paragraph 8(2)(c) is not relevant to this case because it deals with action by the employer.

...

[7] On August 31, 2000, under paragraph 8(2)(a) of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993* (the Regulations), the Board asked the parties to submit written arguments on the following issue:

[Translation]

Does the Board have jurisdiction to hear a complaint under paragraph 23(2)(a) of the PSSRA alleging that the PSAC failed to observe the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the PSSRA?

Arguments by the Parties

[8] On September 28, 2000, the respondents submitted the following written arguments:

[Translation]

**Complaint Under Section 23 of the
Public Service Staff Relations Act**

...

Issue

On August 31, 2000, the Board notified the parties that it would rule on the above-noted objection on the basis of written arguments, and would address the following issue:

“Does the Board have jurisdiction to hear a complaint under paragraph 23(2)(a) of the PSSRA alleging that the PSAC failed to observe the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the PSSRA?”

The PSAC considers that the Board does not have jurisdiction to hear a complaint made under paragraph 23(2)(a) of the Public Service Staff Relations Act concerning the above-noted prohibitions.

The prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) read as follows:

“8. (2) Subject to subsection (3), no person shall

...

(c) seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or any other penalty or by any other means to compel an employee

(i) seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or any other penalty or by any other means to compel an employee

(ii) to refrain from exercising any other right under this Act.”

Facts

The complainants work as correctional officers in various penitentiaries in Quebec. They are members of the CX group bargaining unit, for which the PSAC is the bargaining agent.

On April 11, 1997, PSAC sent to Treasury Board a notice to bargain concerning the CX bargaining unit. Treasury Board representatives identified the positions to be designated

under sections 78 to 78.5 of the PSSRA. Several hundred positions were not designated under the PSSRA. As a result, a number of members were able to take part in the strike.

On March 19, 1999, the conciliation board submitted a report under section 87 of the PSSRA stating that members occupying non-designated positions could take part in the strike starting on March 26, 1999.

On March 19, 1999, Treasury Board and PSAC agreed that approximately 728 positions in the CX bargaining unit would not be designated under the designation procedure described in the PSSRA.

On March 22, 1999, Treasury Board and PSAC ratified the agreement concerning the designated CX positions.

On March 22, 1999, Bill C-76, An Act to provide for the resumption and continuation of government services, 1999, was tabled.

On March 26, 1999, the CX members occupying the 728 positions went on strike.

On March 29, 1999, Part II of the Act to provide for the resumption and continuation of government services, 1999 came into force by order of the Governor in Council. Part II of that Act applied specifically to Correctional Service employees. Sections 16 and 17 of that Act ordered members of this group back to work and prohibited them from continuing the strike. That Act extended the collective agreement and imposed new working conditions by means of a new collective agreement.

On March 30, 1999, the new CX collective agreement came into effect, until May 31, 2000.

On March 30, 1999, the strike was declared to be over.

In mid-April 1999, strike pay cheques were sent to members who took part in the strike.

On or around April 22, 1999, Penny Bertrand, Director, PSAC Regional Offices; Steve Jelly, Executive Assistant, National Sectoral Council (NSC); and Daryl Bean, PSAC National President, met to determine in which cases CX members should sign new membership cards, considering the legal requirements, PSAC by-laws, and past practice.

On April 22, 1999, Penny Bertrand sent a memorandum to all regional representatives assigned to the CX group (Appendix 1). In the memo, following her meeting with Steve Jelly and Daryl Bean, Penny Bertrand clarified that CX

members could be represented by PSAC under the imposed collective agreement. She noted that it was inappropriate for members to sign membership cards again before proceeding with a grievance or an appeal.

However, Penny Bertrand pointed out that requests that membership cards be signed again were appropriate in the following cases:

- taking union training courses;
- receiving strike pay;
- being a representative at appeals;
- attending PSAC or USGE conferences;
- attending meetings of locals;
- being a member of the union executive or local committees;
- sitting on PSAC or USGE committees;
- voting in a strike vote;
- voting in a ratification vote;
- attending bargaining conferences and voting on contract claims.

On April 26, 1999, Jean Morin, Regional Co-ordinator, Montréal Office, sent a letter to all correctional officers working for Correctional Service in Quebec, reiterating the content of Penny Bertrand's memorandum (**Appendix 2**).

In April or May 1999, the CSN sent correctional officers a document accusing PSAC of dishonest practices toward its members (**Appendix 3**). The CSN also accused PSAC of demanding that "members sign PSAC membership cards again in order to obtain their strike pay and before being represented with the employer". The CSN also accused PSAC of intimidating and harassing its members. The CSN therefore encouraged the correctional officers to complain using the draft it had prepared, and indicating, "the Board will be obliged to exert pressure on PSAC to respect your basic rights".

Between May 5, 1999 and July 22, 1999, the complainants each filed a complaint alleging that PSAC failed to observe the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the PSSRA. Specifically, they alleged the following:

"In a letter dated April 30, 1999, Mr. Jean Morin (Organizing Officer, PSAC, Quebec) suggested that if I did not sign a PSAC membership card again:

- I could no longer take a PSAC training course;
- I could no longer receive strike pay;
- I could no longer attend PSAC or USGE conferences or meetings;

- I could no longer attend meetings of locals;
- I could not be a member of the union executive or local committees;
- I could no longer sit on PSAC or USGE committees;
- I could no longer vote in strike votes;
- I could no longer attend bargaining conferences or vote on contract claims.

Mr. Morin did this without even receiving a resignation from me; I continue to pay PSAC and USGE union dues.”

On August 25, 2000, the PSAC alleged that the Board did not have jurisdiction to hear the complaints. The jurisdictional objection dealt with the application of paragraph 8(2)(c) of the PSSRA to employee organizations. Section 8 of the Regulations reads as follows:

“8. (1) Subject to subsection (2), but notwithstanding any other provision of these Regulations, the Board may dismiss an application on the ground that the Board lacks jurisdiction.

(2) The Board, in considering whether an application or complaint should be dismissed pursuant to subsection (1), shall

(a) request that the parties submit written arguments within the time and in the manner specified by the Board; or

(b) hold a preliminary hearing.”

Under paragraph 8(2)(a) of the Regulations, the Board asked the parties to submit written arguments on the issue of its jurisdiction.

Arguments

The PSAC argues that the prohibitions contained in subparagraphs 8(2)(c) (i) and (ii) of the PSSRA do not apply to employee organizations.

Subparagraphs 8(2)(c) (i) and (ii) of the PSSRA must be read in context, not in isolation from the rest of section 8, which provides as follows:

“8. (1) No person who occupies a managerial or confidential position, whether or not the person is acting on behalf of the employer, shall participate in or interfere with the formation or administration of an employee organization or the representation of employees by such an organization.

(2) Subject to subsection (3), no person shall

(a) refuse to employ, to continue to employ, or otherwise discriminate against any person in regard to employment or to any term or condition of employment, because the person is a member of an employee organization or was or is exercising any right under this Act;

(b) impose any condition on an appointment or in a contract of employment, or propose the imposition of any condition on an appointment or in a contract of employment, that seeks to restrain an employee or a person seeking employment from becoming a member of an employee organization or exercising any right under this Act; or

(c) seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or any other penalty or by any other means to compel an employee

(i) to become, refrain from becoming or cease to be, or, except as otherwise provided in a collective agreement, to continue to be a member of an employee organization, or

(ii) to refrain from exercising any other right under this Act.

(3) No person shall be deemed to have contravened subsection (2) by reason of any act or thing done or omitted in relation to a person who occupies, or is proposed to occupy, a managerial or confidential position.”

Clearly, section 8 of the PSSRA as a whole applies to persons occupying managerial or confidential positions. Specifically, paragraph 8(2)(c) prohibits seeking to compel employees to refrain from becoming or cease to be a member, or to refrain from exercising a right under the Act. There are examples: intimidation, threat of dismissal or imposition of a pecuniary penalty. These examples are based on the authority conferred on employers, as expressed in the Board decision in Lai, PSSRB 161-34-1128 (2000-08-29), at page 6 (Appendix 4):

“The authority to dismiss belongs solely to an employer. An employee organization has no power to dismiss an employee. In this light, and in light of the other provisions in section 8 of the Act, I find that paragraph

8(2)(c) of the Act could not be directed at an employee organization. ”

The Board made a similar ruling in the Tucci decision, PSSRB 161-34-1129 (2000-08-29) (Appendix 5).

The Board had already set out its position on section 8 in the decisions in Jetté et al., PSSRB 161-2-631 to 633 (1992-03-02), at page 6 (Appendix 6):

“ It seems clear that sections 8(1) and (3) and 9(1) and (2) do not apply in the instant case. They prohibit the employer from interfering in the affairs of a trade union and from discriminating against a trade union.”

...

Sections 8(2)(a) and (b) also have no application because they prohibit certain actions by the employer.”

...

Lastly, in its decision in Bélanger, PSSRB 161-2-105 (1974-07-10), at page 16 (Appendix 7), the Board ruled as follows:

“In view of the terms used, it is clear that section 8(1) prohibits certain activities by persons employed in a managerial or confidential capacity. The prohibition, however, is directed against persons, not against employee organizations, inasmuch as the concept of a person employed in a managerial or confidential capacity, as described (sic) in section 2 of the Public Service Staff Relations Act, is intended to designate, and thus exclude on the grounds of managerial or confidential functions, only natural persons. It cannot therefore be applied to employee organizations, whether or not they have acquired legal personality. A contrary interpretation would contradict the purpose of the Act. We consequently cannot see how the complaint could possibly apply to the respondents named - the Public Service Alliance of Canada and the Department of Veterans Affairs Component - at least in so far as the prohibitions stipulated in section 8(1) are concerned....

To be successful in the case before the Board, the complainant would have to prove that the four natural persons named as respondents are persons employed in a managerial or confidential capacity, 2) who have infringed the prohibition laid down in section 8(1) of the Act against participating in or

interfering with the formation of administration of an employee organization or the representation of employees by such an organization....” (*our emphasis*)

According to the above-cited case law, then, the Board does not have jurisdiction to hear complaints made under section 8 since section 8 applies to interference by employers in union matters. These complaints have been made by PSAC members against the PSAC, a situation to which section 8 does not apply.

Corrective Action Requested

For all these reasons, we respectfully ask the Board to grant the preliminary objection concerning its jurisdiction and therefore to dismiss the complaint.

Respectfully submitted.

[Original underlining and boldface]

[9] The complainants did not respond to the respondents' written arguments. On December 22, 2000, however, they submitted an application for leave to amend their complaints, asking the Board to exercise its authority under section 3 of the Regulations and allow them to amend their complaints in order to rectify what they considered a clerical error; they wished to replace all references to failure to observe the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the *PSSRA, supra* with references to failure to observe the prohibitions contained in section 10. The complainants argued that the amendment they sought would not alter the nature of their complaints.

[10] Section 3 of the Regulations reads as follows:

3. (1) The Board may, on its own initiative or that of a party, request that information contained in any document filed by any other party be made more complete or specific.

(2) The Board, after giving a party the opportunity to reply to a request referred to in subsection (1), may strike from the document the information that is incomplete or insufficiently specific.

[11] Section 10 of the *PSSRA* reads as follows:

10. (1) *Except with the consent of the employer, no officer or representative of an employee organization shall attempt, on the premises of the employer during the working hours of an employee, to persuade the employee to become, refrain from becoming, continue to be or cease to be a member of an employee organization.*

(2) *No employee organization, or officer or representative of an employee organization, that is the bargaining agent for a bargaining unit shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in the unit.*

[12] The respondents contested the complainants' application for leave to amend their complaints. Contrary to the complainants' allegation, the respondents argued that the purpose of seeking the amendment was not to rectify a clerical error but to alter the nature of the complaints, and pointed out that the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the *PSSRA, supra*, applied to employers and their representatives, while the prohibitions contained in section 10, *supra*, applied to employee organizations and their representatives.

[13] The complainants responded that the amendment they sought did not alter the nature of their complaints at all, since the complaints were made against PSAC and actions by a PSAC representative.

Reasons for Decision

[14] The first issue the Board must address here is whether, under section 3 of the Regulations, *supra*, it must allow the complainants' application for leave to amend their complaints. The complainants wished to amend their complaints by replacing all references to failure to observe the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the *PSSRA, supra*, with references to failure to observe the prohibitions contained in section 10, *supra*. Section 3 of the Regulations, *supra*, deals with the completion or specification of documents submitted to the Board.

[15] The complainants alleged that the purpose of the amendment was merely to correct a clerical error, not to alter the nature of the complaints. I disagree. I share the respondents' view that the amendment sought alters the nature of the allegations made against the respondents. The prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the *PSSRA, supra*, prohibit employers and employer representatives from

seeking to compel employees to take a course of action in relation to membership in an employee organization, or to refrain from exercising a right under the Act. On the other hand, the prohibitions contained in section 10 of the *PSSRA*, *supra*, prohibit employee organizations and their representatives from campaigning on the premises of the employer during the working hours of an employee without the consent of the employer, or from refusing to fairly represent an employee in the unit for which it is the bargaining agent. The prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) and section 10 apply not only to different persons, but also in different circumstances. Thus, the application for leave to amend the complaints does not make the complaints more complete or specific in accordance with section 3 of the Regulations, *supra*, but does change the nature of the complaints. The application for leave to amend the complaints is therefore dismissed. Without expressing a conclusion in this regard, I would add that a reasonable person, having considered all the circumstances surrounding these matters, including the fact that the complainants submitted the application for leave to amend their complaints more than 18 months after filing the complaints, and nearly three months after receiving the respondents' written arguments in support of the preliminary objection on jurisdiction, might be tempted to conclude that the application is unreasonable and vexatious in the circumstances.

[16] The second issue the Board must address is whether it has jurisdiction to hear the complaints made under paragraph 23(1)(a) of the *PSSRA* alleging that the respondents failed to observe the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the *PSSRA*, *supra*. In other words, do these prohibitions apply to an employee organization or one of its components?

[17] The Board recently addressed this issue in the decisions in *Lai v. Professional Institute of the Public Service of Canada*, 2000 PSSRB 79 (161-34-1128); *Tucci v. Professional Institute of the Public Service of Canada*, 2000 PSSRB 80 (161-34-1129); *Martel v. Veley*, 2000 PSSRB 89 (161-2-1126); and *Godin v. Public Service Alliance of Canada (Union of Solicitor General Employees)*, 2001 PSSRB 16 (161-2-1121). In these decisions, the Board came to the conclusion that the prohibitions contained in paragraph 8(2)(c) of the *PSSRA*, *supra*, apply to employers, not to employee organizations or their representatives.

[18] The respondents argued that the Board did not have jurisdiction to hear complaints, quoting in support of their arguments the decisions in *Lai* and *Tucci*, for

example. The complainants, on the other hand, made no arguments that the Board could hear their complaints. In these circumstances, I see no reason to depart from the reasoning developed in *Lai, Tucci, Martel* and *Grondin, supra*.

[19] Since the complainants alleged that their bargaining agent and one of its components failed to observe the prohibitions contained in subparagraphs 8(2)(c)(i) and (ii) of the *PSSRA, supra*, and in light of the decisions in *Lai, Tucci, Martel* and *Grondin, supra*, I find that the Board does not have jurisdiction to hear the complaints in these matters.

[20] For these reasons, the complaints are dismissed.

**Yvon Tarte,
Chairperson**

OTTAWA, May 3, 2001.

Certified true translation

Maryse Bernier

Appendix

161-2-968	Desrosiers, Jean
161-2-970	Labelle, Richard
161-2-971	Gauthier, André J.
161-2-972	Piché, Claude
161-2-973	Levasseur, Christiane
161-2-974	Ganéó, Thierry
161-2-975	Gélinas, Jacques
161-2-976	Lavoie, Mario
161-2-977	Langlois, Sylvio
161-2-978	Henriques, Maria
161-2-979	Côté, Chantal
161-2-980	Bousquet, André
161-2-981	Giogres, Pierre
161-2-982	Gardner, Jocelyn
161-2-983	Guy, Lionel
161-2-984	Cloutier, Jean
161-2-985	Baillargeon, Robert
161-2-986	Vaillancourt, Guy
161-2-987	Séguin, Daniel
161-2-988	Cyr, Donald
161-2-989	Ordines, Richardo
161-2-990	Siovi, Richard
161-2-991	Brunelle, Guy
161-2-992	Gelineau, Michel
161-2-993	Therrien, Yves
161-2-994	Larose, Daniel
161-2-995	Michaud, Line
161-2-996	Côté, Robert
161-2-997	Kalinowski, Christian
161-2-998	Forget, Denis
161-2-999	Boudreau, Francine
161-2-1000	Bélanger, Serge
161-2-1001	Gilbert, Jean
161-2-1002	Sutton, Robert
161-2-1003	Gilbert, Carol
161-2-1004	Desbiens, Mélanie
161-2-1005	Leclerc, Eric
161-2-1006	Loyer, Gilles Alain
161-2-1007	Roy, A.
161-2-1008	Lagrandeur, Dominic

161-2-1009	Robidoux, Richard
161-2-1010	Bélanger, Michel
161-2-1011	Gordon, Pierre
161-2-1012	Lachapelle, Claude
161-2-1013	Lafrenière, André
161-2-1014	Caron, Louis-Martin
161-2-1016	Paquet, Yvon
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161-2-1018	Milette, Gélas
161-2-1019	Clane, Robert
161-2-1020	Pouliot, Paul
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161-2-1024	Jacob, Albert
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161-2-1031	Minot, Michel
161-2-1032	Dubuc, André
161-2-1033	Hurtubise, Bernard
161-2-1034	Dumais, Eric
161-2-1035	Munger, Patrice
161-2-1036	Chouinard, J.M.L. Denis
161-2-1037	Goyette, Alain
161-2-1038	Bergeron, Gaétan
161-2-1039	Nadeau, Marquis
161-2-1040	Bouchard, Alain
161-2-1041	Portelance, André
161-2-1042	Gougeon, Mario
161-2-1043	Tremblay, Sylvain
161-2-1044	Stevens, Dany
161-2-1045	Thériault, Rémi
161-2-1046	Roy, Noel
161-2-1047	Mérineau, Réal
161-2-1048	Raymond, Marc
161-2-1049	Boisclair, Suzanne
161-2-1050	Lagaçé, Rolland

161-2-1051 Labonté, Conrad
161-2-1052 Therrien, Benoît
161-2-1053 Monière, Dominic
161-2-1054 Pelletier, Gilles
161-2-1055 Larivière, Denis
161-2-1056 Turmel, Gilles Henri
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161-2-1059 Desrochers, Jean-Luc
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161-2-1067 Rioux, Yvon
161-2-1068 Plante, Jacques
161-2-1069 Heracles, Glykis
161-2-1070 Rolland, Daniel
161-2-1071 Fournier, Gilles M.
161-2-1072 Charbonneau, Daniel
161-2-1073 Mongrain, Louise
161-2-1074 Benjamin, Gilles
161-2-1075 Sigouin, Michel
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161-2-1077 Cadieux, Guy
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161-2-1079 Lavoie, Frédéric
161-2-1080 Villeneuve, Robert
161-2-1081 Plante, Christian
161-2-1082 Girard, Josée
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161-2-1086 Dumont, Luc
161-2-1087 Clavel, François
161-2-1088 Therrien, Richard
161-2-1089 Mastrocola, Francesco
161-2-1090 Marin, Annie
161-2-1091 Laviolette, Stéphane

161-2-1092	Cusson, André
161-2-1093	Lalancette, Gervais
161-2-1094	Lévesque, Herman
161-2-1096	Côté, Gilles
161-2-1097	Beaulieu, Germain
161-2-1098	Haspeck, Denis
161-2-1099	Gilbert, Jacques
161-2-1100	Nabelso, Luc
161-2-1101	Robitaille, Philip
161-2-1102	Hardy, Robert
161-2-1105	Beauchamp, Ginette
161-2-1106	Aubin, Marc