**Date:** 20220127

**File:** 561-02-43180

**Citation: 2022 FPSLREB 6**

*Federal Public Sector Labour Relations and Employment Board Act* and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

**JACQUELINE GABON**

Complainant

and

**DEPARTMENT OF THE ENVIRONMENT**

Respondent

Indexed as
*Gabon v. Department of the Environment*

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

**Before:** Caroline E. Engmann, a panel of the Federal Public Sector Labour Relations and Employment Board

**For the Complainant:** Herself

**For the Respondent:** Erin Saso, analyst, Treasury Board Secretariat

Decided on the basis of written submissions, filed June 28 and July 30, 2021.

**REASONS FOR DECISION**

## I. Complaint before the Board

[1] The complainant, Jacqueline Gabon, works at the Department of the Environment and Climate Change Canada ("the respondent") in its Meteorological Service of Canada Branch ("MSC Branch"). On June 28, 2021, she made a complaint under s. 190 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*") alleging that the respondent committed an unfair labour practice within the meaning of s. 185 of the *Act* by contravening ss. 186(1)(a) and 186(2). Specifically, she alleges that it issued grievance replies at the first and second levels of the internal grievance process to three of the six grievances she filed without affording her and her bargaining agent representative the opportunity to present the grievances at an oral hearing. She also alleges that the respondent violated section 186(2) by certain acts of intimidation.

[2] The complainant signed the complaint form, which was copied to Stephen Vanneste. He is identified in the complaint as the authorized representative of the Public Service Alliance of Canada - Union of Health and Environment Workers ("the bargaining agent" or "PSAC/UHEW"). The complaint also identifies Paige Gilmore, President of PSAC/UHEW Local 00709, as the bargaining agent representative with respect to the three grievances at the heart of this complaint.

[3] In its response, the respondent states that the complaint is unfounded and that it ought to be dismissed in its entirety. In support of its position, the respondent raises these three main objections:

1) the complainant did not have the requisite standing to make a complaint under s. 186(1)(a) of the *Act*;
2) none of the alleged acts falls within the prohibitions in s. 186(2); and
3) the complaint is moot.

[4] I have been appointed as a panel of the Federal Public Sector Labour Relations and Employment Board ("the Board") to determine the respondent's preliminary objections, which this decision deals with. In addressing them, the Board will assess these preliminary objections using the arguable case analytical framework.

[5] Other than the complainant's assertion that two of the grievances are discrimination grievances, their exact natures were not disclosed in the complaint, which is not relevant for the purposes of my determination.

[6] Section 190 of the *Act* requires the Board to "examine and inquire into any complaint" that the prohibitions in several sections under Part 1, including s. 185, were violated. Section 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) authorizes the Board to decide any matter before it without holding an oral hearing. The Board is satisfied that the merits of the preliminary objections can be dealt with in writing on the basis of the information in the complaint and the respondent's response.

[7] On the basis of the facts set out in the complaint and the respondent's response, and adopting an arguable-case analytical framework, I conclude that the complainant has no standing to make this complaint under section 186(1) of the *Act* and will dismiss the complaint on that basis. With respect to the alleged contravention of section 186(2), I accept the respondent's objection that there is no arguable case and dismiss the part of the complaint based on this provision. In light of my overall disposition on the jurisdictional issues raised as part of the preliminary objections, I need not make a decision on the issue of mootness.

## II. Summary of the facts

### A. For the complainant

[8] The complainant filed six grievances, which were held in abeyance until March 31, 2021, by mutual agreement between her bargaining agent representative and the respondent. On March 30, 2021, the respondent informed her bargaining agent representative that it would no longer continue to hold them in abeyance, and it proposed dates and times to hear three of them (numbered 9499, 9513, and 9836). Her bargaining agent representative was unavailable for the dates and times that the respondent proposed.

[9] The respondent issued first-level replies to the three grievances without holding a first-level oral hearing. It denied them all. They were then sent to the second level.

[10] The grievances were denied at the second level, again without oral hearings. The bargaining agent transmitted the grievances to the third level, citing bad faith by the

respondent in not allowing grievance hearings at the first and second levels. It alleged the following:

> …
>
> *"… By not scheduling any grievance hearings for* [the] *grievances and issuing 1st and 2nd level grievance responses without hearing the grievance arguments, the employer* [was] *acting in bad faith, in contravention of the TC Collective Agreement Article 1 (1.01 and 1.02) and the intent of the* Federal Public Service Relations Act *(preamble), as well as the departmental-bargaining agents practice of scheduling grievance hearing when it is mutually agreeable to al parties, respecting accommodations for parties and operational priorities for union "volunteers" … To not allow the merits of the grievances to be heard at a hearing is viewed as bad faith on the part of the employer."*
>
> …
>
> [*Sic* throughout]

[11] The terms and conditions of the complainant's employment are governed by, among other things, the collective agreement between the Treasury Board and the PSAC for the Technical Services (TC) Group. The complaint refers extensively to the collective agreement's provisions, in particular articles 1, 18, and 19, which provide in part as follows:

> ***Article 1**: purpose and scope of agreement*
>
> *1.01 The purpose of this agreement is to maintain harmonious and mutually beneficial relationships between the Employer, the Alliance and the employees and to set forth herein certain terms and conditions of employment upon which agreement has been reached through collective bargaining.*
>
> *1.02 The parties to this agreement share a desire to improve the quality of the public service of Canada and to promote the well-being and increased efficiency of its employees to the end that the people of Canada will be well and efficiently served. Accordingly, they are determined to establish, within the framework provided by law, an effective working relationship at all levels of the public service in which members of the bargaining agent are employed.*
>
> …
>
> ***Article 18**: grievance procedure*
>
> …
>
> *18.06 No person shall seek by intimidation, by threat of dismissal or by any other kind of threat to cause a grievor to abandon a*

> *grievance or refrain from exercising the right to present a grievance, as provided in this collective agreement.*
>
> …
>
> ***Article 19:** no discrimination*
>
> *19.01 There shall be no discrimination, interference, restriction, coercion, harassment, intimidation or any disciplinary action exercised or practiced with respect to an employee by reason of age, race, creed, colour, national or ethnic origin, religious affiliation, sex, sexual orientation, gender identity and expression, family status, marital status, mental or physical disability, membership or activity in the Alliance or a conviction for which a pardon has been granted.*
>
> …

[12] The complainant relies on these five main grounds in support of her allegation of bad faith:

1) all oral hearings were denied for the three grievances;
2) the respondent did not work with her bargaining agent representative to schedule mutually agreeable dates and times for oral hearings;
3) the respondent did not communicate with her and her bargaining agent representative before issuing the first- and second-level responses;
4) respondent decided unilaterally that the three grievances had alternate recourse mechanisms, a position that the bargaining agent does not share; and
5) the respondent discriminated against her bargaining agent representatives, in violation of s. 186(1)(b) of the *Act*.

[13] The complainant asserts that the respondent knew that she was a union steward; therefore, it systematically pressured her to no longer provide representation to the bargaining agent's members in her branch and division. She also alleges that the respondent did not consider her for staffing opportunities, including assignments and other "means". Further, she asserts that the respondent is aware that she suffers from depression, anxiety, and panic attacks and that it failed to take care to protect her health and safety in the workplace to avoid triggering her.

[14] No further particulars, including dates, are provided with respect to these additional allegations.

[15] The corrective action sought is that in consultation with the complainant's bargaining agent representative, the respondent agrees to mutually convenient dates and times to allow for oral hearings at which to fully and sufficiently present the three grievances.

**B. For the respondent**

[16] The complainant filed the three grievances at issue between January 15 and October 4, 2019. Several attempts to schedule grievance hearings were made, all to no avail. In December 2020, the respondent agreed to the bargaining agent's request that the three grievances be placed in abeyance until March 31, 2021, but indicated that it would not agree to an abeyance beyond that date.

[17] On March 31, the respondent issued responses for the three grievances at the first level of grievance process. On April 12, 2021, the grievances were transmitted to the second level, at which replies were issued on April 15. They were then sent to the third level on April 28.

[18] On May 11, 2021, the respondent communicated to the bargaining agent that the third-level decision maker was agreeable to scheduling an oral hearing, which it was agreed would take place on July 27, 2021. The three grievances were heard on that date, and the responses are pending.

**C. Procedural facts**

[19] This complaint was made on June 28, 2021. The respondent provided its response on July 30, 2021, and raised two preliminary objections. On August 3, 2021, the complainant was asked to provide her response to the preliminary objections by August 15, 2021. On August 17, 2021, she requested an extension of time to September 17, 2021, to provide a response, citing the need for additional time to verify certain factual assertions in the respondent's response as well the unavailability of her bargaining agent representative until mid-September. The respondent consented to the request, and the extension was granted.

[20] On September 15, 2021, the complainant requested a second extension of time, to October 8, 2021, citing her inability to consult with her bargaining agent representative due to a medical emergency in her family. Her response was not received by the extension date, and the Board on its own motion granted a further extension to October 19, 2021, for her to provide a response. Again, no response was received from her or on her behalf.

[21] On November 15, 2021, the Board provided one final opportunity to the complainant to provide her response to the respondent's preliminary objections. It

directed that her response, if any, should be delivered by no later than Monday, November 22, 2021, and that any reply from the respondent had to be delivered by no later than Friday, November 26, 2021. The parties were informed that after the latter date, the preliminary objections would be dealt with on the basis of the existing written submissions on file.

[22] No further submissions were received after November 26, 2021.

## III. Summary of the arguments

[23] The respondent argues that this complaint must be dismissed on these three grounds:

1) the complainant has no standing to make a complaint under s. 186(1)(a) of the *Act* because that right is reserved exclusively to the bargaining agent;
2) none of the allegations fall within the purview of s. 186(2) of the *Act*; and
3) the complaint is moot since an oral hearing has already been held at the third level of the grievance process.

[24] The complainant made no submissions on the preliminary objections, despite being afforded several opportunities.

## IV. Reasons

### A. Issues

[25] There are three main issues to be addressed, as follows:

1) Did the complainant have standing to make this complaint under ss. 186(1)(a) or (b) of the *Act*?
2) Does the complaint disclose an arguable case of a violation of the statutory provisions?
3) Is the complaint moot?

### B. Scheme of the *Act*

[26] The relevant statutory provisions are ss. 185, 186(1)(a) and (b), 186(2), and 190(1)(g) of the *Act*, which read as follows:

> ***185*** *In this Division,* ***unfair labour practice*** *means anything that is prohibited by subsection 186(1) or (2), section 187 or 188 or subsection 189(1).*
>
> ***186 (1)*** *No employer, and, whether or not they are acting on the employer's behalf, no person who occupies a managerial or confidential position and no person who is an* officer *as defined in*

*subsection 2(1) of the* Royal Canadian Mounted Police Act *or who occupies a position held by such an officer, shall*

***(a)*** *participate in or interfere with the formation or administration of an employee organization or the representation of employees by an employee organization; or*

***(b)*** *discriminate against an employee organization.*

***(2)*** *No employer, no person acting on the employer's behalf, and, whether or not they are acting on the employer's behalf, no person who occupies a managerial or confidential position and no person who is an* officer *as defined in subsection 2(1) of the* Royal Canadian Mounted Police Act *or who occupies a position held by such an officer, shall*

***(a)*** *refuse to employ or to continue to employ, or suspend, lay off, discharge for the promotion of economy and efficiency in the Royal Canadian Mounted Police 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 or 2.1,*

***(iii)*** *has made an application or filed a complaint under this Part or Division 1 of Part 2.1 or presented a grievance under Part 2 or Division 2 of Part 2.1, or*

***(iv)*** *has exercised any right under this Part or Part 2 or 2.1;*

***(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 a person seeking employment from becoming a member of an employee organization or exercising any right under this Part or Part 2 or 2.1; 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 or 2.1,*

> ***(ii)*** *making a disclosure that the person may be required to make in a proceeding under this Part or Part 2 or 2.1, or*
>
> ***(iii)*** *making an application or filing a complaint under this Part or Division 1 of Part 2.1 or presenting a grievance under Part 2 or Division 2 of Part 2.1.*
>
> …
>
> ***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.*
>
> [Emphasis in the original]

[27] The essence of the statutory provisions in s. 186 of the *Act* is to provide two distinct and different prohibitions — s. 186(1) is aimed at protecting employee organizations' interests, while s. 186(2) is directed at protecting individual employees' interests. The predecessor to this Board explained those provisions in *Bialy v. Heavens*, 2011 PSLRB 101 at paras. 18 to 20, as follows:

> ***18*** *In my opinion, when Parliament enacted subsections 186(1) and (2) of the new* Act*, it had in mind two different and distinct statutory protections against potential unfair labour practices by employers.* ***One was to protect the interests of employee organizations, and the other was to protect the interests of individual employees****.*
>
> ***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).*
>
> ***20 In enacting subsection 186(2), Parliament was equally concerned about protecting the interests of individual employees by listing the actions that employers may not take against employees and that constitute unfair labour practices. That list is clearly directed at protecting individuals as opposed to employee organizations****.*
>
> [Emphasis added]

## V. Analysis and decision

### A. The three main issues

#### 1. Does the complainant have standing to make a complaint under s. 186(1)?

[28] As noted earlier, s. 186(1) aims to protect employee organizations' interests, and as such, individual employees lack standing to make a complaint under this section. The jurisprudence from this Board and its predecessors is clear on this point. In *Bialy*, the complainant alleged that the respondents interfered in an employee organization's representation of employees by placing conditions on a proposed settlement agreement. The complaints were dismissed on the grounds that the individual complainants had no mandate from their bargaining agent to make them and that therefore, the complainants lacked the requisite standing.

[29] In *Bernard v. Canada Revenue Agency*, 2017 PSLREB 46, the Board's predecessor concluded that it lacked jurisdiction to examine and inquire into a complaint made by an individual employee that stated that the respondent had violated s. 186(1)(a) of the *Act*. It stated as follows: "… 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*."

[30] In *Walenius v. Treasury Board (Department of Foreign Affairs, Trade and Development)*, 2020 FPSLREB 48, the bargaining agent withdrew its representation of the complainant, who then sought to pursue the complaint on her own behalf. The Board reiterated as follows at paragraph 39:

> *[39] The case law cited by the respondent is clear. In* Bernard 2017*, the Public Service Labour Relations and Employment Board (PSLREB) clearly stated that s. 186(1)(a) is designed to protect the interests of bargaining agents and that "… a complaint under this provision of the* Act*, can only be brought by the bargaining agent or a duly authorized representative" (at paragraph 73).*

[31] I see no valid reason to depart from this line of well-established Board jurisprudence that only an employee organization or its authorized representative can make a complaint under s. 186(1) of the *Act*.

[32] In this case, Ms. Gabon is representing herself. Although her bargaining agent representatives are being copied on all emails from the Board's Registry, there has not

been any confirmation that they approved this complaint; nor have they filed any material to support it. Therefore, I find that Ms. Gabon lacked the requisite standing to make this compliant under s. 186(1) of the *Act*. This means that her allegations which relate to the employer having failed to hold grievance hearings with her bargaining agent and her allegations of bad faith against her bargaining agent cannot proceed.

[33] While article 18.14 of the TC collective agreement states that "[t]he Alliance shall have the right to consult with the Employer with respect to a grievance at each or any level of the grievance procedure", this right is clearly provided to the Alliance and not to the complainant.

[34] Furthermore, this allegation requires a substantive interpretation of a provision of the collective agreement which is more appropriately addressed through the adjudication process under Part 2 of the *Act*. Section 191(2) of the *Act* provides as follows:

> ***191(2)*** *The Board may refuse to determine a complaint made under subsection 190(1) in respect of a matter that, in the Board's opinion, could be referred to adjudication under Part 2 or Division 2 of Part 2.1 by the complainant.*

[35] I accept the respondent's objection on section 186(1) and dismiss the complaint. Even had she had standing to file it, I would have exercised my discretion not to hear it.

[36] I will now address the respondent's other points, which are that none of the events that the complainant cites triggers any of the prohibitions in s. 186(2). Given that an individual employee can make a complaint under s. 186(2), it is worthwhile to conduct the arguable-case analysis to determine whether the complaint should proceed to a hearing. Finally, I will address the issue of mootness.

**2. Do the allegations disclose an arguable case?**

[37] The arguable-case analytical framework is similar to the framework adopted in civil actions with respect to preliminary motions to strike pleadings. I draw on the Supreme Court of Canada's analysis in *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), in which the Court held that the test to be adopted for preliminary motions to strike pleadings is the "plain and obvious" test. In applying this test, courts assume that the facts as stated in the pleadings can be proved; in other words, the bare facts

stated in the pleadings are assumed to be true. Upon that foundation, the court must then consider whether it is plain and obvious that the pleading discloses a reasonable cause of action.

[38] The jurisprudence of this Board and its predecessors has firmly established the arguable-case analytical framework in the context of addressing preliminary objections to unfair-labour-practice complaints. While this approach has been adopted predominantly in duty-of-fair representation complaints, in my view, it is equally applicable to other types of unfair-labour-practice complaints.

[39] In *Hughes v. Department of Human Resources and Skills Development*, 2012 PSLRB 2, the complainant made complaints against his employer alleging several violations of s. 186(2) of the *Act*. The former Board dealt with, among other issues, the respondent's objection that the complainant failed to demonstrate on the face of the complaints that the respondent violated the statutory provisions; in other words, the complaints, on the face, did not disclose an arguable case that the statutory provisions had been violated. Addressing this preliminary objection, the former Board framed the issue as follows at paragraph 86:

> *[86] … The parties were asked to address whether the three complaints before me* ***reveal, on their face, an arguable case of a violation of the*** **PSLRA***.* ***The parties were asked to specifically address whether, if the Board considered all the facts alleged in the complaints as true, there is an arguable case that the respondent contravened the unfair labour practice legislative provisions of the*** **PSLRA.**
>
> [Emphasis added]

[40] Using this analytical framework, the former Board found that the complaints revealed an arguable case of a contravention of s. 186(2)(a) of the *Act* (see paragraphs 104 to 108). This approach requires a careful and rigorous analysis of the facts that the parties set out, to assess whether there is an arguable case.

[41] The former Board noted as follows in *Hughes*, at para. 105:

> *[105] … if* [there is] *any doubt about what the facts, assumed to be true, reveal, then* [the Board] *must err on the side of finding that there is an arguable case … and … must preserve the complainant's opportunity to have his complaints heard ….*

[42] I adopt a similar approach in this case.

[43] The crux of the complainant's remaining allegations under s. 186(2) are set out by her the Form 16 under the heading "Other contributory factors" as follows:

> …
>
> *Management was aware that the Grievor was a union representative for Local 00709 and Alternate RVP for UHEW Ontario Region. The Grievor had provided representation services to UHEW members in MSC Branch in the past. The Grievor assets that the employer was* ***putting pressure on her to no longer provide union representation to UHEW members in MSC Branch and MDSD*** *(*FPSLRA *s 186(1)(a),* FPSLRA *186(2)(c) ), not considering her for staffing opportunities including assignments for [sic] which management was aware that she was interested in and in qualified pools, and by other means.*
>
> …
>
> [Emphasis added]

[44] In addition, she has made allegations concerning the employer's failure to protect her health.

[45] It would appear that the allegation related to not being considered for "staffing opportunities including assignments" pertains to the prohibition in section 186(2)(c), which specifies the following:

> ***186 (2)*** *No employer, no person acting on the employer's behalf, and, whether or not they are acting on the employer's behalf, no person who occupies a managerial or confidential position and no person who is an* officer *as defined in subsection 2(1) of the* Royal Canadian Mounted Police Act *or who occupies a position held by such an officer, shall*
>
> …
>
> ***(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 or 2.1,*
>
> ***(ii)*** *making a disclosure that the person may be required to make in a proceeding under this Part or Part 2 or 2.1, or*

> ***(iii)*** *making an application or filing a complaint under this Part or Division 1 of Part 2.1 or presenting a grievance under Part 2 or Division 2 of Part 2.1.*

[Emphasis added]

**a. Pressure to discourage representation**

[46] As for the allegation that "… the employer was putting pressure on her to no longer provide union representation to UHEW members in MSC Branch and MDSD …", it clearly falls under the prohibition set out in s. 186(2)(c) as she alleges intimidation designed to have her refrain from her role as a bargaining agent representative. However, while the bare allegation may fit under the definition of an unfair labour practice as defined in the *Act*, the complaint is also devoid of any facts on this issue and she made no submissions on the issue either. The arguable case test, in part, requires some facts, even basic ones, which are not present here. More than mere allegations are required and the complainant was clearly advised of the repercussions of her failure to submit them.

[47] The complainant asserts that the respondent pressured her to no longer provide bargaining agent representation to bargaining unit members in her branch and division. She does not provide any particulars as to incidents or events underlying her bald assertion. Particulars are important because of the operation of s. 190(2), which requires that a complaint be made no later than 90 days after the date on which the complainant knew or ought to have known of the action or circumstances giving rise to it.

[48] In arriving at my decision, I adopt the approach of the Board in *Hager* v. *Statistics Survey Operations and the Minister responsible for Statistics Canada*, 2009 PSLRB 80 at para 35 as follows:

> *35 … the* prima facie *test must be applied in a fashion that errs on the side of allowing a complaint to be heard on its merits unless there is no arguable case to be made, presuming the facts as alleged to be true. As the complainants have argued, it is certainly not appropriate to require them to reveal all the facts on which their case is based as a precondition to crossing the* prima facie *threshold. What* ***is*** *required are facts sufficient to establish an arguable link between the respondents' decision to remove the complainants from the Core North Team and their memberships in the bargaining agent or their roles on its local executive.*

[Emphasis in the original]

[49] In this case, unlike in *Hager*, there is a complete dearth of particulars or specifics of the alleged actions, inactions and events that form the basis of the complainant's allegation of being pressured. I am keenly aware of the operation of section 191(3) which reverses the burden of proof in a complaint based on section 186(2) as well as the 90-day limitation period. In the interest of fairness, I must find that there is no arguable case to be made on the basis of the file before me as the complainant has failed to provide any facts at all.

**b. Staffing opportunities**

[50] The complainant asserts that management was aware that she was interested in certain staffing opportunities; yet, she was not considered for them. Furthermore, she states that she was in qualified pools. There are no particulars with respect to these events or circumstances and the related timing. Again, I am faced with her mere allegation that certain management staffing decisions were made as pressure tactics meant to discourage her bargaining agent activities. There is no arguable case of a contravention on this allegation.

**c. Health concerns**

[51] The complainant also asserts that management was aware that she suffers from depression, anxiety, and had panic attacks; therefore, it ought to have taken care to protect her health and safety in the workplace, to avoid triggering her. She claims that the first- and second-level grievance responses being issued without oral hearings triggered her health conditions. Once again and for the purposes of clarity, the provision of the *Act* at issue is as follows:

> ***186 (2)*** *No employer, no person acting on the employer's behalf, and, whether or not they are acting on the employer's behalf, no person who occupies a managerial or confidential position and no person who is an officer as defined in subsection 2(1) of the* Royal Canadian Mounted Police Act *or who occupies a position held by such an officer, shall*
>
> …
>
> ***(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 or 2.1,*
>
> ***(ii)*** *making a disclosure that the person may be required to make in a proceeding under this Part or Part 2 or 2.1, or*
>
> ***(iii)*** *making an application or filing a complaint under this Part or Division 1 of Part 2.1 or presenting a grievance under Part 2 or Division 2 of Part 2.1.*

[Emphasis added]

[52] I am unable to read the above provision as in any way providing for an obligation on the employer to protect an employee's health and safety. While such an obligation does in fact exist in law under the auspices of the *Canada Labour Code*, I see no way in which to read such an obligation into s. 186(2)(c). I find that there is no arguable case on this allegation.

### 3. Mootness

[53] In light of my decision on the issues raised by the preliminary objections I need not address the issue of mootness.

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

*(The Order appears on the next page)*

## VI. Order

[55] The respondent's preliminary objections are partially upheld.

[56] The complaint is dismissed.

January 27, 2022.

**Caroline E. Engmann,**
**a panel of the Federal Public Sector**
**Labour Relations and Employment Board**