Date: 20220413

File: 561-02-893

Citation: 2022 FPSLREB 30

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

GEORGE SGANOS

Complainant

and

ASSOCIATION OF CANADIAN FINANCIAL OFFICERS

Respondent

Indexed as
Sganos v. Association of Canadian Financial Officers

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: Melynda E.A. Layton, counsel

For the Respondent: Danielle Viel, counsel

Decided on the basis of written submissions, filed February 20 and March 6, 2018, and November 15 and 22, 2021.

REASONS FOR DECISION

I. Complaint before the Board

[1] The complainant, George Sganos, was at all relevant times a financial officer classified at the FI-03 group and level, and he worked in the Office of the Controller General within the Treasury Board Secretariat ("the Treasury Board" or "the employer"). The respondent, the Association of Canadian Financial Officers (ACFO), is the certified bargaining agent representing financial officers employed in the federal public service.

[2] On January 26, 2018, the complainant made this complaint against the respondent, alleging a violation of s. 187 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"), which states as follows:

> ***187*** *No employee organization that is certified as the bargaining agent for a bargaining unit, and none of its officers and representatives, shall act in a manner that is arbitrary or discriminatory or that is in bad faith in the representation of any employee in the bargaining unit.*
>
> ***187*** *Il est interdit à l'organisation syndicale, ainsi qu'à ses dirigeants et représentants, d'agir de manière arbitraire ou discriminatoire ou de mauvaise foi en matière de représentation de tout fonctionnaire qui fait partie de l'unité dont elle est l'agent négociateur.*

[3] Specifically, he alleged that he received minimal support from the respondent in his attempts to "… shed light concerning wrongdoing in the Federal Government since 2015." He cited a particular event on November 2, 2017 (an agreement by the respondent to hold grievance presentation timelines in abeyance), which confirmed his belief that the respondent was acting in bad faith and was violating his rights under the provisions of the relevant collective agreement. As corrective action, the complainant seeks to be made whole as well as a review and revocation of the respondent's certification.

[4] The respondent provided its response to the complaint on February 20, 2018, and raised a preliminary objection on the basis that the complainant's allegations "… do not disclose a *prima facie* breach of [its] duty of fair representation …". The respondent requested that the complaint be summarily dismissed without a hearing.

[5] The complainant responded to the respondent's objection on March 6, 2018, by providing additional information.

[6] Section 190(1)(g) of the *Act* requires that the Federal Public Sector Labour Relations and Employment Board ("the Board") examine and inquire into any complaint that an employee organization has committed an unfair labour practice. Pursuant to s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365), the Board "… may decide any matter before it without holding an oral hearing."

[7] The Board informed the parties that it would address the respondent's preliminary objection on the basis of written submissions and invited them to provide any additional submissions related to determining the objection by way of written submissions or to the objection itself. The parties were informed that upon receipt of the submissions, the complaint may either be scheduled for an oral hearing or it may be dismissed based on the written submissions and the file would then be closed. Both parties provided additional submissions. The complainant maintains that to decide whether there is any veracity to his claims, there must be a "… a full hearing … during which [he would be] entitled to full disclosure in advance."

[8] I was appointed as a panel of the Board to determine the respondent's preliminary objection. I am satisfied that the parties' written submissions provide me with a sufficient basis to deal with the objection.

[9] For the reasons outlined in this decision, I uphold the respondent's preliminary objection and dismiss the complaint on the basis that the allegations do not disclose an arguable case of a contravention of s. 187 of the *Act*. In reaching this conclusion, I followed the analytical framework adopted by the Board to address these types of preliminary objections, which is the arguable case analysis.

II. Summary of the parties' submissions

A. For the complainant

[10] The complaint was made using the Board's Form 16, section 4 of which requires the complainant to provide a concise statement of the act, omission, or matter complained of, including dates and the names of the persons involved. This requirement is particularly important due to the operation of s. 190(2) of the *Act*, which mandates 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 circumstances or action giving rise to the complaint.

[11] At section 4 of the Form 16, the complainant stated as follows:

> *I believe that there has been unfair representation by my bargaining agent (the Association of Canadian Financial Officers) as prescribed by section 187. additional details are provided in the attached paper.*

[12] The attached paper provided further details, as follows:

> *I have been trying to shed light concerning wrongdoing in the Federal Government since December 2015. I have being using official avenues to pursue this and I have called upon my bargaining agent (the Association of Canadian Financial Officers) for assistance. For the majority of [sic] time, I believe the support of the bargaining agent was minimal. However, in the last twenty months, the actions of the bargaining agent have led me to believe they are behaving in a manner that is in bad faith. In particular, on November 2, 2017, I obtained confirmation that my bargaining agent violated my rights under section 17.17 of the collective agreement between the Treasury Board and the Association of Canadian Financial Officers.*

[13] Elsewhere in the Form 16, it is alleged that "… the bargaining agent has been compromised via numerous conflict [*sic*] of interests [*sic*]".

[14] The complainant's extensive submissions are on the Board's file. In the paragraphs that follow, I have summarized some of the relevant events, bearing in mind that the 90-day period preceding the complaint being made is the only relevant period.

[15] The complainant asserts that the respondent acted in bad faith and that it engaged in unfair representation, which he bases on the events outlined in the following paragraphs.

[16] The complainant stated that he started whistle-blowing on December 21, 2015, and requested assistance from the ACFO. The next day, an ACFO labour relations advisor, Grant Boland, contacted him to discuss his problem. They met on December 23, 2015, following which he filed a grievance.

[17] Mr. Boland recommended placing the grievance timeline in abeyance. Initially, the complainant did not want to acquiesce, as he felt that there was "a delay pattern with the assistance" he was receiving. After an explanation from Mr. Boland on the

implication of holding the timelines in abeyance, he agreed to it. He continued to gather evidence to support his whistle-blowing allegation.

[18] His grievance hearing was held on June 3, 2016. It was not until four months later that he received a reply, denying the grievance. The complainant was unhappy with the delay in the processing of the grievance, and he made his dissatisfaction known to his union representative, Mr. Boland.

[19] The complainant made a staffing complaint in February 2017, following which he began to receive reprisals from senior executives in his workplace, in particular Michael Lionais, the executive director of his work unit.

[20] Mr. Lionais gave him a written reprimand on May 19, 2017. Mr. Boland recommended that the complainant grieve the reprimand, which he did on May 24, 2017. He states that at that time, he made it clear to Mr. Boland that "… the delay tactics used before were not acceptable and [he] wanted the grievance process to proceed quickly."

[21] The employer requested that the grievance timelines be placed in abeyance until the grievance was heard at the first level. The complainant agreed to that and to holding the first-level hearing after the summer leave period. He insisted that the timelines established in the relevant collective agreement had to be adhered to following that first-level hearing.

[22] The complainant was shocked to learn that there was no first-level hearing and that the second-level hearing would be held before Mr. Lionais. He believed that this was a conflict of interest, so he transmitted his grievance to the third level.

[23] He did not hear anything about the third-level hearing until he received an email from Mr. Boland on October 25, 2017, which read as follows:

> …
>
> *"I got a call from LR* [Labour Relations] *at the department asking if we would like to keep the grievance in abeyance until Michael is no longer acting. She said that is going to be mid November. I think this is preferable on our side, but just wanted to confirm with you before I agree to that."*
>
> …

[24] He was displeased with Mr. Boland's email, as he felt that the employer was once again engaging in delay tactics. He informed Mr. Boland that the delay was unacceptable to him and made his position known in a series of email exchanges between October 25 and November 2, 2017. On November 2, 2017, Mr. Boland admitted to the complainant that he agreed to put the timelines in abeyance for the third-level hearing, thus going against the complainant's wishes. This was done on October 6, 2017.

[25] According to the complainant, instead of apologizing for his inappropriate behaviour, Mr. Boland started to pressure him "… to agree to something [he] never wanted or believed to be appropriate." He also believed that Mr. Boland made a few false statements. Mr. Boland going against his wishes proved to him that Mr. Boland was not acting in good faith.

[26] Over the next two months, the complainant found out that Mr. Boland went against his wishes because the ACFO was working with Mr. Lionais to receive a substantial amount of money from the employer for training purposes. He believes that Mr. Boland and the ACFO used his whistle-blowing information to gain access to new and substantive money inflows from the employer, for training purposes.

[27] The complainant alleges that the ACFO summarily dismissed the evidence of whistle-blowing he had uncovered, including the allegations against senior leadership in the Office of the Comptroller General, such as Mr. Lionais and others. He further charges that the ACFO arbitrarily dismissed his reprisals claims and failed to address his allegations that the employer was targeting him.

[28] As part of his bad-faith allegation, the complainant alleges that while dealing with a grievance against Mr. Lionais in September 2017, Mr. Boland directed him to proceed to the grievance hearing in front of Mr. Lionais, despite acknowledging that there was a conflict of interest.

[29] The complainant also asserts that the ACFO was in a conflict of interest, which it failed to disclose to the complainant when it lobbied the Office of the Comptroller General to secure funding to support its members' professional development. The ACFO received the funding on December 6, 2017.

[30] On October 27, 2017, Mr. Boland advised the complainant that the grievance timelines were discretionary, which is contrary to the provision of the relevant collective agreement that indicates that the timelines are mandatory.

[31] On November 2, 2017, Mr. Boland deceived the complainant by incorrectly advising the complainant that he was dealing with someone called "Lisa", when emails of October 6 and November 2, 2017, confirm that he was corresponding with Laura Szabo.

[32] On November 8, 2017, "Mr. Grant" [presumably Mr. Boland] threatened the complainant that the ACFO would abandon him if he did not agree to delay the grievance. On November 14, 2017, the ACFO refused to represent the complainant, alleging that he failed to meet an expected "standard".

[33] During a hearing on November 23, 2017, the ACFO failed to object to Ms. Szabo's participation, who had been identified as the "note-taker" and "neutral representative of Labour Relations".

B. For the respondent

[34] The respondent is the certified bargaining agent representing financial officers employed in the federal public service. It asserts that the complaint ought to be dismissed summarily on the basis that the complainant has failed to disclose a *prima facie* breach of its statutory duty of fair representation. In addition to this preliminary objection, the respondent states that its officers and representatives conducted themselves honestly and forthrightly in their dealings with the complainant and that he acted uncooperatively and inappropriately.

[35] The respondent provided an extensive chronology of its representation of the complainant between 2015 and 2018. For the purposes of this complaint, the relevant events are those falling within the 90-day period before the complaint was made, which began on October 29, 2017. To the extent that I have set out any events outside that period, it is only to provide the appropriate contextual and background information.

[36] The respondent has a skilled and experienced labour relations team operating out of its national office consisting of six labour relations advisors and a director of labour relations. This team provides services to financial officers in matters

concerning the interpretation of collective agreements, informal conflict resolution, grievances, staffing complaints, harassment, and discrimination complaints. During the period relevant to this complaint, Mr. Boland was the labour relations advisor assigned to assist the complainant.

[37] Since 2008, the respondent has helped the complainant with numerous formal and informal matters. According to the chronology and emails provided by the respondent, Mr. Boland and the complainant exchanged several emails between October 29, 2017, and January 22, 2018, about the scheduling of the third-level hearing of the complainant's grievance against the written reprimand that Mr. Lionais issued on May 19, 2017.

[38] I have outlined after this paragraph the salient and relevant information. The anchoring event of the parties' correspondence during this period appears to be Mr. Boland's decision on behalf of the complainant to agree to the employer's request that the timelines for the third-level transmittal be held in abeyance until a formal hearing could be scheduled. This communication with the employer occurred on October 6, 2017.

[39] In an email dated October 25, 2017, Mr. Boland informed the complainant that he had received a call from the employer asking that the timelines associated with the disciplinary grievance be held in abeyance until mid-November because Mr. Lionais was acting in the position that hears third-level grievances, which created a conflict of interest. Mr. Boland asked the complainant to confirm whether he agreed with the abeyance request.

[40] In reply, the complainant asked to receive the "communications/recommendations" in writing because he believed that the employer had already violated his rights, and he needed to document the employer's communications. He also suggested that the executive director of the Human Resources Division could hear the grievance at the third level, instead of Mr. Lionais. He stated that he wanted to know Labour Relations' plan before agreeing to anything that would diminish his rights.

[41] It is evident from the email exchanges that the complainant did not want the timelines held in abeyance. He was frustrated with the delay and felt that the employer

was again engaging in delay tactics, for its benefit. He wanted to file an "official complaint" against the employer stating that his rights had not been respected.

[42] In an email dated October 27, 2017, to Mr. Boland, the complainant wrote the following:

> …
>
> *The ball is in their court. They received the paper work [sic] for the 3rd level grievance. They need to contact me in particular as I am the one who is the griever [sic]. Also, this should be done in writing. So what I want is that they keep their obligations under the collective agreement and if they need to contact me (us), it should be in writing. This way, I can truly understand what the other side wants… I await their (TBS) official response to my 3rd level grievance submission in writing.*
>
> …

[43] Mr. Boland responded by stating that employers always contact the bargaining agent if a grievor is represented but that he would ask the employer to contact the complainant directly. He also informed the complainant that he did not share the complainant's perspective on scheduling and that it was preferable if the complainant could simply organize the hearing of his grievance himself.

[44] On November 2, 2017, Mr. Boland informed the employer that it should organize the scheduling of the next grievance hearing directly with the complainant. The employer acknowledged receipt and stated that it would contact the complainant after mid-November with respect to scheduling the hearing. On the same date, the complainant directly communicated by email with the employer and inquired as to the reason for the delay [Mr. Boland was not copied on this email]. The employer responded as follows [copying Mr. Boland]:

> …
>
> *It is my understanding that Mr. Boland advised you that the grievance was placed in abeyance by mutual agreement upon receipt at the final level. With regards to scheduling the hearing, as indicated in my voice mail [sic] message to Mr. Grant [sic], the grievance would be heard at the Final Level by the Assistant Comptroller General, Financial Management Sector and since Mr. Lionais is currently acting in that role and has responded to the grievance at the second level, he cannot hear the grievance at the Final Level according to Article 17.11 of the FI Collective Agreement. If you do not wish to wait until someone else acts or is*

> *appointed in that role, I could ask the Director General of Human Resources to hear the grievance, who as per the TBS Delegation Instrument can under specific and extenuating circumstances retain the authority to substitute a Sector Head at Final Level in the grievance process.*
>
> …

[45] The complainant responded [copying Mr. Boland], stating that the abeyance was only for the first level and that the grievance had not been placed in abeyance for the third level. Upon receipt of this email, Mr. Boland sent the following email to both the complainant and the employer: "On October 5th Laura contacted me to place the grievance into abeyance to allow for the scheduling of the hearing. On October 6th I agreed." Mr. Boland further explained that had the timelines not been placed in abeyance, the grievance could have been considered abandoned.

[46] The complainant then responded that he had never agreed to put the final-level grievance hearing in abeyance and that he would like it to proceed as soon as possible.

[47] Mr. Boland explained to the complainant that had the timelines not been placed in abeyance, the grievance could have been considered abandoned.

[48] A hearing date for the grievance was secured for November 23, 2017. It was to be heard by the new comptroller general, Roch Huppé, as the third-level grievance respondent and the ultimate decision maker on the complainant's grievance. Mr. Boland confirmed the date and confirmed that the timelines remained in abeyance pending the scheduled hearing. This occurred on November 8, 2017. On that same date, the complainant emailed the following to Mr. Huppé:

> *Good day Mr. Huppé,*
>
> *Please note that I never agreed to put the timelines to this final level grievance in abeyance. Given this, I believe the timelines have already expired. Never-the-less [sic], I was asked earlier today if I was available to attend a grievance hearing. As I have time to shed light on the issues, I agreed to attend the hearing at 2:30 PM, November 23, 2017. Please note that this does not indicate that I am now willing to put the timelines in abeyance after the timelines have already expired.*
>
> …

[49] In light of the complainant's email to Mr. Huppé and his disagreement that the timelines be held in abeyance, the employer asked the ACFO to clarify the situation

and to explain to the complainant the implications of timelines not being placed in abeyance.

[50] Mr. Boland confirmed the agreement to place the timelines in abeyance and asked the employer to disregard that aspect of the complainant's email as the complainant was not familiar with the grievance process. The employer acknowledged the email and thanked Mr. Boland for clarifying.

[51] Following this exchange, the complainant wrote to the employer, copying Mr. Boland and Mr. Huppé (the third-level decision maker) and stating as follows: "Good day Laura, The facts are what they are and please do not disregard my e-mails. I stand behind what I wrote."

[52] Mr. Boland then wrote to the complainant, stating the following:

> *Hi George,*
>
> *Do not send emails like the one below again if you want to continue to be represented by ACFO.*
>
> *I know that you do not understand the grievance process, but I have since advised you that your emails can be very detrimental to you [sic] case and could result in it being dismissed out of hand.*
>
> *You are not required to be represented by ACFO on this file. It is your choice if you want to do so. You can represent yourself or hire (at your own cost) a representative of your choosing.*
>
> *Nor is ACFO required to represent you. We have limited resources. We do expect and require that our members will conduct themselves in a collaborative and professional manner.*
>
> …

[53] The following day, on November 9, 2017, Mr. Boland wrote to the complainant, requesting a meeting with him and the ACFO's director of labour relations "to discuss the ongoing issues." The complainant declined the meeting request, explaining that he was very busy at work and that he had "very little time available" for other meetings. He also stated that given what had transpired the previous week, he was not comfortable with a face-to-face meeting at that time.

[54] On November 14, 2017, Mr. Boland emailed the following to the complainant:

> *Hi George,*

> *ACFO expects and requires it [sic] members to act in good faith, collaboratively and professionally and you have not met this standard. We are therefore withdrawing our representation for your two outstanding matters (your staffing complaint and your grievance related to the letter of reprimand for insubordination). I will be informing the appropriate contact persons immediately. Neither of these matters are related to the collective agreement and you are free to proceed regardless and either represent yourself or choose outside representation. I wish you good luck in resolving these issues to your satisfaction.*
>
> ***For any further employment related matters feel free to contact me at any time and ACFO will review its representation on a case by case basis.***
>
> [Emphasis added]

[55] Upon receipt of this email, the complainant wrote to the ACFO on January 17, 2018, seeking consent to be represented by outside counsel on the two outstanding matters. Mr. Boland requested a status update on both matters but received no response from the complainant.

[56] Upon receipt of the present complaint, the ACFO wrote to the complainant as follows:

> …
>
> *Regardless of the filing of your DFR complaint I write to assure you that ACFO is ready and available to represent you should you request that representation.…*
>
> *Prior to further representation ACFO will require an in-person meeting to discuss your concerns with past representation and to confirm our expectations with regards to your collaboration with ACFO representatives… ACFO has both a firm practice and policy to require a such a meeting should either a member or ACFO employee raise concerns regarding representation.*
>
> …

[57] On November 22, 2021, the ACFO provided its response to the complainant's supplementary submissions. These submissions remain on the Board's file. While the response largely refers to the ACFO's initial submission, the ACFO clarified a few salient points, which I have highlighted in the following paragraphs.

[58] The respondent denies the allegation that Mr. Boland directed the complainant to proceed with a hearing in front of Mr. Lionais in September 2017. It provided emails

from Mr. Boland to the complainant to support its position. In an email dated September 12, 2017, to the complainant, Mr. Boland states as follows:

> *Hi George,*
>
> *If Michael is a step in the grievance process then the department has no choice but to schedule the grievance with him as grievances can only be waived by mutual consent. Passing over that level would have violated your rights under the collective agreement.*
>
> *I agree that in the circumstances that it is not appropriate for him to hear the grievance and it is a clear conflict of interest. We'll ask for it to be waived. If they do not agree then I will recommend that we have them render a decision based on the information they currently have and we can then transmit it to the higher level.*
>
> *But they really had* [no] *option but to schedule.*
>
> *I've emailed LR* [Labour Relations] *at the department (I am also declining the meeting invitation) and I'll let you know when I get a response.*
>
> *Grant*

[59] Email exchanges between Mr. Boland and Kevin Dubé, a labour relations advisor at the Treasury Board, on September 12, 2017, support the respondent's position that the ACFO requested waiving the second-level hearing before Mr. Lionais but that the employer refused and informed the ACFO that the grievance would be heard at Mr. Lionais's level. Mr. Boland then informed the employer that the grievor and ACFO would "forego an in person presentation" and asked that a decision be rendered on the information at hand. On the same date, Mr. Boland forwarded his email exchange with Mr. Dubé to the complainant.

[60] As for the allegation of a conflict of interest based on funding received from the employer for a professional development program, the respondent explained that the program, and its funding, was negotiated as part of regular collective bargaining and that the ACFO's membership ratified it overwhelmingly. The details of this initiative were posted on the ACFO's website, and its members, including the complainant, were informed of it by direct email.

[61] The respondent provided an excerpt from the relevant collective agreement, which reads as follows:

…

> *The purpose of this memorandum is to confirm the understanding reached in negotiations between the parties with respect to a Joint Training Fund.*
>
> *The funding in total for all departments will be one million dollars ($1,000,000) annually which is provided to the National Joint Professional Development Committee established under clause 16.04 of this collective agreement or the mutually agreed upon joint committee. This would commence April 1, 2017. The funds would be used for training and development initiatives identified by the joint committee. Unspent amounts would not carry forward. The departments may pool resources to provide a common curriculum. The training provided by the Canada School of Public Service through existing funding arrangements cannot be charged against this allocation.*

[62] As for the alleged deception involving the identity of the employer's labour relations staff member, the respondent acknowledged that Mr. Boland mistakenly referred to Ms. Szabo as "Lisa" but that he corrected this error as soon as he realized it. The respondent provided emails in support of its position. In one dated November 2, 2017, at 9:34 a.m., Mr. Boland referred to "Lisa" as the labour relations advisor handling the complainant's grievance. At 1:26 p.m. that same day, Mr. Boland emailed Ms. Szabo and copied the complainant, confirming that Ms. Szabo would deal directly with the complainant with respect to scheduling his grievance hearing.

C. The parties' arguments

[63] The respondent argues that "[t]he Complainant's allegations do not disclose a *prima facie* breach of the Association's duty of fair representation", and therefore, the complaint must be summarily dismissed. It also argues that the complainant had the burden of establishing a violation of the duty of fair representation and that he failed to . He did not provide any details or evidence in support of his allegations of bad faith; nor did he provide any examples or evidence to substantiate any allegations of arbitrary or discriminatory conduct. The procedural decisions made in the course of handling the grievance in this case do not amount to bad faith. There is no factual foundation to substantiate a breach of s. 187.

[64] The Board is without jurisdiction to grant the corrective action that the complainant seeks, namely, a revocation of the bargaining agent's certification under s. 192(1)(b) of the *Act*.

[65] The respondent relied on the following cases: *Elliot v. Canadian Merchant Service Guild*, 2008 PSLRB 3; *Abeysuriya v. Professional Institute of the Public Service of Canada*, 2015 PSLREB 26; *Ouellet v. St-Georges*, 2009 PSLRB 107; *Canadian Merchant Service Guild v. Gagnon*, [1984] 1 S.C.R. 509; *Cousineau v. Walker*, 2013 PSLRB 68; *Ménard v. Public Service Alliance of Canada*, 2010 PSLRB 95; *Mangat v. Public Service Alliance of Canada*, 2010 PSLRB 52; *Sayeed v. Professional Institute of the Public Service of Canada*, 2010 PSLRB 44; *Charinos v. Public Service Alliance of Canada*, 2016 PSLREB 83; *Manella v. Treasury Board of Canada Secretariat*, 2010 PSLRB 128; and *Kilby v. Public Service Alliance of Canada*, PSSRB File Nos. 161-02-808 and 150-02-44 (19980427), [1998] C.P.S.S.R.B. No. 28 (QL).

[66] The complainant argues that the bargaining agent has been compromised and that to decide whether his claim has any veracity, a full hearing must be held, for which he is entitled to full disclosure in advance.

III. Procedural history

[67] The Board clearly notified the parties of its intention to address the preliminary objection without holding an oral hearing and sought the parties' submissions on that point. They were also specifically notified that upon receipt of their written submissions, the complaint may either be scheduled for an oral hearing, or it may be dismissed based on the written submissions and the file would then be closed. The statutory requirement that the Board "examine and inquire into any complaint" does not entitle any party to an oral hearing. Furthermore, the duty of procedural fairness does not require that an oral hearing be held in every instance (see *Osman v. Public Service Alliance of Canada*, 2021 FCA 227 at para. 10; and *Boshra v. Canadian Association of Professional Employees*, 2011 FCA 98 at paras. 12 to 14).

IV. Analysis and decision

A. Scheme of the *Act*

[68] The relevant statutory provisions are found at ss. 185, 187, and 190 of the *Act*, as follows:

185 *In this Division,* **unfair labour practice** *means anything that is prohibited by subsection 186(1) or*	***185*** *Dans la présente section,* **pratiques déloyales** *s'entend de tout ce qui est interdit par les*

(2), section 187 or 188 or subsection 189(1).	*paragraphes 186(1) et (2), les articles 187 et 188 et le paragraphe 189(1).*
…	*[…]*
187 *No employee organization that is certified as the bargaining agent for a bargaining unit, and none of its officers and representatives, shall act in a manner that is arbitrary or discriminatory or that is in bad faith in the representation of any employee in the bargaining unit.*	***187*** *Il est interdit à l'organisation syndicale, ainsi qu'à ses dirigeants et représentants, d'agir de manière arbitraire ou discriminatoire ou de mauvaise foi en matière de représentation de tout fonctionnaire qui fait partie de l'unité dont elle est l'agent négociateur.*
…	*[…]*
190 (1) *The Board must examine and inquire into any complaint made to it that*	***190 (1)*** *La Commission instruit toute plainte dont elle est saisie et selon laquelle :*
…	*[…]*
(g) *the employer, an employee organization or any person has committed an unfair labour practice within the meaning of section 185.*	***(g)*** *l'employeur, l'organisation syndicale ou toute personne s'est livré à une pratique déloyale au sens de l'article 185.*
(2) *Subject to subsections (3) and (4), a complaint under subsection (1) must be made to the Board not later than 90 days after the date on which the complainant knew, or in the Board's opinion ought to have known, of the action or circumstances giving rise to the complaint.*	***(2)*** *Sous réserve des paragraphes (3) et (4), les plaintes prévues au paragraphe (1) doivent être présentées dans les quatre-vingt-dix jours qui suivent la date à laquelle le plaignant a eu — ou, selon la Commission, aurait dû avoir — connaissance des mesures ou des circonstances y ayant donné lieu.*
…	*[…]*

[69] Section 187 encapsulates what is commonly referred to as a bargaining agent's duty of fair representation. It is one of the fundamental principles found in most labour relations statutes across Canada, and it is the corollary to the exclusive right granted to a bargaining agent to represent or act as the agent for all employees in an identified bargaining unit in dealings with the employer. The Supreme Court of Canada described the legal landscape of a union's representational obligations in *Bernard v. Canada (Attorney General)*, 2014 SCC 13, 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 in a given bargaining unit****, including Rand 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*.*
>
> …
>
> [Emphasis added]

[70] In *Gagnon*, the Supreme Court of Canada outlined five principles relating to a union's duty of fair representation, as follows:

> 1) The exclusive right of a union or bargaining agent to act as the spokesperson for employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.
> 2) Generally, employees represented by a bargaining agent do not have an absolute right to refer a grievance to adjudication or arbitration, as the union has considerable discretion deciding which grievances to refer to adjudication or arbitration.
> 3) The union must exercise this discretion in good faith, objectively and honestly, after thoroughly considering the grievance, taking into account the employee's interests on one hand and the legitimate interests of the union on the other.
> 4) The union must not act in an arbitrary, discriminatory, capricious, or wrongful manner.
> 5) The union must act fairly, genuinely, and competently and without serious or major negligence or hostility toward the employee.

B. Analytical framework

[71] There is a vast body of jurisprudence on the scope of the duty of fair representation across the country, including jurisprudence from the Board, which noted in *Burns v. Unifor, Local 2182*, 2020 FPSLREB 119, the similarities between the language used in s. 187 of the *Act* and s. 37 of the *Canada Labour Code* (R.S.C., 1985,

c. L-2). It also considered the Canada Industrial Relations Board's (CIRB) decision in *McRaeJackson v. National Automobile, Aerospace Transportation and General Workers Union of Canada (CAW-Canada)*, 2004 CIRB 290, and opined that many of the principles that the CIRB expressed in that decision were useful when considering duty-of-fair-representation complaints under the *Act*. I agree. *McRaeJackson* is a pivotal case that comprehensively outlines substantive and procedural aspects of duty-of-fair-representation complaints.

[72] In *McRaeJackson*, the CIRB explained as follows:

> …
>
> *[13] In a complaint under section 37, the employee bears the onus (or burden of proof) of presenting evidence that is sufficient to raise a presumption that the union has failed to meet its duty of fair representation.* ***The burden of proof is also described as the requirement to establish a*** **prima facie** ***case, or said differently, the requirement to bring forward sufficient relevant facts to establish a violation of the*** **Code.***…*
>
> …
>
> [Emphasis added]

[73] Elsewhere in *McRaeJackson*, the CIRB explained as follows:

> …
>
> *[50] A complaint is not merely a perceived injustice; it must set out the facts upon which the employee relies in proving his or her case … A complaint goes beyond merely alleging that the union has acted "in a manner that is arbitrary, discriminatory or in bad faith." The written complaint must allege serious facts, including a chronology of the events, times, dates and any witnesses.…*
>
> …
>
> *[53] Most instances of a complaint being dismissed relate to the fact that the complainant was unable to establish the facts upon which the Board could make a decision… Conversely, successful complainants allege detailed facts ….*
>
> …

[74] The complainant bears the onus of establishing that the duty of fair representation was violated (see *Ouellet*, at para. 31).

[75] In most duty-of-fair representation complaints, the respondent often raises what can only be described as a preliminary objection or a motion to strike the

complaint on the basis that there is no arguable case of a violation of that duty. In essence, respondents often ask that a hearing not be held and rather that an assessment be made as to whether the written complaint discloses sufficient facts that could arguably support a complaint.

[76] The jurisprudence from 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.

[77] The arguable case analytical framework is similar to the framework adopted in civil actions in 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 it held that the test to be adopted on 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.

[78] In *Hughes v. Department of Human Resources and Skills Development*, 2012 PSLRB 2, the complainant in that case made a complaint 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 had failed to demonstrate on the face of the complaints that the respondent was in violation of the statutory provisions. In other words, the complaints did not disclose an arguable case of a violation of the statutory provisions. In addressing this preliminary objection, the former Board framed the issue as follows:

> …
>
> *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]

[79] 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 *Hughes*, at paras. 104 to 108). This approach requires a careful and rigorous analysis of the facts set out by the parties, to assess whether there is an arguable case.

[80] It is useful to elaborate on what constitutes "facts" which are to be taken as proven for the purposes of establishing an arguable case under s. 187 of the *Act*. I draw on the teaching of the Supreme Court of Canada in *Operation Dismantle v. The Queen*, [1985] 1 S.C.R. 441, where in the context of a motion to strike a statement of claim, the court explained as follows:

> *27 We are not, in my opinion, required by the principle enunciated in* Inuit Tapirisat, supra, *to take as true the appellants' allegations concerning the possible consequences of the testing of the cruise missile.* **The rule that the material facts in a statement of claim must be taken as true for the purpose of determining whether it discloses a reasonable cause of action does not require that allegations based on assumptions and speculations be taken as true. The very nature of such an allegation is that it cannot be proven to be true by the adduction of evidence. It would, therefore, be improper to accept that such an allegation is true. No violence is done to the rule where allegations, incapable of proof, are not taken as proven**.
>
> [Emphasis added]

[81] Subsequently, in *R. v. Imperial Tobacco Canada Ltd.,* 2011 SCC 42, the court further explained that on a motion to strike, the facts pleaded must be taken as true **unless** they are manifestly incapable of being proven and that it was up to the claimant [complainant in this context] to "clearly plead the facts" which form the basis of the claim. The claimant cannot rely on the "possibility that new facts may turn up as the case progresses. … the facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated." Such facts must not be speculative nor based on some future possibility that evidence would emerge during the hearing that would support the claims. The court stated as follows:

> *[25] Related to the issue of whether the motion should be refused because of the possibility of unknown evidence appearing at a future date is the issue of speculation. The judge on a motion to strike asks if the claim has any reasonable prospect of success. In the world of abstract speculation, there is a mathematical chance that any number of things might happen. That is not what the test on a motion to strike seeks to determine. Rather, it operates on the*

> *assumption that the claim will proceed through the court system in the usual way — in an adversarial system where judges are under a duty to apply the law as set out in (and as it may develop from) statutes and precedent. The question is whether, considered in* the context of the law and the litigation process*, the claim has no reasonable chance of succeeding.*
>
> [Emphasis in original]

[82] The requirement that facts pleaded must be taken as proven provides a low threshold for the claimant and as the Supreme Court of Canada stated in *Imperial Tobacco*, operates in favour of the claimant [para. 24]. Conversely, the test exacts a stringent requirement on the moving party to demonstrate that it is "plain and obvious" that the claim cannot succeed.

[83] The jurisprudence also firmly teaches that pleadings or in this case, the complaint form, must be given a broad, generous and liberal reading in order to accommodate any drafting deficiencies (see *Zbarsky v. Canada*, 2022 FC 195 at para.15).

[84] As the former Board noted in *Hughes*, at para. 105, as follows: "… 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 [the Board] must preserve the complainant's opportunity to have his complaints heard …". I adopt a similar approach in this case.

C. Relevant facts - factual findings

[85] Based on my examination of the parties' respective positions, I have outlined in the paragraphs that follow the facts relevant to my determination of the preliminary issue.

[86] At all relevant times, the complainant was a member of the bargaining unit represented by the respondent. Mr. Boland, a labour relations advisor of the respondent, was assigned to provide assistance to the complainant in his interactions with the employer.

[87] The complainant received a written reprimand from his supervisor, Mr. Lionais, on May 19, 2017. Mr. Boland helped the complainant file a grievance against the written reprimand. They both agreed to hold the timelines for the first-level hearing in abeyance until after the summer holidays.

[88] The complainant took the position that the timelines should not be held in abeyance beyond the first level because he wanted to avoid delays, which he clearly communicated to Mr. Boland.

[89] On October 6, 2017, Mr. Boland agreed to the employer's request to hold in abeyance the timelines for the third-level hearing without first seeking the complainant's concurrence. Mr. Boland explained that this was done to preserve the grievance so that it would not be considered abandoned.

[90] The complainant found the delay unacceptable, as he believed that delays favoured the employer and were to his detriment. He made his position clear to the employer directly.

[91] On November 14, 2017, the respondent invited the complainant to a meeting, to discuss the parameters of its representation and to clarify their respective roles and obligations. The complainant declined the invitation and stated that he was not comfortable meeting face to face with the respondent because of what had transpired [the agreement to hold the timelines in abeyance].

[92] On November 14, 2017, the respondent withdrew its representation of the complainant with respect to the grievance against the letter of reprimand and to a staffing complaint. It informed him that it would review its representation of him in employer-related matters on a case by case basis.

[93] This complaint was made on January 26, 2018. It alleges that the respondent acted in bad faith in its representation of the complainant.

V. Issue

[94] The issue I must determine is whether given the relevant facts outlined above, the complainant has an arguable case of a violation of s. 187 of the *Act* that deserves a hearing.

VI. Decision

A. The agreement to hold timelines in abeyance does not constitute bad faith

[95] The main basis of the complaint is that the respondent's actions in its representation of the complainant during the relevant period constitute bad faith, contrary to s. 187 of the *Act*. One of the five principles that govern a union's

representational obligations toward employees in the bargaining unit is that it must exercise its discretion objectively, honestly, and in good faith (see *Gagnon*). Bad faith is also one of the prohibitions in s. 187. Avoiding bad faith in the context of a union's duty of representation requires that its actions must not be motivated by personal hostility toward employees; there must be no dishonesty, and its actions must not be based on revenge (see *Rayonier Canada (B.C.) Ltd. v. I.W.A., Local 1-127*, [1975] 2 Can. L.R.B.R. 196 at para. 17; and *Judd v. Communications, Energy and Paperworkers Union of Canada, Local 2000*, 2003 CanLII 62912 (BC L.R.B.) at para 49).

[96] I draw further guidance from the Supreme Court of Canada's decision in *Noël v. Société d'énergie de la Baie James*, 2001 SCC 39, in which the Court, in discussing the scope of the duty of fair representation under Quebec legislation, stated as follows:

> …
>
> *48 This duty prohibits four types of conduct: bad faith, discrimination, arbitrary conduct and serious negligence. The conduct that is demanded applies both at the collective bargaining stage and in administering the collective agreement … First, s. 47.2* ***prohibits acting in bad faith, which presumes intent to harm or malicious, fraudulent, spiteful or hostile conduct*** *… In practice, this element alone would be difficult to prove ….*
>
> …
>
> *52 Bad faith and discrimination both involve* ***oppressive conduct on the part of the union. The analysis therefore focuses on the reasons for the union's action.*** *In the case of the third or fourth element, what is involved is [sic] acts which, while not motivated by malicious intent, exceed the limits of discretion reasonably exercised. The implementation of each decision by the union in processing grievances and administering the collective agreement therefore calls for a flexible analysis which will take a number of factors into account.*
>
> …
>
> [Emphasis added]

[97] To demonstrate an arguable case of a violation of the duty of representation based on bad faith, the complainant must provide sufficient facts to disclose some form of personal hostility toward him or behaviour on the part of the respondent that was oppressive, dishonest, malicious, or spiteful.

[98] The complainant and his bargaining agent representative, Mr. Boland, interacted extensively via email. A close examination of their email exchanges with respect to

substance and tone does not disclose any inkling of animosity or hostility toward the complainant from Mr. Boland. Therefore, I am unable to conclude that there is sufficient information to support an arguable case on this basis.

[99] The focal event during the 90-day period before the complaint was made was Mr. Boland's agreement with the employer to hold the timelines for the final-level grievance hearing in abeyance. It is evident from the parties' correspondence that the complainant had clearly indicated to Mr. Boland that he did not wish to have any delays in the processing of his grievance and that the only timeline abeyance he was comfortable with was at the first-level presentation.

[100] Unbeknownst to the complainant, on October 6, 2017, Mr. Boland agreed to the employer's request that the timelines for the third-level grievance presentation be held in abeyance; according to Mr. Boland, this was routine. As it transpired, Mr. Lionais was acting in the assistant comptroller general position during this period. Given that this position was the third- and final-level grievance respondent, the employer requested that the final-level hearing be delayed for another two weeks, when it was expected that Mr. Lionais's acting appointment would end. On October 25, 2017, Mr. Boland emailed the complainant, seeking his consent for this further delay and explaining that it was a preferable approach. At that point, the complainant became aware that Mr. Boland had agreed to place the third-level timelines in abeyance.

[101] Unsurprisingly, the complainant was not happy about this, and he directly informed the employer that he did not agree to place the timelines in abeyance. As previously outlined in this decision, several testy email exchanges then took place, leading to the respondent's decision to withdraw its representation. Clearly, the complainant was dissatisfied with the representation he was receiving from Mr. Boland.

[102] The Board's jurisprudence has firmly established that a complainant's dissatisfaction or disagreement with the quality or nature of the union's representation is not the standard to use when assessing whether s. 187 has been contravened. The mere fact that a complainant disagrees with the union representative's strategy or decision in processing a grievance will not establish a breach of s. 187 (see *Bergeron v. Public Service Alliance of Canada*, 2019 FPSLREB 48 at paras. 89 to 91).

[103] In *Charinos*, the complainant in that case disagreed with how his union representative cross-examined employer witnesses during the adjudication of his grievances and alleged bad faith by that representative. The former Board explained as follows:

> …
>
> ***16*** *The complainant alleges that the PSAC acted in bad faith, first through incompetent representation at the hearing, and second, by withdrawing its representation. From the allegations, it is clear that the complainant and the PSAC officer representing him at the hearing did not agree on strategy. The complainant would have preferred a more aggressive cross-examination of the employer's witnesses, to undermine their credibility. He contends he should have been examined differently when he was on the witness stand. He also cites as part of the bad faith the fact that the officer assigned to the case lost her last case.*
>
> ***17 I cannot see a matter of strategy amounting to bad faith on the part of the PSAC. The union representative defends the interests of the employee, but she is not bound by his advice on how to proceed.****…*
>
> …
>
> [Emphasis added]

[104] I accept the respondent's explanation that the agreement to hold the timelines in abeyance on October 6, 2017, was routine. However, I question why this routine action was not communicated to the complainant at that time, as was done previously. Nevertheless, I cannot conclude that this event, in and of itself, is evidence of bad faith.

B. The alleged conflict of interest does not support an arguable case

[105] The complainant argues that the respondent should have declared and disclosed a conflict of interest because it was lobbying and receiving funds from the Comptroller General. The respondent explains that the professional development fund was negotiated as part of collective bargaining and was overwhelmingly ratified by its members. It also provided a read-receipt of an email showing that the complainant was personally aware of this program, which is meant to directly benefit its membership. On the other hand, the complainant provided no facts to support his allegation of a conflict of interest. There are no facts to suggest that during the processing of the complainant's grievance, Mr. Boland was in any way involved in administering the professional development fund.

[106] I agree with the respondent that to accept the complainant's argument would effectively "… render the normal course of labour relations in the public service impossible."

[107] This allegation of a conflict of interest is based simply on the complainant's supposition which is not backed by any facts. I am not required to accept as true allegations which are speculative (*Imperial Tobacco* at para. 25). I am therefore satisfied that the circumstances described would not support a violation of s. 187 of the *Act*. There is no arguable case of such a violation.

C. The reference to "Lisa" instead of "Laura" does not support an arguable case

[108] The complainant argues that Mr. Boland purposely deceived him by referring to the employer's assigned labour relations advisor as "Lisa" instead of "Laura". The respondent explains that it was a human error on Mr. Boland's part, which was corrected four hours later. Other than the bare allegation, the complainant provided no additional facts or argument to explain why he believes this was anything other than a "human error" that was almost immediately corrected. The relevant facts surrounding this allegation are as follows:

> 1) on November 2, 2017, at 9:34 a.m., in response to an email from the complainant about scheduling, Mr. Boland stated this: "… the voice mail [*sic*] I received last week from **Lisa** was a common sense view … It's preferable if you simply organize the hearing of your grievance with **Lisa** yourself and I'll email her later this morning to advise her to follow up with you directly" [emphasis added]; and
> 2) on November 2, 2017, at 1:20 p.m., Mr. Boland emailed **Laura Szabo**, copying the complainant and stating, "Hi **Laura**, Thanks for your voice mail [*sic*] of last week. With respect to the scheduling of the next grievance hearing can you organize directly with Mr. Sganos?" [emphasis added].

[109] I note that following this direct introduction, the complainant communicated directly with Ms. Szabo and informed her that he "… personally never agreed to put the final level grievance in abeyance …". Nowhere in the subsequent exchange with either Ms. Szabo or Mr. Boland did he ask who "Lisa" was. He tacitly accepted that the labour relations advisor was "Laura" and not "Lisa". He provided no additional information that he relied upon the alleged "deception" to his detriment.

[110] Even if I accept the complainant's allegation as true, the facts gleaned through the email communication at the relevant time would not support an arguable case of a violation of s. 187 of the *Act*.

D. The withdrawal of representation on November 14, 2017, was not arbitrary

[111] The complainant argues that the respondent's refusal to represent him in his staffing complaint and his grievance against the written reprimand was arbitrary and in bad faith. The respondent argues that the scope of its statutory duty of fair representation toward him extends only to matters covered by the relevant collective agreement or the *Act* and that matters falling outside them cannot form part of a complaint under s. 187. It cites jurisprudence from the Board's predecessors, including *Elliott v. Canadian Merchant Service Guild*, 2008 PSLRB 3, and *Abeysuriya*.

[112] In this case, I find that the written-reprimand grievance does not fall within the parameters of s. 209 of the *Act*. Similarly, the staffing complaint is not captured by the obligation in s. 187.

[113] The withdrawal of representation came in the wake of the complainant's refusal to meet with the respondent to discuss the ongoing representation and the parties' mutual expectations. The respondent was concerned that the complainant was not working collaboratively with it, and that his direct messaging to the employer hampered its representation of him. Therefore, it took the position that since the staffing complaint and the disciplinary grievance were not related to the relevant collective agreement, the complainant was free to proceed on his own.

[114] In *Gabon v. Public Service Alliance of Canada*, 2022 FPSLREB 2, the complainant in that case made a complaint against her union, alleging a violation of the duty of fair representation in relation to the processing and mediation of a number of staffing complaints. The Board found as a fact that the true nature of the complaint was a staffing mediation matter under the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13), which fell outside the parameters of s. 187. The union in that case admitted that it voluntarily represented its members in matters not related to grievances, such as staffing complaints, workers' compensation claims, Canada Pension Plan and Employment Insurance applications, and the like. Despite the union's clear admission, the Board concluded that the "… voluntary union conduct of such matters is not amenable to a [duty of fair representation] complaint before this Board …".

[115] I agree with and adopt the Board's conclusion in *Gabon*.

[116] In light of the existing jurisprudence on the scope of the duty of fair representation, I find that even accepting the complainant's allegation as true, there is no arguable case that the decision to withdraw representation from those two matters at that point was made in contravention of s. 187.

E. Other Allegations

[117] The complainant also made several allegations which I will briefly address for the sake of completeness. These can be categorized as follows: a) alleged "few false statements" made by Mr. Boland; b) summary dismissal of his whistle-blower claims by the respondent; and c) respondent used his whistle-blower information to negotiate an agreement from the employer for professional development funding and then in order not to compromise its chances of securing the funds, worked with the employer to delay the processing of his grievance.

[118] I find that these allegations lack the factual grounding to fall within the category of "facts to be taken as true" in accordance with the jurisprudence. As instructed by the Supreme Court of Canada, on a motion to strike a pleading, the court is not required to take as true "allegations based on assumptions and speculations" (*Operation Dismantle* at para. 27; *Zbarsky* at paras. 13 to 16).

[119] With respect to the "false statements", other than the issues around holding grievance timelines in abeyance and the reference to "Lisa" instead of "Laura", both of which have been addressed above, the complainant provided no other facts to support his bald statement that Mr. Boland made a "few false statements." This leaves one to speculate as to the nature of these alleged "false statements." On a generous and comprehensive reading of the complaint form and the submissions, these alleged false statements could refer to Mr. Boland's statements that the timelines in the collective agreement were discretionary rather than mandatory.

[120] Even if I were to accept this allegation as true, there is no nexus between these alleged unspecified "false statements" and the respondent's obligations under section 187 of the *Act*.

[121] The second general allegation relates to the complainant's belief that the respondent summarily dismissed his whistle-blowing claims against his management team and in particular Mr. Lionais. I find that the discussion around the whistle-blower

claims fall outside the statutory 90-day period for making duty of fair representation complaints. Furthermore, I find that this allegation falls within the category of "assumptions and speculation" which need not be taken as true.

[122] The final allegation relates to professional development funding received by the respondent pursuant to the collective agreement signed between the employer and the respondent. While there are several points to this allegation, I find that there is no nexus to the ongoing implementation of collective agreement provisions of a validly executed collective agreement and the representation by the respondent to the complainant with respect to his grievance against the written reprimand. Furthermore, if there exists any conflict of interest as alleged by the complainant, it would not be unique to him alone but would equally apply to all the employees in that bargaining unit.

[123] I conclude that I need not consider these other allegations any further.

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

(The Order appears on the next page)

VII. Order

[125] The respondent's preliminary objection is upheld.

[126] The complaint is dismissed.

April 13, 2022.

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