

**Date:** 20221110

**File:** 561-34-43940

**Citation:** 2022 FPSLREB 93

*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

**STEPHEN HUFF, ERIN ALCOCK, KEN BROWN, LUCY BOURAK, CHARLENA DAVIS,  
JAMES HALL, FRED LONGE, JENNIFER MYLES, LISA-NICOLLE SCHNEIDER, AND JEAN  
VEERMAN**

Complainants

and

**PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA**

Respondent

Indexed as

*Huff v. Professional Institute of the Public Service of Canada*

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

**Before:** David Orfald, a panel of the Federal Public Sector Labour Relations and  
Employment Board

**For the Complainants:** Stephen Huff and Lisa-Nicolle Schneider

**For the Respondent:** Isabelle Roy and Martin Ranger, Professional Institute of  
the Public Service of Canada

---

Decided on the basis of written submissions,  
filed December 7, 2021, and January 28, February 10, May 30 and 31, and June 2, 2022.

---

**REASONS FOR DECISION**

---

**I. Complaint before the Board**

[1] On July 27, 2021, Stephen Huff made a complaint with the Federal Public Sector Labour Relations and Employment Board (“the Board”) against his bargaining agent, the Professional Institute of the Public Service of Canada (“PIPSC” or “the respondent”). During the completion of the forms required for the processing of the complaint, he made it clear that the complaint was made by him and the nine other individuals listed on the cover page of this decision (“the complainants”).

[2] The complainants alleged that the respondent had committed an unfair labour practice by breaching its duty of fair representation with respect to its handling of grievances filed by the complainants and some other employees of the Canada Revenue Agency (“CRA”). The grievances at issue were the subject of a decision of a panel of the Board, *Myles v. Canada Revenue Agency*, 2020 FPSLR 49.

[3] In *Myles*, the Board dismissed the complainants’ grievances against the calculation of their continuous employment. This calculation was used in determining their entitlement to certain severance pay benefits under a collective agreement between PIPSC and the CRA.

[4] In this complaint, the complainants took issue with the quality of PIPSC’s representation before the Board in *Myles*. They also asserted that the respondent’s decision not to proceed with a judicial review application of the Board’s decision in *Myles* was a violation of its duty of fair representation, pursuant to s. 187 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”).

[5] The respondent raised a preliminary objection to the complaint, arguing that it must be dismissed as untimely. According to the respondent, the complaint was made with the Board more than 90 days after the events complained of, including the date on which the complainant was informed of PIPSC’s final decision not to commence a judicial review application of the Board’s decision in *Myles*.

[6] A statutory requirement set out at s. 190(2) of the *Act* establishes a mandatory 90-day deadline for making complaints alleging a breach of a bargaining agent’s duty of fair representation.

[7] PIPSC requested that it not be required to file a reply on the merits of the complaint until the Board addresses its request that the complaint be summarily addressed as untimely.

[8] Section 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) provides that the Board "... may decide any matter before it without holding an oral hearing." The parties to this matter were informed that the Board was considering rendering a decision with respect to the respondent's objections based on written submissions. They were provided with the opportunity to file additional written submissions. Both parties availed themselves of that opportunity.

[9] I am satisfied that I can decide the respondent's preliminary objection on the written submissions that the parties filed.

[10] As mentioned, the *Act* requires that complaints be made within 90 days of the alleged breach of the duty of fair representation. The complainants' allegations with respect to the handling of their grievances during the adjudication of *Myles* all pre-date the issuance of the Board's decision in May of 2020. With respect to the proposed judicial review of *Myles*, the 90-day period for the making of a duty-of-fair-representation complaint began to run when the complainants were informed of PIPSC's final decision not to make a judicial review application in June of 2020. This complaint was made with the Board significantly more than 90 days after that event. It is untimely and must be dismissed, for the reasons that follow.

## **II. Summary of the facts**

[11] This summary is based on the facts alleged by the complainants and on information contained in the Board's decision in *Myles*.

[12] The complainants are employed by the CRA and are members of the Audit, Financial and Scientific (AFS) bargaining unit represented by PIPSC. As such, they are governed by collective agreements between PIPSC and the CRA for the AFS group.

[13] The complainants were part of a group of more than 150 CRA employees whose grievances were addressed in *Myles*. All were former employees of the Government of Ontario, Ministry of Revenue, who transferred to the CRA in March of 2012 as part of a program called the "Ontario Sales Tax Administration Reform" (OSTAR). The grievors sought to have their service with the Ontario government included in the calculation of

continuous employment with the CRA. Had their service with the Ontario government been included, the grievors would have been entitled to higher severance termination benefits under the terms of the collective agreement between the CRA and PIPSC that was signed on July 10, 2012, and that expired on December 21, 2014. The grievors believed that during the implementation of the OSTAR program, they had been promised that their service with the Ontario government would count for the purposes of severance pay. PIPSC represented the grievors before the Board in *Myles* and made those arguments.

[14] The Board's hearing in *Myles* was held from October 2 to 5, 2018, followed by written submissions made between November 13, 2018, and February 1, 2019. The Board's decision dismissing the grievances was issued on May 7, 2020.

[15] The complainants were informed by PIPSC about the Board's decision in *Myles* on May 19, 2020. Attached to their complaint, the complainants provided a copy of a letter Mr. Huff received from Marcia Kredentser, regional manager for PIPSC in Ontario. The three-page letter summarized the Board's decision and explained PIPSC's decision not to make an application for judicial review of *Myles*. The letter explained that the grievors could request a reconsideration of the recommendation not to pursue a judicial review by writing to Isabelle Roy, General Counsel, PIPSC, no later than May 28, 2020.

[16] The complainants requested reconsideration within that timeline. They attached to their complaint copies of requests made by two complainants (dated May 24 and 25, 2020). The requests for reconsideration discussed the merits of the grievances and questioned the Board's conclusions in *Myles*. They made reference to the decision of a predecessor to the Board in *Clough v. Canada Revenue Agency*, 2015 PSLREB 48, upheld by the Federal Court of Appeal in *Canada (National Revenue) v. Clough*, 2016 FCA 148. In *Clough*, former employees of the Government of British Columbia had succeeded in their grievances to have service with that province recognized for the purposes of calculating severance pay. The requests for reconsideration asserted that the Board in *Myles* failed to respect the prior decision in *Clough*.

[17] In a letter dated June 13, 2020, Ms. Roy provided PIPSC's response to the requests for reconsideration. She explained that in a judicial review, a court will only consider whether the decision of the Board was reasonable. She explained why PIPSC

---

had concluded that a judicial review of *Myles* would not succeed. She informed the grievors that they were at liberty to proceed with a judicial review on their own, at their own expense, but that they were required to notify PIPSC if they proceeded. The letter provided a hyperlink to information on how to file a judicial review application and the applicable timelines.

[18] On November 16, 2020, the complainant Charlena Davis wrote a letter on behalf of herself and several other grievors to the president of PIPSC, Debi Daviau. The letter summarized concerns about how PIPSC handled the case going back to its inception in 2013-2014 and reiterated concerns about the decision not to proceed with a judicial review, particularly in light of the Board's earlier decision in *Clough*. The letter asked what actions PIPSC would take to restore the grievors' faith in the union.

[19] On November 30, 2020, Ms. Kredentser replied to Ms. Davis. She explained what steps PIPSC had taken to represent the grievors in *Myles*, emphasized how PIPSC representatives had argued that the grievances were similar to those in *Clough*, but explained why the Board had been able to distinguish the grievances in *Myles* from those in *Clough*.

[20] On December 14, 2020, Ms. Davis wrote back to Ms. Kredentser, indicating that it would be her last correspondence on the issue. The letter reiterated the grievors' concerns about PIPSC's decision not to seek judicial review and said that the decision made by PIPSC "... needs to be referred to the Canada Industrial Relations Board (CIRB) for review as per Section 37."

[21] This complaint was initially made to the Board on July 27, 2021. However, the forms required to complete the intake process were not filed by the complainants until December 7, 2021.

[22] As the attachments to the complaint are key to understanding the complainants' explanation of events, I have included the complaint forms submitted on December 7, 2021, as part of the written submissions, as well as the respondent's reply of January 28, 2022, and the complainants' reply of February 10, 2022.

[23] On May 18, 2022, the Board indicated to the parties that it was considering issuing a decision based on written submissions, and it invited their additional written submissions, which were received on May 30 and 31 and June 2, 2022.

### III. Summary of the arguments

[24] The complainants argued that the Board should show leniency with respect to the 90-day deadline, given the COVID-19 pandemic. They said that they received the decision on the *Myles* grievances only on May 19, 2020, and that they had only until May 28, 2020, to request reconsideration of PIPSC's decision not to seek a judicial review. They did seek reconsideration, and on June 13, 2020, PIPSC confirmed that it would not commence a judicial review application. The complainants argued that PIPSC did not tell them about the time limits for filing a judicial review application on their own, and that the Board should show leniency for that reason. They claimed that PIPSC told them that they should seek legal representation. They said that they called several law offices and each time, they experienced a delay hearing back from the law firms due to the COVID-19 pandemic. They said that the law firms they contacted all declined to represent them, given conflicts of interest.

[25] In arguing that the Board should show leniency regarding the 90-day deadline for making a complaint, the complainants pointed out that they are not lawyers but auditors. They did not feel that they could attempt a judicial review on their own. Because they were trying to hire a lawyer, they might have missed deadlines. They appealed to the Board to hear the matter on its merits as opposed to only on process.

[26] The respondent argued that the Board has no discretion to extend the 90-day limit in the *Act*, citing *Myles v. Professional Institute of the Public Service of Canada*, 2017 FPSLR 31 at para. 42 ("*Myles v. PIPSC*"). Even if the limitation period commenced on the last day that the respondent communicated to the complainants on the matter (November 30, 2020), the complaint was not made until July 27, 2021, well beyond the 90-day period set out in the legislation, PIPSC argued.

[27] PIPSC also argued that the 90-day period for unfair-labour-practice complaints is clearly set out in the Board's "Guide for Self-Represented Complainants", published on its website.

[28] It argued that as the complaint was made outside the 90-day window provided for in the *Act*, it should be summarily dismissed without a hearing.

#### IV. Reasons

[29] The statutory requirements for making complaints alleging a breach of a bargaining agent's duty of fair representation are set out at s. 190(2) of the Act. It establishes a 90-day filing deadline for making a complaint. Sections 190(1) and (2) state the following:

**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.*

**(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.*

**190 (1)** *La Commission instruit toute plainte dont elle est saisie et selon laquelle :*

[...]

**g)** *l'employeur, l'organisation syndicale ou toute personne s'est livré à une pratique déloyale au sens de l'article 185.*

**(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.*

[30] It is well established that the wording in s. 190(2) is mandatory, and the Board does not have discretion to extend the 90-day period; see *Myles v. PIPSC* at para. 42, *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78 at para. 55, and *Paquette v. Public Service Alliance of Canada*, 2018 FPSLREB 20 at para. 36. The Board's only discretion when interpreting s. 190(2) with respect to the 90-day time limit is determining when the complainant knew or ought to have known of the matter giving rise to the complaint; see *Esam v. Public Service Alliance of Canada (Union of National Employees)*, 2014 PSLRB 90 at para. 33, *Éthier v. Correctional Service of Canada and Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN*, 2010 PSLRB 7 at para. 18, and *Tohidy v. Public Service Alliance of Canada*, 2022 FPSLREB 69 at para. 45.

[31] According to their own summary of the events leading to the complaint, the complainants were informed by PIPSC of the Board's decision in *Myles* on May 19,

2020. At the same time, they were informed that PIPSC did not intend to pursue an application for judicial review of the decision. If I were to determine that May 19, 2020, was the date on which the complainants knew or ought to have known of the matter giving rise to the complaint, the 90-day deadline for making the complaint would have been August 17, 2020.

[32] According to the complainants' own assertions, they were informed of PIPSC's response to their request for reconsideration on June 13, 2020. In that letter, they were informed that the decision not to proceed to judicial review was now a final decision but that they had the right to pursue judicial review on their own. If I were to determine that June 13, 2020, was the date on which the complainants knew or ought to have known of the matter giving rise to the complaint, the 90-day deadline for making the complaint would have been September 11, 2020.

[33] PIPSC also argued that even if its final correspondence to the complainants (November 30, 2020) were taken as the date for calculating the 90-day deadline, the complaint would still be untimely.

[34] This complaint was made on July 27, 2021. For a complaint made on that date to be valid, the Board would have to conclude that the complainants knew or ought to have known about the circumstances giving rise to the complaint, on or after April 28, 2021.

[35] The complainants have made no allegations or submissions that would allow me to conclude that they only learned of the respondent's actions or omissions after that date. It is clear from the complainants' own submissions that they knew of the results of PIPSC's representation before the Board on *Myles* by May 19, 2020. They also knew by that date that the Ontario region of PIPSC was not recommending a judicial review of that decision.

[36] It is also clear by the complainants' own submissions that by June 13, 2020, PIPSC had made a final decision not to initiate a judicial review of *Myles*, informed them of their right to do so on their own, and provided them with a link to information on how to file a judicial review and the timelines for doing so.

[37] This complaint was made more than a year after the letters of May 19, 2020, and June 13, 2020, were provided to the complainants.



[38] I see nothing in the exchange of letters between the complainants and the respondent in November and December 2020 that raised new allegations or made new requests that would give rise to making a duty-of-fair-representation complaint. Even if I had, the 90-day period following the letter of November 30, 2020, would have expired on February 28, 2021, more than five months before this complaint was made.

[39] I appreciate that the complainants have raised compassionate concerns related to the impact of the COVID-19 pandemic, their lack of legal knowledge, and their difficulties securing legal representation. However, there are no provisions in the *Act* and no jurisprudence cited by the complainants or known to me that would allow the Board to exercise its discretion to extend the 90-day deadline and allow this complaint to proceed on its merits. Even if this complaint were heard on its merits, it is evident from their submissions that what the complainants are ultimately seeking is a reconsideration of the Board's decision in *Myles* by a higher court, via a judicial review. Quite simply, the deadlines for requesting a judicial review of *Myles* have long since passed.

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

*(The Order appears on the next page)*

**V. Order**

[41] The complaint is dismissed as it was untimely.

November 10, 2022.

**David Orfald,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**