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*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

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BETWEEN

**BERNARD LAQUERRE**

Grievor

and

**THE NATIONAL BATTLEFIELDS COMMISSION**

Employer

Indexed as

*Laquerre v. The National Battlefields Commission*

In the matter of an individual grievance referred to adjudication

**Before:** Marie-Claire Perrault, a panel of the Federal Public Sector Labour Relations and Employment Board

**For the Grievor:** Laval Dallaire and Antoine Fontaine-Asselin, counsel

**For the Employer:** Karl Jessop and Véronique Aubé, counsel

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Decided on the basis of written submissions,  
filed November 18 and December 20, 2022, and July 17 and August 8 and 25, 2023.  
[FPSLREB Translation]

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**REASONS FOR DECISION****FPSLREB TRANSLATION**

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**I. Individual grievance referred to adjudication**

[1] On October 21, 2022, Bernard Laquerre was terminated by his employer, the National Battlefields Commission (NBC). On November 18, 2022, he referred his grievance to adjudication before the Federal Public Sector Labour Relations and Employment Board (“the Board”).

[2] The NBC objects to the referral and argues that the Board does not have jurisdiction to hear the grievance.

[3] This decision deals only with the Board’s jurisdiction to hear a grievance originating from the NBC. When Mr. Laquerre referred his grievance to the Board, he also attached a legal opinion on the Board’s jurisdiction. The NBC’s objection arrived after that. I then invited the parties to complete their arguments on the Board’s jurisdiction. To make the dispute easier to understand, I will present the parties’ arguments, starting with the NBC’s objection and then Mr. Laquerre’s arguments. While that does not respect the order in which the arguments were received, it remains faithful, at least I hope, to their contents.

[4] For the following reasons, I am of the opinion that the Board does not have jurisdiction to hear Mr. Laquerre’s grievance.

**II. Summary of the arguments**

[5] Note that typically, the term “employee” is used to designate the person who referred a grievance to adjudication; however, in this case, the very issue of the decision is whether Mr. Laquerre is in fact an “employee” within the meaning of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”).

Consequently, I refer to him by his name in this decision. For the same reason, because it is also about deciding whether the NBC is an “employer” within the meaning of the *Act*, I refer to that organization by its acronym.

**A. The NBC’s objection**

[6] According to the NBC, it is not part of the public service within the meaning of the *Act*, and consequently, Mr. Laquerre is not an employee with recourse under the *Act*.

[7] In addition, *An Act respecting the National Battlefields at Quebec* (S.C. 1908, c. 57), the NBC's constituting Act, provides for the following:

...  
*4 The Commission may make by-laws for:*

...  
*(c) the appointment, control, duties and removal of all officers, guardians, agents, technical and professional advisers, and employees of the Commission, and their remuneration ....*

...  
[8] No by-laws were established for that purpose.

[9] Section 2(1) of the *Act* defines the term "employer" as a department named in Schedule I to the *Financial Administration Act* (R.S.C., 1985, c. F-11) or another portion of the federal public administration named in Schedule IV to that Act, and a separate agency named in Schedule V to that Act. The term "public service" is defined as the several positions in or under the entities named in those three schedules.

[10] The NBC does not appear in any of those three schedules but does appear in Schedule II. Therefore, it is not part of the public service as defined by the *Act*. Some agencies, such as the Canada Revenue Agency, appear in both Schedule II and Schedule V. That is not so for the NBC, which appears only in Schedule II.

[11] Section 206 of the *Act* specifies to whom recourse to a grievance applies. Only an employee may file an individual grievance, and the term "employee" is defined in that section as "person employed in the public service".

[12] It is true that as Mr. Laquerre states, he also has no recourse before the Canada Industrial Relations Board. If he has no recourse before an administrative tribunal, he can appear before a court.

## **B. Mr. Laquerre's arguments**

[13] In the absence of a grievance process at the NBC, Mr. Laquerre sent his grievance against his termination directly to the Board under s. 209(1)(b) of the *Act*. Anticipating that the NBC would object, he attached a legal opinion on the Board's jurisdiction to hear his grievance.

[14] According to that legal opinion, Mr. Laquerre has no recourse under s. 240 of the *Canada Labour Code* (R.S.C., 1985, c. L-2), since that provision's application is restricted by s. 167, which notably excludes "any departmental corporation" within the meaning of the *Financial Administration Act*, meaning a corporation named in Schedule II to that Act. Therefore, the NBC is outside the scope of the *Canada Labour Code* with respect to recourse against a termination.

[15] The legal opinion acknowledges that the NBC is not expressly within the scope of the *Act* since the public service is defined in it as the entities in Schedules I, IV, and V to the *Financial Administration Act*.

[16] However, Mr. Laquerre argues that his exclusion from the scope of the *Act* goes against its purpose, namely, according to its preamble, the "... fair, credible and efficient resolution of matters arising in respect of terms and conditions of employment ...".

[17] Mr. Laquerre emphasizes that the NBC is a Canadian federal government agency and that it is part of the Department of Canadian Heritage's portfolio. In addition, the Department of Finance assures the NBC's funding. Therefore, his position fell, at least indirectly, under the departments found in Schedule I to the *Financial Administration Act*.

[18] The legal opinion also argues in support of the NBC being part of the Canadian federal government apparatus.

[19] In his reply to the detailed objection, Mr. Laquerre states that it is evident that he is an employee, and he states in particular that NBC employees are represented by the Public Service Alliance of Canada, which is a union that represents many federal employees.

[20] Also in his reply, Mr. Laquerre argues that the Canada Revenue Agency was added to Schedule V only in 2015 by the order in SOR/2015-118. In other words, Parliament can be called on to add entities to the schedules that provide a right to recourse before the Board, and the NBC's omission may be a simple oversight, given its small size.

### III. Analysis

[21] There is no doubt that the NBC is part of the Canadian federal government apparatus. However, it does not mean that the Board's enabling Act provides recourse for Mr. Laquerre's grievance.

[22] Mr. Laquerre's argument is based in particular on an interpretation of the *Canada Labour Code* to demonstrate that he must have recourse before the Board since he has no recourse under the *Canada Labour Code*.

[23] However, this argument eliminates the need for the Board's enabling Act to effectively offer recourse to Mr. Laquerre. But that is not so. As an NBC employee, he was not an employee within the meaning of the *Act*; consequently, he could not use the recourse to a grievance set out in the *Act* and therefore could not refer a grievance to adjudication before the Board.

[24] The *Act* defines an employee as a person employed in the public service. The public service is defined as follows in s. 2(1) of the *Act*:

**public service, except in Part 3, means the several positions in or under**

**fonction publique** Sauf à la partie 3, l'ensemble des postes qui sont compris dans les entités ci-après ou qui en relèvent :

**(a) the departments named in Schedule I to the Financial Administration Act;**

**a) les ministères figurant à l'annexe I de la Loi sur la gestion des finances publiques;**

**(b) the other portions of the federal public administration named in Schedule IV to that Act; and**

**b) les autres secteurs de l'administration publique fédérale figurant à l'annexe IV de cette loi;**

**(c) the separate agencies named in Schedule V to that Act.**

**c) les organismes distincts figurant à l'annexe V de la même loi.**

[25] The NBC does not appear in any of those schedules; it appears only in Schedule II to the *Financial Administration Act*.

[26] It is significant that the usual grievance process cannot be followed at the NBC because it does not exist. Yet, under s. 225 of the *Act*, this process is a prerequisite to a referral to adjudication.

[27] Mr. Laquerre argues that he can be considered an employee because the NBC falls under the Department of Canadian Heritage.

[28] In its portfolio, the Department of Canadian Heritage includes three departmental agencies: the National Film Board of Canada, Library and Archives of Canada, and the NBC. The National Film Board appears in Schedule V to the *Financial Administration Act*, and Library and Archives of Canada appears in Schedule IV. Once again, the NBC appears only in Schedule II.

[29] This is not an oversight — Parliament placed the NBC in a certain category (Schedule II) and not in the schedules that are part of the public service. It could have placed the NBC in both Schedule II and another schedule to the *Financial Administration Act* (as it is for the Canada Revenue Agency), but it did not.

[30] It is false to state that the Canada Revenue Agency was added to Schedule V only in 2015. It has appeared in Schedule V since its creation in 2005. In 2015, by order, the Governor in Council designated it for the purposes of the application of s. 209(1)(d) of the *Act*, which allows an employee to challenge a demotion or termination imposed for a reason other than discipline. Since its creation, its staff members have always been employees.

[31] The NBC's situation is similar to that of the national museums, which appear in Schedule III, are also part of the Department of Canadian Heritage's portfolio, and receive their funding from the Department of Finance. Their employees are not part of the public service within the meaning of the *Act* and have no recourse before the Board. They are represented by a union that represents a number of federal employees (the Professional Institute of the Public Service of Canada), but that union's certification as a bargaining agent for the museums' bargaining units is granted by the Canada Industrial Relations Board and not by the Board. The Public Service Alliance of Canada is also certified as bargaining agent for NBC employees by the Canada Industrial Relations Board, not by the Board.

[32] I conclude that Mr. Laquerre is not an employee within the meaning of the *Act* and therefore that he cannot refer a grievance to the Board. The outcome of this analysis is unfortunate because his recourse is a more costly procedure before a court, but the Board cannot bring under the aegis of the *Act* that which Parliament did not. That would exceed its jurisdiction.

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

*(The Order appears on the next page)*

**IV. Order**

[34] The Board declares that it does not have jurisdiction to hear Mr. Laquerre's grievance against his termination.

[35] File 566-02-46115 is closed.

September 13, 2023.

FPSLREB Translation

**Marie-Claire Perrault,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**