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File: 561-02-47362

Citation: 2023 FPSLREB 100

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

JOSHAUA BEAULIEU

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as
Beaulieu v. Public Service Alliance of Canada

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

Before: Ian R. Mackenzie, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Himself

For the Respondent: Kalapi Roy

Decided on the basis of written submissions, filed February 27 and 28, March 28, May 18 and 30, and June 3, 5, 8, 14, and 16, 2023.

REASONS FOR DECISION

I. Complaint before the Board

[1] Joshaua Beaulieu ("the complainant") made an unfair-labour-practice complaint against the Union of Veterans Affairs Employees ("the union"), a component of the Public Service Alliance of Canada ("the respondent"), on February 27, 2023. He alleged that the respondent refused to file a grievance or to provide representation in response to a decision of the Department of Veterans Affairs ("the department") related to an allegation of harassment. He also alleged that he was expelled from the union for reasons related to a disability.

[2] The complainant made his complaint under ss. 190(1)(g) and (e) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*").

[3] Section 190(1)(e) of the *Act* is for complaints related to an alleged failure to comply with s. 117 (the duty to implement provisions of the collective agreement). In email correspondence to the complainant on March 28, 2023, the Federal Public Sector Labour Relations and Employment Board ("the Board") advised him that s. 190(1)(e) relates to the duty to implement the terms of a collective agreement between an employer and a union. The complainant maintained that he wanted to make a complaint under that paragraph as well as under s. 190(1)(g), which relates to complaints of unfair labour practices.

[4] The respondent has requested that the complaint be dismissed summarily because it is untimely. The complainant does not dispute that the complaint is untimely. He has requested that the time limit be extended. The respondent submitted that an extension should not be granted.

[5] This decision addresses the Board's jurisdiction over a complaint made by an employee alleging a failure to implement the provisions of a collective agreement and the respondent's request for a summary dismissal based on the untimeliness of the complaint.

[6] I am satisfied that pursuant to s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365), this decision is properly rendered on the basis of the written submissions and the complaint on file.

[7] For the reasons set out in this decision, I have determined that s. 190(1)(e) of the *Act* is not applicable to this complaint. I have also determined that the complaint under s. 190(1)(g) is untimely, and I decline to exercise the Board's jurisdiction to extend the time limit.

II. Can an individual make a complaint under s. 190(1)(e) of the *Act*?

[8] The complainant made his complaint under the usual section of the *Act* for a duty-of-fair-representation complaint (s. 190(1)(g)) but also relied on s. 190(1)(e), the duty to implement the provisions of a collective agreement.

[9] The duty to implement the provisions of a collective agreement is set out as follows at s. 117 of the *Act*:

117 *Subject to the appropriation by or under the authority of Parliament of money that may be required by the employer, the parties must implement the provisions of a collective agreement*	***117*** *Sous réserve de l'affectation par le Parlement, ou sous son autorité, des crédits dont l'employeur peut avoir besoin à cette fin, les parties à une convention collective commencent à appliquer celle-ci :*
(a) *within the period specified in the collective agreement for that purpose; or*	***a)*** *au cours du délai éventuellement prévu à cette fin dans la convention;*
(b) *if no such period is specified in the collective agreement, within 90 days after the date it is signed or any longer period that the parties may agree to or that the Board, on application by either party, may set.*	***b)*** *en l'absence de délai de mise en application, dans les quatre-vingt-dix jours suivant la date de la signature de la convention ou dans le délai plus long dont peuvent convenir les parties ou que fixe la Commission sur demande de l'une ou l'autre des parties.*

[10] The complainant alleged that the failure to file a grievance was a failure to implement a provision of the collective agreement. However, s. 117 relates to the implementation of a new collective agreement or arbitral award, not the application of the provisions of an existing collective agreement (see *Halfacree v. P.S.A.C.*, 2010 PSLRB 64 at para. 15).

[11] Since this complaint has nothing to do with collective bargaining for a collective agreement or the implementation of a collective agreement or an arbitral award by

either an employer or a union, the complainant could not rely on this section for his complaint.

[12] Accordingly, the part of the complaint alleging a breach of s. 190(1)(e) is dismissed.

III. The timeliness of the complaint, and whether the Board can grant an extension

[13] Section 190(1) of the *Act* requires that the Board inquire into any complaint that an employee organization has committed an unfair labour practice within the meaning of s. 185. Section 185 defines an unfair labour practice, in part, as anything that is prohibited by ss. 187 or 188.

[14] Section 187 of the *Act* sets out the bargaining agent's duty of fair representation 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.*

[15] Section 188 of the *Act* provides, in part, as follows:

188 *No employee organization and no officer or representative of an employee organization or other person acting on behalf of an employee organization shall*	***188*** *Il est interdit à l'organisation syndicale, à ses dirigeants ou représentants ainsi qu'aux autres personnes agissant pour son compte :*
…	[…]
(b) *expel or suspend an employee from membership in the employee organization or deny an employee membership in the employee organization by applying its membership rules to the employee in a discriminatory manner …*	***b)*** *d'expulser un fonctionnaire de l'organisation syndicale ou de le suspendre, ou de lui refuser l'adhésion, en appliquant d'une manière discriminatoire les règles de l'organisation syndicale relatives à l'adhésion;*

[16] Section 190(2) of the *Act* requires that 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."

[17] In his complaint, the complainant stated in the complaint form that the date on which he "… knew of the act, omission or other matter giving rise to the complaint …" was May 2, 2018. As the complaint was not submitted until February 27, 2023, the respondent submitted that the complaint is untimely, and that it should be dismissed on that basis. The complainant agreed that the complaint is untimely and submitted that the time limit should be extended. The respondent submitted that the time limit should not be extended.

[18] I agree that the complaint is untimely. Therefore, the preliminary issue to be determined is whether the Board has the power to extend the time limit to make a complaint under s. 190 of the *Act* or if it has the power to remedy a complainant's failure to comply with the time limit.

[19] This Board, and its predecessors, have long held that the 90-day time limit in that section is mandatory and therefore cannot be extended. The first decision to make this finding was *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78, in which the Public Service Labour Relations Board interpreted an identical statutory provision in the *Public Service Labour Relations Act* (*PSLRA*). That Board addressed the time limit in s. 190(2) as follows

> *55 That wording is clearly mandatory by its use of the words "must be made no later than 90 days after the events in issue". No other provision of the* PSLRA *gives jurisdiction to the Board to extend the time limit prescribed in subsection 190(2). Consequently, subsection 190(2) of the* PSLRA *sets a boundary, limiting the Board's power to examine and inquire into any complaint that an employee organization has committed an unfair labour practice within the meaning of section 185 (under paragraph 190(1)(*g*)) of the* PSLRA*) and that is related to actions or circumstances that the complainant knew, or in the Board's opinion ought to have known, in the 90 days previous to the date of the complaint.*

[20] The *Castonguay* decision has been consistently followed in subsequent decisions, including *Paquette v. Public Service Alliance of Canada*, 2018 FPSLREB 20;

Nemish v. King, 2020 FPSLREB 76; *Burns v. Unifor, Local 2182*, 2020 FPSLREB 119; *Marcil v. Public Service Alliance of Canada*, 2022 FPSLREB 65; and *Tremblay v. Canadian Association of Professional Employees*, 2023 FPSLREB 69.

[21] The Federal Court of Appeal has determined that this interpretation of the Board's power is reasonable; see *Roberts v. Union of Canadian Correctional Officers*, 2014 FCA 42 at paras. 9 to 11. However, a finding by a reviewing court that an interpretation of a statute is reasonable does not mean that a different interpretation could not also be reasonable.

[22] In *Canada (Attorney General) v. Public Service Alliance of Canada*, 2019 FCA 41 at para. 44, a decision that also related to s. 190, the Federal Court of Appeal stated that it is "… for the Board and not for this Court to assess how sound labour relations policies are advanced through the interpretation to be given to … the *FPSLRA*."

[23] To answer the question about the Board's power to extend time limits under s. 190(2), it is necessary to engage in the exercise of statutory interpretation. However, the modern approach to statutory interpretation requires that I consider more than just the ordinary meaning of the words used. It is also necessary to consider the purpose and context of the provision in question. The Supreme Court of Canada succinctly set out this modern principle of statutory interpretation as follows in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 at para. 10:

> *10 It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see* 65302 British Columbia Ltd. v. Canada*, 1999 CanLII 639 (SCC), [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.*

[24] In *Da Huang v. Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 228 at para. 43, the Federal Court of Appeal noted as follows that the grammatical and ordinary meaning of a statutory provision does not end the interpretation process:

> *[43] Inherent in the contextual approach to statutory interpretation is the understanding that the grammatical and ordinary sense of a provision is not determinative of its meaning. A court must consider the total context of the provision to be interpreted "no matter how plain the disposition may seem upon initial reading" (*ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140, at paragraph 48). From the text and this wider context, as well as the apparent purposes, the Court aims to ascertain legislative intent, which is "[t]he most significant element of this analysis" (*R. v. Monney*, 1999 CanLII 678 (SCC), [1999] 1 S.C.R. 652, at paragraph 26).*

[25] The first interpretive issue I will address is the express wording of s. 190(2). In *Castonguay*, the predecessor Board found that the wording of s. 190(2) was "clearly mandatory", given the use of the word "must" (at para 55). There is no doubt that the use of the word "must" or "shall" in a statute is **imperative**, in the sense that a person who "shall" or "must" do something has no discretion to decline (Ruth Sullivan, *Sullivan on the Construction of Statutes*, 7th ed. ("*Sullivan*"), at 4.05, "Interpretation Acts and Recurring Legislative Terminology, 'Shall'/'must'" (electronic version)). However, once it is established that a provision is imperative, the next question that must be asked is what consequences flow from failing to comply with it. In other words, is the provision truly "mandatory" (meaning that non-compliance cannot be cured) or is it merely "directory" (meaning that it can)?

[26] In *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 S.C.R. 344, at para. 42, the Supreme Court explained that the most important considerations when making this determination are the objects of the statute in question and the effect of ruling one way or the other. If finding that a provision is truly mandatory would cause hardship and would not serve the legislature's purpose, the concept of a directory "must" allows the decision-maker to achieve a fair and reasonable outcome (see *Sullivan*, at 4.05, "Consequences of finding an imperative provision to be directory").

[27] The preamble to the *Act* sets out its objects as follows:

Recognizing that	*Attendu :*
the public service labour-management regime must operate in a context where protection of the public interest is paramount;	*que le régime de relations patronales-syndicales de la fonction publique doit s'appliquer dans un environnement où la protection de l'intérêt public revêt une importance primordiale;*
effective labour-management relations represent a cornerstone of good human resource management and that collaborative efforts between the parties, through communication and sustained dialogue, improve the ability of the public service to serve and protect the public interest;	*que des relations patronales-syndicales fructueuses sont à la base d'une saine gestion des ressources humaines, et que la collaboration, grâce à des communications et à un dialogue soutenu, accroît les capacités de la fonction publique de bien servir et de bien protéger l'intérêt public;*
collective bargaining ensures the expression of diverse views for the purpose of establishing terms and conditions of employment;	*que la négociation collective assure l'expression de divers points de vue dans l'établissement des conditions d'emploi;*
the Government of Canada is committed to fair, credible and efficient resolution of matters arising in respect of terms and conditions of employment;	*que le gouvernement du Canada s'engage à résoudre de façon juste, crédible et efficace les problèmes liés aux conditions d'emploi;*
the Government of Canada recognizes that public service bargaining agents represent the interests of employees in collective bargaining and participate in the resolution of workplace issues and rights disputes;	*que le gouvernement du Canada reconnaît que les agents négociateurs de la fonction publique représentent les intérêts des fonctionnaires lors des négociations collectives, et qu'ils ont un rôle à jouer dans la résolution des problèmes en milieu de travail et des conflits de droits;*
commitment from the employer and bargaining agents to mutual respect and harmonious labour-management relations is essential to a productive and effective public service …	*que l'engagement de l'employeur et des agents négociateurs à l'égard du respect mutuel et de l'établissement de relations harmonieuses est un élément indispensable pour ériger une fonction publique performante et productive,*
…	[…]

[28] The ruling in *Castonguay* that the time limit in s. 190 is "clearly mandatory", in certain circumstances, can cause hardship that would not serve the statutory purpose of a "fair, credible and efficient resolution" of disputes or contribute to "harmonious labour-management relations". A ruling that the time limit is directory and not mandatory allows for a "fair and credible" resolution and one that respects "harmonious" labour relations in situations in which a time limit was not met due to circumstances that were out of the complainant's control.

[29] Under the interpretation of s. 190(2) of the *Act* set out in *Castonguay*, parties are deprived of an opportunity to have a dispute adjudicated if the delay was not their fault. The benefit of a hard and immovable deadline is finality and clarity – where the 90-day time limit is carved in stone. In balancing the two interpretations, an interpretation that provides a remedy for failing to meet a deadline through no fault of the complainant better satisfies the objects of the *Act*. A reasonable person would not think that denying a person access to adjudication if the deadline was missed due to unforeseen circumstances that were not the fault of that complainant was either fair or credible. For example, if a person is hospitalized or if their community is subject to an evacuation order due to forest fires, a remedy for the resulting delay in filing a complaint would assist in the "fair and credible" resolution of the complaint and would also contribute to "harmonious" labour relations.

[30] The second interpretive issue I will address are the sources of the Board's powers under the *Act*. While the authorities are clear that the actions of an administrative decision maker must be grounded in statute, it is equally clear that these powers are not limited to those that are expressly stated. In *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 S.C.R. 1722 at 1756, the Supreme Court of Canada stated that the powers of an administrative tribunal may also exist "… by necessary implication from the wording of the act, its structure and its purpose." The Supreme Court warned against "unduly broadening" powers through judicial law-making but also noted that courts must avoid "… sterilizing these powers through overly technical interpretations of enabling statutes." In *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, the Court noted that the "doctrine of jurisdiction by necessary implication" provided that the powers of an enabling statute can be considered to include "… by implication, all powers which are practically necessary for the accomplishment of the object

intended to be secured by the statutory regime created by the legislature …" (at paragraph 51).

[31] The Federal Court of Appeal in *Tipple v. Canada (Attorney General)*, 2012 FCA 158 also noted that adjudicative decision makers have the inherent authority to control their own process and to "remedy its abuse" (at para. 29).

[32] To determine if the Board has the implicit power to extend time limits for complaints made under s. 190 of the *Act*, it is necessary to again examine the objects of the *Act* and whether the implied power is necessary for the accomplishment of those objects.

[33] Section 12 of the *Act* sets out as follows the Board's powers in relation to the administration of the *Act*:

12 *The Board administers this Act and it* ***may exercise the powers and perform the duties and functions that are conferred or imposed on it by this Act, or as are incidental to the attainment of the objects of this Act,*** *including the making of orders requiring compliance with this Act, with regulations made under it or with decisions made in respect of a matter coming before the Board.*	***12*** *La Commission met en oeuvre la présente loi et* ***exerce les attributions que celle-ci lui confère ou qu'implique la réalisation de ses objets,*** *notamment en rendant des ordonnances qui en exigent l'observation, celle des règlements pris sous son régime ou des décisions qu'elle rend sur les questions dont elle est saisie.*

(Emphasis added)

[34] The relevant objects in interpreting the Board's powers in this case are "[the] fair, credible and efficient resolution" of disputes and "harmonious labour-management relations", as I have set out earlier in my reasons.

[35] Support for the existence of an implied power to relieve non-compliance with a statutory timeline can also be found in the case law.

[36] The Federal Court of Appeal conducted a detailed analysis of the Board's authority to remedy a non-compliance with a statutory time limit in *Canada (Attorney General) v. P.S.A.C.*, [1989] 3 FC 585 ("*P.S.A.C.*"). In that decision, the Court found that a predecessor Board, the Public Service Staff Relations Board, had an "implied but very limited jurisdiction" to relieve a party from its "default" (the failure to meet a time

limit) "… if it is persuaded by the reasons for the delay in what would likely be most unusual or extraordinary circumstances." In that case, the employer had failed to provide lists of designated positions to the Board within the stipulated time limit, and there was no statutory provision for an extension of time limits. The Court made the following observation:

> …
>
> *… Although the statute in question, unlike many others that deal with time limits, does not mention the possibility of a proper case and good cause and although specific time limits should as a general matter be taken seriously, I do not think it does harm to statutory interpretation or Parliament's intent to acknowledge that such time limits can be treated as being legally met where an event or happening akin to an accident,* force majeure *or Act of God has intervened to prevent literal compliance with the time limit. It takes little imagination in our modern complex life to think of circumstances where, through no fault or shortcoming of the employer, the filing of the list was delayed… Obviously one cannot generalize since each case depends on the statute in question and the words used amongst other factors.…*
>
> …

[37] In *Public Service Alliance of Canada v. Staff of the Non-Public Funds, Canadian Forces*, 2009 PSLRB 123, the Chairperson of the predecessor Public Service Labour Relations Board relied on the Federal Court of Appeal's decision in *P.S.A.C.* to allow the bargaining agent to file a request for arbitration past the deadline set out in the *Act* (at paragraph 5). The Chairperson continued as follows (at paragraphs 6 and 7):

> *6 Further, the preamble to the new* Act *fosters effective labour-management relations, encourages employers' and bargaining agents' collaborative efforts, affirms the Government of Canada's commitment to fair, credible and efficient resolution of matters arising in respect of terms and conditions of employment, and recognizes that the commitment from employers and bargaining agents to mutual respect and harmonious labour-management relations is essential to a productive and effective public service. The new* Act *also provides at section 241 that proceedings are not invalid because of a mere technical irregularity.*
>
> *7 Taking into account the precedents above and the legislator's intent specifically expressed in the new* Act, *I find that the Chairperson has, in exceptional circumstances, the jurisdiction to relieve a party from its failure to meet the time limit set out in subsection 136(5) of the new* Act.

[38] The apparent contradiction between granting an explicit power to extend time limits for some sections of the *Act* (but not s. 190) and an implicit power to relieve a party from its failure to meet the 90-day time limit for complaints made under s. 190 is easily resolved. The implicit power, as the Federal Court of Appeal articulated in *P.S.A.C.*, is very limited and does not engage balancing fairness with prejudice. This implicit power is to be used only in truly exceptional or unusual cases. The Federal Court of Appeal used the terminology of "… accident, *force majeure* or Act of God …". The meaning behind those words is clear: the delay must have arisen from an extraordinary event that was out of the control of the party that missed the time limit. Each case must be decided on its own facts, but relieving a party from its failure to comply with a statutory time limit under this implicit power will be rare and will be used only in exceptional or unusual circumstances. I agree with the Federal Court of Appeal that there is no harm to statutory interpretation or Parliament's intent to relieve a party from the consequences of non-compliance in exceptional circumstances "where, through no fault or shortcoming" of the complainant, the making of the complaint was delayed.

[39] The Federal Court of Appeal in *P.S.A.C.* referred to accident, "Act of God", and "*force majeure*". Relief could be granted if a complainant was incapacitated due to an accident or serious illness, for example. In my view, "Act of God" is an archaic term that is adequately captured by this definition of "*force majeure*" (see Black's Law Dictionary, 8th ed.): "… [a]n event or effect that can be neither anticipated nor controlled …". Examples of such events could include natural disasters or infrastructure failures (fires, floods, and blackouts, for example). This list is not exhaustive.

[40] The interpretation by the Federal Court of Appeal in *P.S.A.C.*, is also reinforced by the later addition of the preamble to the *Act*, which directly refers to fairness ("fair and credible resolution"). More expansive relief (similar to the *Schenkman* criteria), however, is not supported by the *Act*. The legislature made a clear distinction between those cases in which it expected the Board to exercise its discretion to extend time limits (when justified) and s. 190 complaints, where no such discretion was extended to the Board. This was a legislative choice that the Board must respect.

[41] I would articulate the appropriate test for relief for a failure to meet the 90-day time limit under s. 190 of the *Act* as follows: the Board may consider relieving a party

from its failure to comply with the 90-day deadline to make a complaint if there was a good cause for the delay that could have been neither anticipated nor controlled. As noted, this implicit power is to be exercised only in exceptional or unusual circumstances.

[42] This interpretation of the Board's authority to provide relief to a complainant addresses the object of the *Act* of the "fair, credible" resolution of disputes. It is neither fair nor credible that a complainant be deprived of rights under the *Act* if circumstances totally out of their control interfere with the timely making of a complaint. In addition, allowing for relief in these narrow circumstances contributes to "harmonious labour-management relations".

[43] In *Roberts*, the Federal Court of Appeal stated (at paragraph 11) that "[n]o principle of law or equity trumps Parliament's intent …" that complaints under s. 190 of the *Act* must be made within 90 days. However, the Court's decision comprises only 13 paragraphs and contains no detailed analysis of the basis for its conclusion.

[44] Therefore, I find that the Board has the implicit power to remedy a failure to meet the 90-day time limit for making a complaint under s. 190 of the *Act*, to address exceptional or unusual circumstances.

IV. Should the complainant be provided relief in the circumstances of this complaint?

[45] The circumstances surrounding the making of the complaint are not fundamentally in dispute. I have relied on the allegations set out in the complaint, the statements of fact in the respondent's response that the complainant has not disputed, as well as from a public Federal Court decision (see *Beaulieu v. Canada (Attorney General)*, 2022 FC 1671) that was the judicial review of a decision of the Canadian Human Rights Commission ("the Commission") to dismiss his complaint of discrimination based on disability.

[46] The allegations in the complaint relate to the respondent's representation of one or more internal harassment complaints that the complainant made in March 2018. The complainant also alleged that he was removed from union membership. This appears to have occurred in June 2017, when he went on a period of leave without pay. The respondent's constitution requires non-dues-paying members (for example, members on leave without pay) to apply to it to maintain their membership in good

standing. Therefore, I conclude that the complainant knew or ought to have known of this allegation by some time in 2017. Therefore, the alleged breaches of the duty of fair representation are all over three years old.

[47] In March 2019, the department's disability insurance provider determined that the complainant was "totally and permanently incapacitated", and he was approved for disability insurance benefits. His employment was terminated on May 22, 2019.

[48] The complainant made a human rights complaint with the Commission on December 10, 2018. On December 2, 2019, the Commission advised him that it would investigate his complaint. On December 2, 2021, the investigator recommended that the complaint be dismissed. The complainant made submissions to the Commission in response to the recommendation.

[49] The Commission dismissed the complaint in a decision dated February 23, 2022. In its decision, it stated the following: "Apparently, the Complainant is awaiting a hearing on some of the grievances that were referred to the Federal Public Service [*sic*] Labour Relations and Employment Board. He will have additional opportunities there to advance his argument."

[50] The complainant filed a notice of application seeking judicial review of the Commission's decision on April 1, 2022. He swore an affidavit in support of his application on May 12, 2022. He also prepared a second affidavit and sought the leave of the court to file it and some accompanying documents in early August 2022. The hearing of the judicial review application occurred on November 23, 2022.

[51] The complainant submitted that the time limit should be extended for the following reasons:

1) He was deemed totally disabled and was unable to make a complaint.
2) The time limit must be adjusted as a form of accommodation of a disability as required by human rights law and the *Accessible Canada Act* (S.C. 2019, c. 10).
3) Although he made a human rights complaint, he did not realize that he could also make a complaint with the Board until the time limit had expired.
4) His limited capacities meant that he could not undertake both the Commission's process and the Board's process simultaneously.
5) He was subjected to intimidation and cyberstalking by the respondent.

[52] The respondent noted that the complainant was able to participate in the Commission's process, as well as the judicial review of its decision, without requiring extensions of time limits.

[53] I find that the reasons that the complainant provided for his failure to make his complaint within 90 days of the alleged breaches of the *Act* do not meet the very high standard required for exercising my jurisdiction to provide relief for his failure. The circumstances that he relied upon are not unusual or exceptional. In addition, there was no external cause preventing him from making a complaint. In other words, the delay making his complaint was within his control and could have been anticipated.

[54] Although a third-party insurer found him totally disabled, it was solely for the purpose of determining his entitlement to benefits under the disability insurance plan and not for all purposes. The insurer's determination that he is totally disabled did not prevent him from pursuing a complaint with the Commission and a judicial review of its decision. In other words, he was not so incapacitated that he could not initiate legal proceedings, such as a complaint to the Board.

[55] The complainant also stated that his limited capacities meant that he could not pursue both a human rights complaint and a complaint before the Board at the same time. Complaints are often held in abeyance pending the resolution of other legal processes, and there was nothing preventing him from making his complaint with the Board and then asking that it be held in abeyance pending the resolution of the Commission's process.

[56] Lack of knowledge of an available legal recourse also does not meet the standard of an exceptional or unusual circumstance. I also note that at least by February 2022 (a full year before making his complaint), he was aware of the existence of the Board when the Commission referred to his grievances before the Board.

[57] The complainant provided no particulars about the respondent's alleged intimidation and cyberstalking. While intimidation and stalking might, given a sufficient factual foundation, constitute exceptional or unusual circumstances that would justify extending the time limit, that is not the case here.

[58] The *Accessible Canada Act* is a "… proactive and systemic approach for identifying, removing and preventing barriers to accessibility …" (from its preamble)

and has no application to this complaint. The general duty of accommodation in human rights law can be a consideration when determining exceptional or unusual circumstances. However, in this case, the complainant was able to participate fully in other legal processes. This demonstrates that he was not incapacitated from making a complaint with the Board.

[59] Accordingly, the complaint is dismissed on the basis of untimeliness, and I decline to exercise the Board's limited jurisdiction to provide relief for the complainant's failure to meet the 90-day time limit.

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

(The Order appears on the next page)

V. Order

[61] The complaint under s. 190(1)(e) of the *Act* is dismissed.

[62] The request to provide relief for the complainant's failure to meet the time limit to make a complaint under s. 190(1)(g) of the *Act* is denied.

[63] The complaint under s. 190(1)(g) is dismissed.

November 2, 2023.

Ian R. Mackenzie,
a panel of the Federal Public Sector
Labour Relations and Employment Board