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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

**NATIONAL POLICE FEDERATION**

Complainant

and

**TREASURY BOARD  
(Royal Canadian Mounted Police)**

Respondent

Indexed as

*National Police Federation v. Treasury Board (Royal Canadian Mounted Police)*

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

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

**For the Complainant:** Andrew Montague-Reinholdt and Brent Marks, counsel

**For the Respondent:** Chris Hutchison, counsel

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Heard at Ottawa, Ontario,  
November 14 to 16, 2023.

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**REASONS FOR DECISION**

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**I. Complaint before the Board**

[1] On July 25, 2023, the Royal Canadian Mounted Police (RCMP) published an announcement on its public website advertising a new recruitment program.

[2] On July 31, 2023, the National Police Federation (NPF or “the complainant”) made an unfair-labour-practice complaint against the Treasury Board and the RCMP, denouncing the implementation of the new recruitment program, named the Federal Policing Recruit Development Program (FPRDP), as a violation of s. 107 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”), which states that terms and conditions in force at the time notice to bargain is served remain unchanged until a new collective agreement is concluded (commonly referred to as the “statutory freeze”).

[3] The NPF is the bargaining agent that represents regular members and reservists in the RCMP below the rank of inspector. The legal employer and signatory to the collective agreement is the Treasury Board, but human resources and financial management responsibilities are delegated to the RCMP’s commissioner. In this decision, both entities are considered the employer or “the respondent”.

[4] Notice to bargain a second collective agreement was served on December 9, 2022. No new collective agreement has yet been concluded.

[5] At the start of the hearing, the respondent conceded that there had been a change to the terms and conditions of employment of the bargaining unit members, within the meaning of s. 107 of the *Act*. However, it argued that such a change was warranted and that it fell within the exceptions made to the legislation.

[6] The complainant also alleged a breach of s. 106 of the *Act*, that is, bad-faith bargaining by the respondent.

[7] For the reasons that follow, the complaint is allowed in part. I find there has been a breach of s. 107, and the respondent is ordered to cease implementing the FPRDP until a new collective agreement comes into force. I find there has not been a breach of s. 106.

## **II. Summary of the evidence**

[8] The evidence presented in this decision is based on the documentary and oral evidence that was presented at the hearing. Except for the verbal exchanges at a meeting held on July 21, 2023, the evidence was largely uncontradicted.

[9] The complainant called two witnesses: Dennis Miller, Vice-President of the NPF and a lead negotiator in collective bargaining, and Steve Madden, NPF Board Director. Both have considerable experience as regular members of the RCMP in both contract policing and protective policing.

[10] The respondent also called two witnesses: Sean McGillis, Executive Director, Federal Policing Strategic Management, and Richard Arulpooranam, Senior Labour Relations Strategist, who leads collective bargaining for the respondent.

[11] The RCMP is Canada's national police force. It delivers services under several headings: contract policing, national policing, aboriginal policing, and federal policing. Contract policing is the community-based police service offered in all provinces and territories except Quebec and Ontario. National policing comprises specialized support services such as the Canadian Police Information Centre (CPIC).

[12] Federal policing is designed to cover national law-enforcement concerns, such as organized crime, cybercrime, and large-scale financial crime. It also includes protective policing; that is, the protection of high-ranking officials and foreign dignitaries. Finally, federal policing has an international component, notably liaising and cooperating with Interpol and the United Nations. RCMP officers represent Canada in some 73 countries.

[13] According to witnesses from both sides, the RCMP has long had a recruitment and retention problem. There are insufficient applicants to fill all the vacancies. The RCMP also has a structure that allows divisions (each division, except for the National Division, corresponds to an area, either provincial or territorial) to decide on releasing regular members. According to the NPF's figures, which were not disputed, some 400 regular members now working in contract policing have applied to work in federal policing. However, the divisions will not release them, to prevent depleting their ranks. The consequence of non-releasability, recruitment difficulties, and attrition are such

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that federal policing has seen a decrease of some 600 regular members in the last 10 years.

[14] A recent report from the National Security and Intelligence Committee of Parliamentarians (*Special Report on the Federal Policing Mandate of the Royal Canadian Mounted Police*, submitted on August 14, 2023) outlined the dire consequences of these vacancies for Canada, both for the protection of the public and Parliamentarians and for the investigative resources necessary to counter increasing safety threats.

[15] In 2017, the RCMP's Senior Executive Committee (SEC) received a report from a consulting firm on ways to remediate the federal policing staff shortages. The report proposed several solutions but emphasized the need for a separate model of recruiting and training for federal policing services. It suggested a shorter training period of a few weeks rather the usual six months of what is termed "generalist" training at the RCMP's Regina Depot, which is the training centre that has been used for all RCMP recruits since the 1880s. The SEC did not adopt the proposed solutions, but senior management in federal policing continued to reflect on how to improve recruitment and training to fill the numerous vacancies.

[16] Since 2017, according to Mr. McGillis, safety threats have increased, with the radicalization on social media reflected by more violent rhetoric. He stated that the FPRDP was developed as a pilot project to modernize recruiting and training new RCMP members, specifically for federal policing. According to him, the current recruitment and training is designed to train generalists; that is, members who will be suited to the different challenges of community-based policing. The FPRDP's goal is to recruit and to train members who will be specialized in federal policing from the start.

[17] Currently, people who want to join the RCMP as regular members first go through a 26-week (6-month) training program as cadets at the Regina Depot. During that time, they learn the basics of policing. While there, cadets are not paid a salary. Rather, they receive a weekly allowance of \$525, which the RCMP may recover should the cadet fail or resign.

[18] After the six-month training, providing they succeed, they become constables with peace officer status, receive their ceremonial red serge uniform, become part of the bargaining unit, and start receiving a salary at the first step of the constable salary range. They are then assigned to a division and carry out contract work, working in

community-based policing. For the first six months, they are closely monitored in the Field Coaching Program; they are supervised by experienced officers who are paid an extra training allowance in addition to their regular salaries.

[19] Probation lasts for two years after the initial six months of training. After that time, provided they have met all the requirements, they become full-fledged constables and are paid at step 5 in the salary grid.

[20] The proposed FPRDP is quite different. Recruits first start with a one-week online curriculum. As I understood it, that first week is unpaid. If they pass the online tests, the recruits then take 12 weeks of training consisting of applied police sciences, police defensive tactics, driving, firearms, fitness and drill, and deportment. After that, they are deemed regular members of the RCMP, obtain peace officer status, and receive their ceremonial uniform of red serge. They start receiving the step 1 constable salary and become part of the bargaining unit from day 1 of the 12 weeks of training.

[21] After the 12 weeks of training, there is a further, intensive two-week period for carbine and “Immediate Action Rapid Deployment” training. Once the 14 weeks are done, the recruits are deployed to federal policing, where they will also undergo field coaching for 6 months and be subject to a two-year probationary period. It was somewhat unclear as to whether the probationary period would start with the 12-week training period or after it. Mr. McGillis was uncertain, and he was the only witness who testified to it.

[22] One last detail remains. Because the FPRDP recruits are on regular salary and are part of the bargaining unit from the start of their training, their service begins accruing from the first day of training, including pensionable time, service allowance time, and vacation credits. Contrast this with a cadet’s situation, who must undergo six months of training, with a recoverable weekly allowance, before having a regular salary and accruing service for pensionable time, service allowance time, and vacation credits.

[23] Mr. McGillis, who is responsible for the FPRDP’s implementation, testified that discussions with the NPF started in April 2021 with a meeting with NPF officials and Mike Duheme, who was then the RCMP’s deputy commissioner (federal policing). The FPRDP was not discussed specifically, as it had not yet been developed. Discussions centred on the need to address the pressures on protective policing, given the lack of resources.

[24] Mr. McGillis commented on a PowerPoint presentation given to RCMP senior management entitled “Close Protection Officers: Supply and Demand” that is dated November 25, 2022.

[25] According to the presentation, there are some 235 vacancies in the close protection section (which means personal protection for ministers and high-ranking officials in the federal government). Filling these vacancies from within the RCMP is problematic, as all its sectors are currently understaffed. Therefore, the only solution is to set up a direct-entry program; that is, a training program that does not include the traditional cadet training but rather recruits and trains directly for the federal policing sector.

[26] The timeline suggested in the presentation is for the direct-entry program (which became the FPRDP) recruiting from outside the RCMP to start in the fall of 2023. There is no indication that the NPF was made aware of the direct-entry program at that time.

[27] The development of the program did not occur along those timelines.

[28] On December 9, 2022, the NPF served notice to bargain on the respondent. From that point on, s. 107 of the *Act* applied; it reads as follows:

*107 Unless the parties otherwise agree, and subject to section 132, after the notice to bargain collectively is given, each term and condition of employment applicable to the employees in the bargaining unit to which the notice relates that may be included in a collective agreement, and that is in force on the day the notice is given, is continued in force and must be observed by the employer, the bargaining agent for the bargaining unit and the employees in the bargaining unit until a collective agreement is entered into in respect of that term or condition or ....*

*107 Une fois l'avis de négocier collectivement donné, sauf entente à l'effet contraire entre les parties aux négociations et sous réserve de l'article 132, les parties, y compris les fonctionnaires de l'unité de négociation, sont tenues de respecter chaque condition d'emploi qui peut figurer dans une convention collective et qui est encore en vigueur au moment où l'avis de négocier a été donné, et ce, jusqu'à la conclusion d'une convention collective comportant cette condition ou : [...]*

[29] A working group was set up in January 2023 to fully develop the proposed direct-entry program. The first draft was developed in February 2023. Further reviews

occurred in March and April 2023. A “Charter” was developed in April 2023; its purpose was to seek “... approval from the Project Sponsor and Project Authorities to develop and deliver the Federal Policing Recruit Development Program (RDP). Authorization is required to initiate project activities ...”.

[30] On paper, both the need to engage the NPF and take into account occupational health and safety concerns are noted. In practice, from the evidence heard, the NPF was not contacted during the program’s development; nor was the Occupational Health and Safety Committee consulted until September 2023.

[31] The Charter also identifies risks, notably the following (rated “High” for probability and “Medium” for impact): “Given # [the number] of existing RMs [regular members] who are interested and eligible to lateral to Protective, there is a high potential for upset & grievances to COs [commanding officers] or NPF”. Rated “High” for both probability and impact is the following risk: “Buy-in from employees across the organization on the proposed direction”. The outcome for this risk is indicated as follows: “Negatively impact employee morale across organization”.

[32] During a town-hall meeting for National Division employees held on March 20, 2023, Commissioner Duheme stated that the full curriculum for a direct-entry program was under development. It is unclear what details were provided about the FPRDP. The town-hall meeting mainly addressed the National Division’s restructuring, and the questions asked all focused on that issue.

[33] The FPRDP was presented to senior management on June 27, 2023. The presentation detailed how the program would work. Toward the end, it lists this as one of the questions asked about the program (and it is unclear who asked it): “Has the NPF been engaged?” However, engaging the NPF does not appear in the following section, entitled “Next Steps”.

[34] The SEC, after discussing the FPRDP at its July 17, 2023, meeting, recommended consulting with the NPF.

[35] Mr. Madden and Mr. Miller testified that the NPF first heard of the FPRDP in January 2023. In an email dated January 5, 2023, Mr. Madden inquires about a new direct-entry program he has heard about, and he receives the following response on

January 13, 2023, from Lori Wilkinson, Director of Workforce Management with the RCMP:

*Hi Steve,*

*The so-called direct entry program is one of many ideas to get RMs into Federal Policing to meet our operational requirements. We are in the very early days of brain-storming so there's nothing to share just yet.*

*Cheers,*

*Lori*

[36] Nothing further was communicated to the NPF until one of its communications employees learned from her RCMP counterpart that a poster would come out on July 4, 2023, announcing the new recruitment program (FPRDP).

[37] A document addressed to the Director General, National Compensation Services, and to the Chief Human Resources Officer, entitled “Consolidated HR Feedback on the Federal Policing Recruit Development Program (formerly the Direct Entry Training Program)”, and dated June 19, 2023, announced the launch for July 4, 2023. It identified many risks linked to the program, some related to the fact that recruits would immediately become regular members, and some related to the fact that the training program was not evidence-based. The document specifically mentions that the NPF (and other bargaining agents) should be consulted to gauge their support for the new program.

[38] The FPRDP was to be announced to the public for recruitment on July 4, 2023. The announcement was deferred so that the program could be discussed with the NPF. On June 30, 2023, Acting Deputy Commissioner Mark Flynn reached out to Mr. Madden to discuss the FPRDP. According to Mr. Madden, they spoke for some 45 minutes and agreed to meet later in July.

[39] A meeting did take place on July 21, 2023. In attendance were Mr. Flynn, Mr. McGillis, Michele Paradis, Chief Superintendent, Protective Policing; and John Park, Labour Relations Director, as well as Mr. Madden, Mr. Miller, and Pete Merrifield, NPF Vice-President.

[40] According to the complainant, the July 21, 2023, meeting was the first time the FPRDP was thoroughly discussed with its representatives.



[41] The NPF shared its many concerns about the proposed new direct-entry recruitment program, as follows:

- It had neither been consulted nor invited to participate in the six-month working-group project.
- The program constituted a violation of s. 107 (the statutory freeze provision) as it made clear changes to the terms and conditions of employment of the RCMP bargaining unit's members.
- It disadvantaged some 400 to 600 regular members who wanted to transfer into federal policing.
- It created two separate and unequal pathways to employment in the RCMP and a negative impact on the recruiting process.
- The FPRDP does not adhere to training policies and standards, which creates safety concerns for fully trained regular members.
- Occupational health and safety procedures had not been followed for the training program's approval, and the National Policy Health and Safety Committee had not carried out any risk assessment.
- The program was being rushed because a facility was available in the first quarter of 2024; too many short cuts presented a high degree of risk.
- The NPF opposed hiring untrained recruits as regular members and suggested instead ranking them as special constables.
- Employment offers should be conditional on completing the initial training (the 12-week basic law-enforcement course and the 5-week protective-policing course); hiring untrained recruits as permanent employees could be problematic (including for the bargaining agent representing them from day one).

[42] In his notes of the meeting, from which those points are drawn, Mr. Merrifield concludes as follows:

...

*... NPF was clear with the employer that we could not support a hiring, training and operational model that we had not been consulted on, nor permitted to review in detail. We reinforced with the employer that they had not met basic legally required steps [notably the occupational health and safety assessment] for approval. NPF requested all relevant materials from the working group for review. To date [July 25, 2023] no materials have been provided to the NPF.*

...

[43] The witnesses differed on how exactly the meeting ended. According to Mr. Madden, the NPF, having voiced its many concerns about the program, asked that the program not go ahead. When Mr. Flynn was reluctant to state that the program would be stopped, the NPF said that an unfair-labour-practice complaint was forthcoming.

[44] According to Mr. McGillis, Mr. Flynn offered to stop the program if the NPF wanted it. Apparently, Mr. Madden or Mr. Merrifield said words along the lines of, "You go ahead; we reserve the right to file an unfair labour practice complaint." Mr. Flynn took this to be agreement with the program.

[45] I note that Mr. Flynn did not testify, so this is hearsay evidence. I draw an adverse inference from his absence. I believe that at that point, the RCMP wanted to go ahead with the FPRDP, despite the NPF's misgivings. I also believe the NPF clearly wanted the program stopped.

[46] I draw that conclusion based on the following events.

[47] The meeting occurred on Friday, July 21, 2023. The following Monday, July 24, the FPRDP recruitment poster was announced internally, and was published on the RCMP's public website on July 25. Brian Sauvé, the NPF's president, reacted strongly the same day in an email to Commissioner Duheme, which read in part as follows:

...

*Although we did have a 4+ hour meeting with Flynn on Friday, the result of that meeting was pretty clear the NPF had major concerns. We made it clear the NPF does not support the program as laid out nor do we consider one briefing meaningful engagement or consultation during a statutory freeze period while in bargaining.*

...

[48] Commissioner Duheme responded as follows:

...

*... I was briefed by Mark, and was informed that it was a good frank conversation. It goes without saying there were some differences of views/opinions on the way forward, but I think this is positive for all. We are waiting for an off cycle ask for Prot. Pol which will see us grow by another 200 members. Considering the*

*challenges we are currently facing with releasing members for Divisions, this is a good first step.*

...

[49] On July 31, 2023, less than one week after the July 25 posting, the NPF made the present complaint. I have no doubt that the NPF clearly told the RCMP not to go ahead with the FPRDP at this time.

[50] A large part of the hearing was devoted to the FPRDP and to the complainant's opposition to its implementation during the statutory freeze. The complainant also alleged that not bringing the FPRDP to the bargaining table was in itself bad-faith bargaining. According to the complainant, the FPRDP's absence was a significant barrier to reaching an agreement.

[51] The complainant alleges a breach of s. 106 of the *Act*, which reads as follows:

**106** *After the notice to bargain collectively is given, the bargaining agent and the employer must, without delay, and in any case within 20 days after the notice is given unless the parties otherwise agree,*

**(a)** *meet and commence, or cause authorized representatives on their behalf to meet and commence, to bargain collectively in good faith; and*

**(b)** *make every reasonable effort to enter into a collective agreement.*

**106** *Une fois l'avis de négociation collective donné, l'agent négociateur et l'employeur doivent sans retard et, en tout état de cause, dans les vingt jours qui suivent ou dans le délai éventuellement convenu par les parties :*

**a)** *se rencontrer et entamer des négociations collectives de bonne foi ou charger leurs représentants autorisés de le faire en leur nom;*

**b)** *faire tout effort raisonnable pour conclure une convention collective.*

[52] Mr. Arulpooranam testified to the state of the collective bargaining, and his evidence was not contradicted. The parties have met, discussed, and resolved a number of issues. Mr. Arulpooranam characterized their exchanges as constructive. The main issues remaining are monetary, and the parties have agreed to mediation, which is set to take place on December 5, 2023.

[53] Mr. Arulpooranam had been unaware of the FPRDP until August 2023. According to him, the recruitment program could not be part of the discussions between the NPF and Treasury Board. The Treasury Board has always steadfastly

maintained that it will not discuss staffing, recruitment, or classification at the bargaining table.

[54] Mr. Miller also spoke of the generally positive exchanges between the parties in bargaining. Recruitment and retention were not specifically discussed at the table, but those concerns were present by implication. Enhancing monetary conditions would favour recruitment and retention. Salary increases and increased allowances for field coaching were sought.

[55] Both Mr. Arulpooranam and Mr. Miller spoke of a number of memoranda and letters of understanding that the RCMP and the NPF have concluded as well as some that remain unsigned. They are not part of the collective bargaining process but are very much a part of the ongoing discussions involving the RCMP and the NPF on issues that concern them both but that cannot be part of the collective agreement.

### **III. Summary of the arguments**

#### **A. For the complainant**

##### **1. Breach of s. 107**

[56] It is clear that by implementing the FPRDP during the statutory freeze, the respondent breached s. 107 of the *Act*.

[57] The complainant's main concern with the program is the safety impact — for members and for the Canadian public. The recruit training is being changed and shortened, without the respondent fulfilling its legal obligations to assess the FPRDP's impact on occupational health and safety.

[58] In its interpretation of s. 107, the Federal Public Sector Labour Relations and Employment Board ("the Board", including its predecessors) has applied three principles: a purposive interpretation, a strict liability analysis, and the idea that despite the freeze, the employer can maintain business as usual.

[59] There are two stages to the analysis: whether a change occurred, which the respondent has already conceded, and whether the change simply represents management carrying out business as usual.

[60] The respondent's argument is that it acted as a reasonable employer by implementing the FPRDP. The complainant's argument is that it did not act as a reasonable employer.

[61] Both the complainant and the respondent based their arguments on the case law. I will address the case law I consider relevant in my analysis.

[62] The complainant argues that this is not business as usual, as the new direct-entry recruitment program is a drastic change. Moreover, it could not be within the employees' reasonable expectations as it was developed after the notice to bargain was served. A change of that magnitude, without consulting the bargaining agent as the representative of the employees whom the change will impact directly, cannot be the action of a reasonable employer.

[63] From the evidence heard at the hearing, it was obvious that the complainant was not engaged in any discussions of the FPRDP. Yet, the program proposes changes not only to recruitment but also to the regular members' work. For instance, as of now, field coaching is part of the Regina Depot graduates' training in general policing. There is no field coaching for federal policing, since regular members who enter federal policing already have considerable field experience. It is unclear how field coaching will be carried out and whether regular members expected to monitor the new FPRDP recruits will receive any remuneration for doing so.

[64] The RCMP began developing the FPRDP after notice to bargain was served. No attempt was made to consider the statutory freeze, as the complainant was not consulted at any stage of the program's development. Risks were identified; the need to engage the complainant was identified yet never acted on.

[65] In sum, the respondent is making a fundamental change during the freeze period without any consultation of the bargaining agent. The staffing shortage is a reality but has been so for a long time. There is no justification for the change during the statutory freeze period.

## **2. Breach of s. 106**

[66] The complainant argued that not presenting the FPRDP at the bargaining table undermined the negotiations as a whole. The exchanges could not be on a fair and frank footing if the respondent sought to implement a program that impacted regular

members' working conditions and chose to not mention it at the table. According to the complainant, omitting the FPRDP from the negotiations at the table hindered the process of reaching an agreement.

## B. For the respondent

### 1. Breach of s. 107

[67] In its argument, the respondent very much insisted on the looming national security disaster if changes are not made rapidly to federal policing recruitment. This assessment comes not from the RCMP but from the Parliamentary committee that considered the issue of national safety and federal policing.

[68] The respondent admits that the FPRDP represents a change within the meaning of s. 107 of the *Act*. However, it submits that change is urgently required, since as of now, no recruitment is done for federal policing. The only recruitment is through the Regina Depot generalist training; there is no specific entry into federal policing, despite its great need for additional regular members.

[69] The complainant is upset that it was not engaged in meaningful debate, but the fact is that the respondent is the sole authority to decide changes to recruitment and staffing under the *Royal Canadian Mounted Police Act* (R.S.C., 1985, c. R-10; "the *RCMP Act*"). In particular, the Board's attention is drawn to ss. 7, 20.1, and 20.2. The following extracts are of particular relevance:

...	[...]
<i>20.1 In addition to its powers under section 11.1 of the Financial Administration Act, the Treasury Board may, in the exercise of its human resources management responsibilities under paragraph 7(1)(e) of that Act,</i>	<i>20.1 Outre les pouvoirs qu'il est autorisé à exercer en vertu de l'article 11.1 de la Loi sur la gestion des finances publiques, le Conseil du Trésor peut, dans l'exercice de ses attributions en matière de gestion des ressources humaines prévues à l'alinéa 7(1)e de cette loi :</i>
<i>(a) determine categories of members; and ...</i>	<i>a) déterminer des catégories de membres; [...]</i>
<i>20.2 (1) The Commissioner may</i>	<i>20.2 (1) Le commissaire peut :</i>
<i>(a) determine the learning, training and development requirements of members and fix the terms on which</i>	<i>a) déterminer les besoins en matière d'apprentissage, de formation et de perfectionnement des membres et</i>

*the learning, training and development may be carried out ....*

*fixer les conditions de mise en oeuvre de cet apprentissage, de cette formation et de ce perfectionnement; [...]*

...

[...]

[70] In brief, given the security challenges Canada faces, a reasonable employer would have acted as the RCMP did in the circumstances.

## **2. Breach of s. 106**

[71] According to the respondent, there has been no breach of its duty to bargain in good faith. The parties have met several times since notice to bargain was served; many issues have been settled. Some issues remain, but the respondent is willing to participate in mediation to resolve them.

[72] The complainant blames the respondent for not placing the FPRDP on the bargaining table, and at the same time, it argues that the program is not fully developed and ready to be implemented. Both parties understood from the start that classification, recruitment, and structural organization would not be on the table.

[73] It is important to distinguish ss. 106 and 107 of the *Act*. A change in terms and conditions of employment may be a breach of s. 107; it is not covered by s. 106. The parties are engaged in positive bargaining discussions, according to both Mr. Arulpooranam and Mr. Miller. That cannot sustain an allegation of bad-faith bargaining.

[74] The respondent concluded by stating that if a pilot project cannot be implemented during a statutory freeze, the very real risk is that recruitment efforts will stall, and that inertia will take over.

## **IV. Reasons**

[75] I wish to state from the outset that I do not doubt that the RCMP is facing a grave situation in terms of human resources. The issue before me is the narrow issue of the statutory freeze. This decision will impact the short-term implementation of the direct-entry program. I am not pronouncing on the need for such a program or on the suitability of different training models to meet the RCMP's future needs. I will simply

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decide whether the respondent breached ss. 106 and 107 of the *Act* and what the resulting order should be.

#### A. Breach of s. 107

[76] Since the bulk of the hearing was devoted to the statutory freeze complaint, I begin with that alleged violation. The Board's analysis in such cases is aptly summarized in *Public Service Alliance of Canada v. Canada Revenue Agency*, 2019 FPSLRB 110, as follows:

...

[137] *In cases involving s. 107, the Board often conducts what is, in effect, a two-stage analysis. First, it tests whether a complainant has met its principal evidentiary burden of establishing that notice to bargain was served, that an employer subsequently changed a term and condition of employment that might have been included in a collective agreement and that was in force on the date notice to bargain was served, and that the complainant did not consent to that change. In the second stage, the Board considers any defence offered by the employer that despite the fact of a change in a term and condition of employment within the meaning of s. 107, its action did not comprise a violation of s. 107, most often because it was conducting "business as usual"....*

...

[77] The respondent has conceded that the implementation of the FPRDP is a change within the meaning of s. 107 of the *Act*. I find that even if the *RCMP Act* gives the commissioner authority to decide the training of regular members, there are several aspects of the FPRDP that could be terms and conditions of the collective agreement. Since the new recruits become members of the bargaining unit from the start, their terms and conditions of employment can be negotiated, such as hours of work or whether fitness training will be during paid or unpaid time. The change impacts present regular members, such as remuneration for regular members who will ensure field coaching and monitoring in the first months of the new recruits' deployment in federal policing. I note too the respondent's occupational health and safety obligations under article 19 of the relevant collective agreement.

[78] I think it is important to emphasize the purpose of s. 107. As stated in *Public Service Alliance of Canada v. Forintek Canada Corp.*, [1986] OLRB Rep. Apr. 453 at para. 38:



38. ... *The purpose of the “statutory freeze” ... is to maintain the prior pattern of the employment relationship in its entirety while the parties are negotiating for a collective agreement. This ensures that they will have a fixed basis from which to begin negotiations and prevents unilateral alterations in the status quo which might give one party an unfair advantage either from the point of view of bargaining or of propaganda....*

[79] In *National Police Federation v. Treasury Board*, 2020 FPSLR 44 (“*NPF v. TB 2020*”), which involved a statutory freeze complaint that was made following a change in the RCMP’s promotion policy after the NPF had made a certification application, the Board articulated one of the purposes of a statutory freeze as ensuring the employees’ trust in their bargaining agent, in the following terms:

...  
[91] *These changes were of significant importance to the employees and they would have expected the NPF, if certified as their bargaining agent, to be able to discuss them with the employer before they came into effect. Making unilateral changes, with no notice to the employees instead of waiting to discuss them with the NPF (if certified as the bargaining agent), negatively impacts the representational rights of the bargaining agent....*

[80] Bargaining unit members need to trust their bargaining agent in its dealings with the employer during the bargaining process. It would seem obvious that a major change, such as the RCMP’s proposed FPRDP, would upset the equilibrium between employer and bargaining agent and cause considerable consternation among regular members, notably for its impact on their relationship with new members that will simply not receive the expected training required to be a regular member of the RCMP.

[81] In *NPF v. TB 2020*, the statutory freeze originated not from a notice to bargain but from an application for certification. The main difference between s. 56 (the statutory freeze after a certification application is made) and s. 107 (the statutory freeze after notice to bargain has been served) of the *Act* is the fact that the first requires the Board’s consent to carry out the change, while the second requires the bargaining agent’s consent. Otherwise, the analysis is the same — finding that a change occurred and determining whether the employer made out a proper justification for the change.

[82] The parties were the same as in this case. The employer, despite the freeze, made changes to its promotion policy. The Board found that the changes were not business as usual or within the employees' reasonable expectations; nor were they what a reasonable employer would have done in the same situation. The changes were new, they were unexpected, and they were neither urgent nor necessary during the freeze period.

[83] In this case, the respondent argues that the change was necessary and that it acted as a reasonable employer by implementing the change.

[84] Traditionally, two tests have been applied to determine whether the employer can justify changes made during the statutory freeze, whether it resulted from an application for certification or, as in this case, from a notice to bargain.

[85] The first test is the "business as usual" test; that is, despite the notice to bargain, the employer must continue to manage its workplace — nothing remains static. Business as usual can mean two things: the change is consistent with past practice, or it illustrates sound management in that it is "... consistent with what a 'reasonable employer in the same position' would have done ..." (see *United Food and Commercial Workers, Local 503 v. Wal-Mart Canada Corp.*, 2014 SCC 45 at para. 56).

[86] The second test is the employees' "reasonable expectations" test; that is, a change may be made to terms and conditions of employment during the freeze period if it is within the employees' reasonable expectations, defined as follows in *Public Service Alliance of Canada v. Canada Revenue Agency*, 2023 FPSLR 38 at para. 107:

*[107] ... To be within the employees' reasonable expectations, there must have been a firm decision to make the change that was communicated to the employees before the onset of the freeze period, or a change must be part of an established pattern such that the employees would reasonably expect it ....*

[87] The respondent did not emphasize this aspect in its defence. There was no indication that the employees were expecting or could have expected such an upheaval in the way new recruits would be trained or new regular members integrated. At the town-hall meeting, at which the respondent supposedly raised the new direct-entry program, the employees asked questions only about the National Division's restructuring, and Mr. Miller confirmed that that was their main concern. The new

direct-entry program was so vaguely alluded to that no one reacted. In fact, as of then, there was still no concrete program to react to.

[88] Therefore, I will consider the respondent's argument that is acted as a reasonable employer. With respect, I cannot see its actions as being those of a reasonable employer. To borrow from the phrasing in *Canada (Attorney General) v. National Police Federation*, 2022 FCA 80 at para. 94, "... a reasonable employer, aware and desirous of complying with the freeze provisions ...", would not have acted as the RCMP did in the circumstances.

[89] I can understand the feeling of urgency. The evidence clearly shows a shortage of officers. There are simply not enough RCMP constables to meet both contract and federal policing needs. I also understand the RCMP commissioner's authority to determine training requirements for regular members.

[90] However, it is not the authority that is at issue but rather the change to terms and conditions of employment. No explanation was provided for carrying out such major changes during a statutory freeze, including integrating new regular members in the bargaining unit on their first day of training, without even informing the bargaining agent of these changes. A statutory freeze is imposed on terms and conditions of employment unless the bargaining agent consents to the change. A reasonable employer would have at least tried to engage the bargaining agent from the start.

[91] Instead, the NPF was kept in the dark about the program's details until the very moment it was to be made public and the recruitment announcement was to be made.

[92] The program means a profound change in how new recruits would be integrated into the RCMP and how they would be trained. It raises questions about the inequality in the treatment of cadets training at the Regina Depot as opposed to new recruits entering the federal policing unit. Serious safety concerns were raised about inexperienced persons being qualified as regular members, without clear indications as to how field coaching in federal policing would be carried out.

[93] The complete lack of communication, the opacity of the decision-making process, and the deliberate ignorance of the statutory freeze situation (despite reminders from its Labour Relations section) do not add up to a reasonable employer

trying to make changes while respecting its legal obligations, namely, taking into account the statutory freeze and occupational health and safety concerns.

[94] I conclude that the respondent breached s. 107 of the *Act* and that there is no justification that can save its actions. I order it to put a stop to the FPRDP until the new collective agreement is signed.

[95] As for the complaint of bad-faith bargaining, it is dismissed.

[96] The employer has the obligation to meet and negotiate with the bargaining agent and make reasonable attempts to reach a collective agreement.

[97] The complainant cited *Royal Oak Mines Inc. v. Canada (Labour Relations Board)*, [1996] 1 S.C.R. 369, which truly can be distinguished. In that case, the Supreme Court of Canada concluded that the employer had negotiated in bad faith by refusing to bargain, by making unacceptable demands, and by refusing any mechanism to resolve the impasse.

[98] I heard no evidence that the respondent has obstructed the collective bargaining process. The parties have met and exchanged demands, there has been ongoing discussion, and they have agreed to mediation to try to resolve the remaining issues.

[99] It is unclear to me how the RCMP's actions in implementing the FPRDP have impacted the collective bargaining process as such. So far, according to Mr. Arulpooranam, the new program has not been discussed at all. It would seem too early to declare that there has been bad-faith bargaining when no bargaining has taken place on the subject.

[100] The complainant argues that the very fact of not putting the program on the table is in itself bad-faith bargaining.

[101] I do not see an obligation on the respondent to bring the FPRDP to the bargaining table. Seeking to implement it while in collective bargaining is a violation of the statutory freeze, and that is recognized in this decision. However, the Board has no authority to order the parties to negotiate anything. The parties choose what they will put on the table. Again, the obligation is to meet and discuss and to try to reach an agreement. So far, the parties have behaved that way. I conclude there has been no breach of s. 106 of the *Act*.

[102] Obviously, wisdom would suggest that the RCMP engage the bargaining agent in discussions to ensure the success and acceptance of new recruitment initiatives.

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

*(The Order appears on the next page)*

**V. Order**

[104] The complaint is allowed in part.

[105] The Board declares that the respondent breached s. 107 of the *Federal Public Sector Labour Relations Act*.

[106] The Federal Policing Recruit Development Program is put on hold until the new collective agreement is signed.

[107] The Board declares that there has been no breach of s. 106 of the *Federal Public Sector Labour Relations Act*.

December 7, 2023.

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