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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

**O'NEIL BROOKE, TIMOTHY NOVECOSKY, REMI PARENT, HANNAH RODRIGUES,  
AND ADAM WATT**

Complainants

and

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

Respondent

Indexed as

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

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

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

**For the Complainants:** O'Neil Brooke

**For the Respondent:** Tony Micallef-Jones and Marie-Hélène Tougas, legal counsel

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Decided on the basis of written submissions,  
filed March 9 and June 15 and 27, 2022,  
and September 11 and October 10, 30, and 31, 2023.

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**REASONS FOR DECISION**

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**I. Complaint before the Board**

[1] On February 15, 2022, a complaint was made against the Professional Institute of the Public Service of Canada (PIPSC or “the respondent”), alleging a breach of the duty of fair representation that a bargaining agent such as the respondent owes to the members of the bargaining units it represents. The essence of the complaint was the respondent’s failure to contest the implementation of the federal government’s mandatory COVID-19 vaccination policy (“the policy”) for its employees, which was first announced in August 2021 and was adopted in October 2021.

[2] The complaint listed 13 complainants; of these 13 complainants, five remain, as listed on the title page of this decision.

[3] On March 9, 2022, the respondent responded to the complaint after it asked for further particulars from the complainants.

[4] The complainants did provide particulars to detail their interactions with the respondent.

[5] The respondent submits that the allegations do not establish a *prima facie* violation of s. 187 (the duty of fair representation) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”) and that consequently, the complaint should be dismissed summarily, without a hearing.

[6] Once the complainants’ particulars and the respondent’s full submissions had been received, the Federal Public Sector Labour Relations and Employment Board (“the Board”) offered the complainants the opportunity to respond to the summary dismissal request. They responded and provided submissions to show that they do have a *prima facie* case.

[7] A hearing had been scheduled for the complaint in January 2024. However, after reviewing the complainants’ particulars and submissions, I concluded that the matter could be decided on the basis of the written submissions, pursuant to s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365), which reads as follows:

*22 The Board may decide any matter before it without holding an oral hearing.*

*22 La Commission peut trancher toute affaire ou question dont elle est saisie sans tenir d'audience.*

[8] The issue to be decided is whether there is an arguable case that the respondent breached s. 187 of the *Act*. In other words, taking all the complainants' factual allegations as true, could they show that the respondent failed its duty of fair representation, as defined by the *Act* and the jurisprudence?

[9] The answer is no. The respondent might have failed to meet the complainants' expectations of what it should have done when the federal government imposed the policy on its employees. However, their expectations do not dictate the test to decide the issue. The duty of fair representation has limits, as explained in the reasons that follow.

## **II. Context**

### **A. The complainants' particulars**

[10] Each complainant provided particulars detailing their interaction with the respondent after the federal government adopted the policy, which included exemptions for religious or medical reasons. I summarize in the paragraphs that follow each complainant's particulars.

#### **1. O'Neil Brooke**

[11] The opening paragraph of this complainant's particulars reads as follows:

*... The Government of Canada has been engaged in the pre-meditated murder and genocide of Canadian citizens. PIPSC has been acting as a willing and eager accomplice to these crimes. This action before the Labor [sic] Relations and Employment Board is the first step in the prosecution of these crimes. In this action the complainants will show how PIPSC failed to fulfill their fiduciary responsibilities as an agent.*

[12] The Board does not escape condemnation, as indicated as follows in the second paragraph:

*... The Labor [sic] Relations and Employment Board's refusal to acknowledge the reality that experimental genetic therapies have been incorrectly referred to as vaccines is indicative of the ongoing coverup and suppression of reality that enables these criminal acts*

*to continue. This action will expose the Labor [sic] Relations and Employment Board for what it is....*

[13] This follows a procedural decision in the course of a case management conference in which I said that vaccines would be called vaccines, whatever the complainants' view as to the COVID-19 vaccine's true nature.

[14] According to this complainant, the policy was in fact the imposition of compulsory participation in medical experimentation. This was far beyond the relevant collective agreement's reach, and thus, the respondent had the duty to defend its members against such a measure.

[15] When the pandemic started, the complainant followed the debates on the different medical options available to treat COVID-19. He became convinced that alternative treatments, such as ivermectin, could be used to effectively treat COVID-19. He claims that PIPSC disregarded this information, and "... failed to fight back against unlawful medical experimentation that was not needed to address the pandemic."

[16] The particulars provide details of prophylactic treatments that scientists and PIPSC suppressed. As the development of the COVID-19 vaccine progressed, and the employer announced "compulsory medical experimentation", PIPSC failed to act to protect its members.

[17] The complainant attempted to show the employer that vaccination was not effective and that in fact, it was lethal. He raised concerns on the several effects that the vaccine could have on health.

[18] In August 2021, the complainant became a union steward in his workplace. He requested guidance from the respondent on the COVID-19 vaccine.

[19] In September 2021, according to the complainant, "... PIPSC makes a public announcement that they will unfairly elevate the interests of one group of members over other members." The complainant quotes from the announcement as follows: "As the union representing the scientists who approved COVID vaccines, PIPSC welcomes all efforts to increase vaccination coverage in Canada."

[20] In his particulars, the complainant disputes the vaccine's efficacy and denounces its lethal effects at length. He details his correspondence with the

respondent on these topics. In his view, the respondent does not respond at all to his concerns and appears simply to favour some of its members at the expense of all the others.

[21] In October 2021, the Treasury Board announced the policy, or, in the complainant's words, "... its policy on mandatory medical experimentation with genetic therapies."

[22] The complainant makes the following statement about the policy:

...

*The policy eliminates conscientious objection to unwanted medical procedures in direct violation of the Nuremberg code. PIPSC failed to address this concern and did not adequately represent members who did not consent to medical experimentation.*

...

[23] According to the complainant, the policy entailed punitive consequences if employees did not consent to the medical experiment: indoctrination sessions and leave without pay.

[24] As a steward, the complainant was pressured into conforming with the policy. The respondent, according to him, refused to provide advice, counsel, or representation when members requested assistance. The respondent was negligent in its representation role by fully supporting the policy while ignoring concerns that COVID-19 was no more lethal than the average flu, the vaccine was experimental, and the federal government used public servants as guinea pigs, as well as several health concerns related to the vaccine.

[25] The particulars include partial medical reports that according to the complainant, show the dangers of the vaccine.

[26] The employer denied the complainant's exemption request. According to him, he received no representation from the respondent. On December 20, 2021, he was placed on leave without pay, which he grieved.

[27] The particulars include further events beyond the complaint's filing in February 2022 that will not be summarized as they are outside the scope of the complaint.

[28] The particulars conclude that the respondent, as agent, failed its principals so badly that they "... have been discriminated against, vilified, suffered grievous bodily injuries and some have died."

[29] The particulars also mention fraudulent behaviour by the respondent in its recent internal elections. This behaviour was not part of the initial complaint, which focused on the respondent failing to engage the Treasury Board concerning its vaccination policy and refusing to grieve it.

## **2. Timothy Novecosky**

[30] This complainant works at Statistics Canada as a programmer analyst. He has been working remotely since April 2018. It was three days per week before March 2020, and then was five days per week until he was placed on leave without pay in January 2022.

[31] The complainant contacted the respondent in October 2021 to inquire about recourse against the policy. He was advised that the respondent would only support members who were denied a medical or religious accommodation and who had attested to their vaccination status.

[32] The complainant refused to attest to his vaccination status, as he saw this requirement as an invasion of privacy. He filed two individual grievances with the employer in November 2021, as well as a policy grievance. He was promptly informed that individuals could not submit policy grievances.

[33] The respondent emailed him to say that it would not support his grievance but that he could apply for reconsideration. The complainant asked which of the two grievances was not supported but received an answer only about one grievance. There were some further exchanges about the grievances throughout November and December 2021.

[34] The complainant asked specifically why the respondent was not filing a policy grievance and was told that it was because the policy affected only a small number of its members. The complainant disagreed with this assessment, since all employees were affected by the vaccination requirement.

[35] In January 2022, the complainant emailed the respondent about filing a third grievance related to being placed on leave without pay.

[36] The complainant was concerned that the respondent seemed to be confusing his first and second grievances. He filed the third grievance with the respondent's help.

[37] Further exchanges on the grievances occurred after February 2022, including the respondent's help filing a fourth and a fifth grievance. The respondent, after reconsideration, confirmed that it would not support the second grievance. As the complaint is dated February 2022, the complainant's further exchanges with the respondent are not relevant to the complaint.

### **3. Remi Parent**

[38] This complainant works at Employment and Social Development Canada as an information technology (IT) analyst. Since March 2020, he has been working remotely full-time.

[39] The complainant has safety concerns about the vaccine, which he considers an experimental treatment.

[40] On October 8, 2021, he expressed his concern to the respondent that it was supporting the policy. He stated that it amounted to a lack of fair representation, and he raised safety concerns, indicating severe adverse reactions among friends and acquaintances. According to him, the policy violated an individual's right to personal autonomy and bodily integrity, as protected by Canadian law.

[41] The respondent answered that he should comply with the policy or ask for an accommodation. It would intervene only if an accommodation was unreasonably denied.

[42] The respondent's position was that the policy promoted employee safety but that there might be a possibility to file a grievance for those employees who worked remotely full-time. However, the recommendation was to comply, as it would take a long time for such cases to be heard. However, for accommodation based on a documented ground, and for those who worked only remotely, its regional office would provide help.

[43] The complainant sought help to file a grievance, adding to his grievance medical and other evidence to show that the vaccine was inefficient, dangerous, and tainted with corruption.

[44] The respondent did not react to all those assertions. Rather, it reiterated its position that the policy had been adopted for health-and-safety reasons. It ignored the complainant's arguments and evidence that the vaccine did not prevent COVID-19 transmission and that it caused severe adverse effects.

[45] The gist of the complaint is that the respondent did not protect the complainant against a vaccine that he believes was dangerous for his health and safety. Moreover, the respondent failed to provide any scientific evidence to substantiate its vaccine claims. According to the complainant, the vaccine failed to prevent the spread of COVID-19 and was itself dangerous, with unknown long-term consequences.

[46] The respondent's position was that it could not comment on the scientific aspects of the information provided.

#### **4. Hannah Rodrigues**

[47] This complainant is employed as an IT project manager at Natural Resources Canada. Starting in 2018, she worked one or two days per week remotely. Since March 2020, she has been working remotely full-time. She was placed on leave without pay in January 2022.

[48] The complainant communicated her concerns about the policy to the respondent in October 2021. She received responses from several individuals. The message was essentially that she could ask for an accommodation and that the respondent would support her if an accommodation was unreasonably denied.

[49] On November 10, 2021, she sent an individual grievance to her union steward and asked for the respondent's support with respect to the grievance. She was informed that it would not be supported unless an accommodation was denied.

[50] The complainant was offered the possibility of reconsideration, which ultimately maintained the decision not to support her grievance, despite a second reconsideration by the respondent's general counsel. In her particulars, the



complainant stated that she had added new facts but that they were not considered by the respondent. She did not specify what those new facts were.

## **5. Adam Watt**

[51] This complainant is employed as a project manager at Immigration, Refugees and Citizenship Canada. He has been working remotely full-time since July 2020. He was placed on leave without pay effective November 18, 2021.

[52] The complainant attempted to find recourse against the policy, enacted in October 2021 within his department. He was directed to contact his bargaining agent, the respondent. He was told that there were no recourse options for employees without exemptions and that he had three options: take the vaccine, get an accommodation, or be placed on leave without pay.

[53] The complainant submitted a form on the respondent's vaccine internet help line. He asked why the respondent endorsed the policy. According to him, a labour relations officer from the respondent answered that the policy promoted employee safety and that it was a reasonable way to ensure employees' health and safety. He stated that the policy did not violate collective agreements or the complainant's rights.

[54] The complainant replied that safety claims were based on the faulty premise that the vaccine would prevent the spread of COVID-19 and protect the individual receiving it from contracting the disease. He asserted his right to bodily autonomy. He followed up with further evidence in later emails, since he had received no response from the respondent as to the scientific basis for the safety and efficacy claims. The labour relations officer answered that he did not wish to "debate the science" (in quotes in the complainant's particulars). The complainant's concerns, according to the labour relations officer, were "personal views".

[55] The complainant pursued the matter, underscoring the fact that well-known individuals, such as the Prime Minister, had contracted COVID-19 despite having received three vaccine doses. He sent a last email on February 6, 2022, stating that it was obvious that the vaccine did not work as advertised and moreover that it caused serious health issues. He pleaded for the respondent to change course. He received no reply.

[56] The complainant was severely impacted by the loss of income.

[57] As stated earlier, events occurring after the complaint was made will not be considered for the purposes of this decision.

## 6. Questions of fact

[58] In preparation for the hearing, the complainants filed a document titled “Questions of Fact”, which according to them, the Board had no choice but to answer in its decision.

[59] Those questions fall into several categories. I will not reproduce them all, as examples will serve to illustrate their content. As explained in the analysis, I will not address these questions in this decision. The different categories are illustrated as follows:

- Scientific questions: “3) Was the employer mandated experimental mRNA treatment, appropriately or inappropriately called a vaccine?”
- Questions based on the *Criminal Code* (R.S.C., 1985, c. C-46): “21) Did the union act as an accomplice to the criminal code offence of extortion?”
- Questions based on Canadian law: “5) Is it permissible under Canadian law to use unionized employees as unwilling subjects in medical experiments?”
- Questions related to the respondent’s internal functioning: “17) Is PIPSC acting in bad faith when the General Counsel and the board of directors collude to fix elections of internal governing bodies in direct violation of PIPSC bylaws?”
- Questions related to land-acknowledgement declarations: “25) Do the PIPSC encouraged land claim declarations normalize the idea that the Government of Canada is an illegitimate institution?”

## B. The respondent’s response

[60] The respondent submits that the complaint should be summarily dismissed as it does not disclose a *prima facie* violation of s. 187 of the *Act*.

[61] When the Treasury Board and the separate employers of the public service adopted the policy, the respondent issued a statement to its members. The following extracts serve to illustrate its position at the time:

### ***RIGHT TO IMPLEMENT POLICIES***

*Employers are permitted to implement workplace policies even where those can have significant impacts on employees’ interests and which carry potential administrative consequences. The PIPSC*

collective agreements provide for that right under the management rights clause, so long as those are reasonable and respect workers' rights under their collective agreement and human rights and privacy legislation. To the extent that the TBS Policy on COVID-19 Vaccination provides adequate accommodation for protected human rights grounds, and that employees' privacy rights are respected, the employer's policy will not appear, at first blush, to constitute a violation of human rights.

Article 5: management rights

5.01 All the functions, rights, powers and authority which the Employer has not specifically abridged, delegated or modified by this agreement are recognized by the Institute as being retained by the Employer.

### **ACCOMMODATION**

The TBS policy should allow for accommodation in specific cases, namely:

- a certified medical contraindication
- religion
- another prohibited ground for discrimination under the Canadian Human Rights Act

...

### **PRIVACY RIGHTS**

Generally, when there is a valid employment related reason (ie. health and safety in the workplace), employers have the right to request to collect your personal medical information so long as it is managed in accordance with the applicable privacy legislation. The Privacy Act allows for the collection of personal information, such as in this case vaccination status, where it relates directly to a government's institution's operating program or activity.

Disclosure of vaccination status is necessary to allow the employer to implement its COVID-19 Policy mandating vaccinations for all employees.

### **INDIVIDUAL RIGHTS AND FREEDOMS**

In relation to your individual rights as per the CHRA, public rights can trump individual rights and protections. In a case of a global pandemic, it has been deemed reasonable by the Courts that employers protect the Health & Safety of the entire workforce (over individual rights not to be vaccinated) by requiring employees to be vaccinated. Again the right of protecting the safety of all employees trump [sic] individual rights in a situation like a global flu pandemic...

### **CONSTITUTIONAL CHALLENGE**

At this time, PIPSC is not planning to file a constitutional challenge in relation to the Employer's policy. Individuals can choose whether or not to get vaccinated. The consequences flowing from a refusal

*to be vaccinated, in this particular workplace context, are of an economic nature, which have not been traditionally found to to [sic] be protected by the right to life, liberty and the security of the person guaranteed by section 7 of the Charter. In addition, it is highly likely that, even if a violation of section 7 rights were established, such a measure would be found to be a reasonable infringement pursuant to section 1 of the Charter.*

...

#### **DUTY OF FAIR REPRESENTATION**

*A union's duty of fair representation does not require it to file a grievance at the request of one or more members who believe that a mandatory vaccination policy is unreasonable. Instead, a union is entitled to consider the best interests of the bargaining unit as a whole, and balance that against the likelihood of success in bringing a challenge, and the severity of the privacy impact on those who are affected.*

*PIPSC supports a vaccine mandate, with the appropriate exemptions for bona fide Canadian Human Rights Act grounds and appropriate adherence to privacy legislation. Since the consequences for non-compliance with the Policy are very serious, we want to ensure that all PIPSC members are in compliance, either by becoming vaccinated by November 26, 2021 or by receiving accommodation in accordance with the Policy.*

*Members are entitled to their views and have a right to have their circumstances considered by the union. We have taken the position that we will assess every file on a case-by-case basis, and all reasonable efforts will be made to obtain all the relevant information to a member's case before making a decision about whether or not we will support a grievance, however the first step is to seek an accommodation from your manager.*

#### **POLICY GRIEVANCE**

*Our analysis is that the employer is within its rights to implement the policy. To the extent that the TBS Policy on COVID-19 Vaccination provides adequate accommodation for protected human rights grounds, and that employees' privacy rights are respected, the employer's policy does not appear to constitute a violation of human rights.*

...

[62] The respondent answered Mr. Brooke's concerns about the vaccine. Obviously, he disagreed with those answers. He sought to grieve the policy on the basis of genetic discrimination, because the mRNA technology used to make it would create a new genetic characteristic.

[63] The respondent recommended following the accommodation process. The employer denied Mr. Brooke's religious accommodation request. He then asked for the respondent's help to file a grievance. When asked to further explain his religious beliefs as a ground of exemption, he answered that he objected to the use of fetal cell lines and the genetic modification of vaccine recipients since both actions are against God's will.

[64] The respondent and Mr. Brooke had numerous exchanges about his grievance. In the end, a lack of information from him prevented the respondent from supporting his grievance.

[65] In the case of Mr. Parent, there were several exchanges with the respondent. The respondent explained that although it might consider a grievance for someone who could perform his or her work satisfactorily remotely, such a grievance would be heard long after the policy came into effect. Consequently, the respondent's recommendation to its members was the following:

...

*... Since the consequences for non-compliance are very serious, and given this reality, PIPSC continues to recommend that members become compliant with the policy, either by becoming vaccinated by October 29, 2021 or by receiving accommodation on the basis of a prohibited ground of discrimination under the CHRA [Canadian Human Rights Act, (R.S.C., 1985, c. H-6)] or Article 43 [of the relevant collective agreement], in accordance with the current TBS COVID-19 Policy on Vaccination....*

...

[66] Nevertheless, in the same message, the respondent did not close the door on providing guidance and where warranted, representation, as expressed in the following:

...

*... Nonetheless, PIPSC will continue to provide advice, guidance, and (where merited) representation to each PIPSC member. Members whose requests for accommodation on the basis of a documented protected ground, or who have been fully teleworking throughout the pandemic and do not wish to become vaccinated, can contact the appropriate Employment Relations Office [sic] with their applicable Regional Office to discuss the merits of their individual circumstances and the possibility of a grievance in the usual manner....*

...

[67] Mr. Parent sought to file a grievance in the nature of a policy grievance, challenging the policy's reasonableness. The respondent provided advice on the possibility of an individual grievance.

[68] Mr. Parent continued to insist that the respondent should challenge the policy rather than proceed on a case-by-case basis. The respondent's position was that it would not engage in a debate about the science underlying the policy. The legal advice it received was that the policy would likely be considered a reasonable exercise of management rights under the collective agreement.

[69] The respondent did not support the grievance that Mr. Parent would have filed. He did not ask for a reconsideration of its decision; nor did he ask the respondent to file a grievance on his behalf specific to his own circumstances.

[70] Mr. Novecosky approached the respondent for support with three grievances. The first concerned the policy's application to his remote work situation, the second was a policy grievance challenging the entire policy's reasonableness, and the third concerned a denial of an exemption from the vaccine based on a religious accommodation. The respondent supported the first and third grievances. The respondent also supports further grievances outside the scope of this complaint.

[71] Ms. Rodrigues contacted the respondent in October 2021 to express her concerns about the policy. She asked that it negotiate alternative work arrangements for those members who did not wish to receive the vaccine. The respondent answered the following day to explain its position.

[72] In November 2021, Ms. Rodrigues asked a respondent steward to sign a grievance that she had prepared. The steward consulted the respondent's national office. The respondent provided an immediate response, stating that it could not support the grievance, as its position was that vaccination was to be encouraged, except if there was a legitimate need for accommodation.

[73] Exchanges continued between Ms. Rodrigues and the respondent. The respondent continually reiterated its position, which was that compliance, either by vaccination or by obtaining an exemption, was in the best interests of its members, to

avoid being placed on leave without pay. The respondent followed up with Ms. Rodrigues to obtain more information, which was not provided. In the end, after several more exchanges, the respondent confirmed to her that it would not support her grievance and provided detailed explanations of its reasons. On March 7, 2022, its general counsel addressed a letter to Ms. Rodrigues that includes the following statement:

...

*We take note of the questions you raise about the scientific data that underpins the Employer's policy. You are entitled to your views in that regard, however it is not the role of a union to engage in scientific debate about the efficacy or validity of vaccines. It is, rather, the role of the governmental and world health agencies, whose work and recommendations are at the root of the Employer's policy.*

...

[74] Mr. Watt communicated with the respondent when he was placed on leave without pay in November 2021. He sought information on any available recourse. The respondent answered immediately and explained its position.

[75] Mr. Watt did not request an accommodation from the employer; nor did he request that a grievance be filed on his behalf. He sought to engage in a debate on the vaccine, which the respondent refused to do.

[76] On March 27, 2022, Mr. Watt asked for a grievance to be filed on his behalf. By that time, the grievance was untimely. Mr. Watt sought an assessment of the grievance's merits based on science. He received information on filing the grievance on his own. The scientific points were not addressed.

[77] The gist of the complaint is the fact that the respondent did not challenge the employer's policy. It did not because it believed that vaccination would be a positive step in the fight against COVID-19. Also, it sought labour relations and legal advice on the possibility of challenging it. The advice received was that a policy grievance would have little chance of success.

[78] The advice received from Steven Welchner, a retired lawyer and labour relations consultant, was that the policy, if challenged, would in all likelihood be found

reasonable. Mr. Welchner did consider the grounds often raised by people opposing the vaccination mandate, namely, the following:

- the scientific evidence relied upon to justify the policy is not accurate;
- masking and rapid testing should be sufficient to protect the health and safety of employees;
- mandatory vaccination should apply only to employees directly working with medically vulnerable people;
- mandatory vaccination should not apply to those working remotely;
- mandatory vaccination breaches s. 7 (right to life, liberty, and security of the person) of the *Canadian Charter of Rights and Freedoms* (enacted as Schedule B to the *Canada Act 1982, 1982, c. 11 (U.K.)*);
- mandatory vaccination breaches the *Privacy Act* (R.S.C., 1985, c. P-21); and
- mandatory vaccination is discriminatory.

[79] When assessing individual grievances, the respondent followed a similar course. It considered the grievances seriously, in the context of what could succeed. The denial of an exemption based on a medical or religious accommodation could be the subject of a grievance. It could not support grievances that simply sought to attack the policy, given the fact that it encouraged its members to get vaccinated.

### III. Summary of the arguments

[80] Since this decision deals with the respondent's summary dismissal request, its arguments are presented first. The complainants had the opportunity to respond and present submissions to show that they do indeed have a *prima facie* case. Their arguments follow those of the respondent.

#### A. For the respondent

[81] The duty of fair representation does not require that a bargaining agent file all grievances requested by its members. The bargaining agent is entitled to consider the best interests of the bargaining unit as a whole.

[82] The respondent carefully considered the policy applicable to its members and determined not to proceed with a policy grievance after a serious study of the matter. Having considered the available evidence, it took the view that mandatory vaccination would protect its members.



[83] The respondent cites labour adjudication decisions in support of its defence. I will come back to the relevant jurisprudence in my analysis.

[84] As for the Questions of Fact document, the respondent submits that it raises issues that are outside the scope of the Board's inquiry into the complaint and outside its jurisdiction. Moreover, none of the issues raised in that document would help decide the issue in this case, namely, the respondent's duty of fair representation.

[85] Finally, the respondent argues that the complaint is largely moot, since on May 13, 2022, the respondent filed a policy grievance on behalf of the CS (Computer Systems)/IT group challenging the reasonableness of the policy. The respondent acknowledges that its policy grievance did not include all the complainants' arguments, such as contesting the vaccine's efficacy.

## **B. For the complainants**

[86] The complainants seek to show that contrary to the respondent's assertion, they do have a *prima facie* case. According to them, the respondent failed to address their concerns about the vaccine, both its medical consequences and legal implications. This failure to take their position into account was arbitrary, discriminatory, and done in bad faith.

[87] According to the complainants, the science underlying the development of the vaccine is fraught with misinformation and corruption. The vaccine was not efficient, since vaccinated people contracted COVID-19. It was an experimental form of genetic modification that could have long-term repercussions for the human genome, and it caused severe adverse effects. The respondent should not have dismissed so abruptly those valid arguments and should have acted diligently to seek proper answers from the employers who were imposing the vaccine on public servants, whether or not they were willing. The respondent had the duty to defend its members against medical treatments that were forcibly imposed. It did not.

[88] The complainants argue that the imposition of the policy violated fundamental rights, notably the right to refuse medical treatment and the right to privacy. As part of the policy, employees had to disclose their vaccination status. This, according to the complainants, was an assault on the privacy of individuals' medical records.

[89] The complainants contend that the respondent failed its duty to properly represent them and that it did nothing to prevent the loss of income that followed their legitimate refusals to submit to an experimental treatment. It acted arbitrarily by ignoring all the scientific evidence they brought forward to show that the vaccine was inefficient, and worse, dangerous. It acted in bad faith by refusing to defend its members' interests. It discriminated against the members opposing the policy and sided with a subgroup, the scientists it represents who supported the vaccine.

#### **IV. Analysis**

[90] The complainants were very much disappointed when I decided to cancel the hearing and proceed only on the basis of written submissions, while offering them the opportunity to counter the respondent's position that there is no arguable case that it breached its duty of fair representation.

[91] The complainants hoped to show at the hearing what they consider the disastrous mistakes made by the federal government, as the employer, and by the respondent, as the bargaining agent representing the employees' interests. However, the Board is simply not the proper forum for such an inquiry. Its enabling statute gives it only a narrow opportunity to review bargaining agents' actions. The complaint was made under s. 187 of the *Act*. The complainants had to allege actions that demonstrated that the respondent failed its duty of fair representation, as defined by the legislation and the jurisprudence, not as defined by their own standards.

[92] In their submissions, the complainants focus on their fundamental objection to the COVID-19 vaccine. However, this is not the object of this complaint. The respondent did not impose the vaccine. It stated to the employer that human rights considerations had to be taken into account. It told its members the same thing. Also, following the advice of public health authorities, it encouraged its members to take the vaccine, if possible, as doing so would be a positive health measure for federal public sector employees and the Canadian public.

[93] The test for summary dismissal on the basis that the case reveals no arguable case is usually worded as follows: Taking all the plaintiff's factual allegations as true, is there a case to be made for a violation of the law? In other words, is there any indication that the respondent might have failed its duty of fair representation?

[94] The respondent is not expected to have in-depth scientific knowledge. It is expected to act rationally, reasonably, and with care. Given the information and disinformation that surrounded the pandemic and the different treatment options that emerged, it was reasonable for the respondent to rely on public health authorities for the most trustworthy information.

[95] The World Health Organization declared a pandemic, and leaders and health authorities did their best to deal with it. It is common knowledge that the mRNA COVID-19 vaccine did not prevent people from contracting COVID-19. However, according to public health authorities, it offered protection against the worst effects of the disease, including death. That is what the respondent concluded. Whether it was right or wrong is not the issue that arises in a duty-of-fair-representation case. The complainants would have me pronounce on the science and alleged plots underlying what they term “medical experimentation”, commonly referred to as the “COVID-19 vaccine”. My task is to determine if the respondent acted contrary to s. 187 of the *Act*, which reads 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.*

[96] The scope of the duty of fair representation was first enunciated in *Canadian Merchant Service Guild v. Gagnon*, [1984] 1 S.C.R. 509, as follows at page 527:

...

- 1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.*
- 2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.*
- 3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its*

*consequences for the employee on the one hand and the legitimate interests of the union on the other.*

*4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.*

*5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.*

...

[97] As reflected in the legislation, the bargaining agent must not act in an arbitrary way. It must show that it seriously considered the interests of its member. That does not mean it is bound to follow the direction that the member would like it to adopt. As the Supreme Court of Canada stated, the bargaining agent “enjoys considerable discretion”.

[98] In *Mangat v. Public Service Alliance of Canada*, 2010 PSLRB 52 at para. 44, a predecessor Board quoted the following extract from *Judd v. Communications, Energy and Paperworkers Union of Canada, Local 2000*, 2003 CanLII 62912 (BC L.R.B.):

...

*42. When a union decides not to proceed with a grievance because of relevant workplace considerations -- for instance, its interpretation of the collective agreement, the effect on other employees, or because in its assessment the grievance does not have sufficient merit -- it is doing its job of representing the employees. The particular employee whose grievance was dropped may feel the union is not “representing” him or her. But deciding not to proceed with a grievance based on these kinds of factors is an essential part of the union’s job of representing the employees as a whole. When a union acts based on considerations that are relevant to the workplace, or to its job of representing employees, it is free to decide what is the best course of action and such a decision will not amount to a violation of [the duty of fair representation].*

...

[99] A situation similar to the one in the present case occurred in *Watson v. CUPE*, 2022 CIRB 1002, in which a complaint was made against the union for failing its duty of fair representation by not filing a policy grievance against the employer’s mandatory vaccination policy. The Canada Industrial Relations Board (CIRB) dismissed the complaint, stating that the union had turned its mind to the issue and properly

evaluated its chance of successfully challenging the policy. Moreover, in that case too, the union had supported the vaccination policy as an effective means to ensure employees' health and safety. The CIRB concluded that there was no evidence of bad faith on the part of the union in supporting vaccination for its members.

[100] The Board has already dismissed a number of complaints against bargaining agents in which the complainants took issue with the bargaining agents' unwillingness to challenge the policy (see *Musolino v. Professional Institute of the Public Service of Canada*, 2022 FPSLREB 46; *Fortin v. Public Service Alliance of Canada*, 2022 FPSLREB 67; and *Payne v. Public Service Alliance of Canada*, 2023 FPSLREB 58).

[101] The following extract from *Payne* reflects accurately the situation in the present case as well as the Board's position:

...

*[67] Many of the complainants' factual allegations and arguments pertain not to the respondent's actions but to their disagreement with its decision to support the Policy and their opposition to the Policy in general. They do not agree that the Policy strikes a reasonable balance between workplace health-and-safety concerns and the intrusion on employees' rights. They also disagree with the respondent's conclusion that a direct challenge to the Policy would have been unlikely to succeed.*

*[68] Disagreements of that nature are not relevant to the task at hand. The Board's purpose in duty-of-fair-representation cases is not to decide whether the respondent was right or wrong in its assessment of the Policy or in its decision not to file a policy grievance or make a statutory freeze complaint. Instead, my review must focus on the representation that the respondent offered and the process it followed in reaching its conclusion with respect to the Policy, specifically whether it made its decision not to challenge the Policy without discrimination, in an objective and honest manner, and after a thorough review of the case, the issues, and its members' interests.*

...

[102] It is important to emphasize that I am not pronouncing on the policy itself but rather on the respondent's actions with respect to it. The complainants are free to oppose the policy. The respondent has no duty to follow them down that path. The fact is that the complainants' allegations do not state a case for a breach of s. 187 of the *Act*. There is nothing in those allegations that would show conduct that was arbitrary, discriminatory, or in bad faith.

[103] The respondent answered the complainants' enquiries promptly. It clearly stated its position, which was based on advice from legal experts and public health authorities. Its position was not adopted arbitrarily, in bad faith, or in a discriminatory manner.

[104] The respondent supported the complainants' grievances that it believed had a chance of success. It did not file a policy grievance when the complainants requested it. Those actions were reasonable, based on the respondent's honest and thorough assessment, including legal opinions.

[105] The complainants argue that the respondent failed its duty to properly investigate their grievances. It did not fail to investigate their grievances. It refused to engage in a scientific debate with the complainants.

[106] Refusing to thus engage was not a failure of duty by the respondent. A labour union is not a scientific laboratory where molecular medicine is discussed. A labour union does its best to represent its members and leaves science to trusted authorities. The complainants may disagree with those authorities, but that is not the respondent's concern. Large parts of the complaint have to do with the science behind the vaccine and the alleged evil motives of those who developed, marketed, and implemented it.

[107] Again, the focus of this decision is not the vaccine itself, but the respondent's actions in representing its members. For this reason, the Questions of Fact document will not be discussed in this analysis. It makes accusations, asks the Board to pronounce on scientific evidence and on statements, and touches on the respondent's internal functioning, all of which are entirely irrelevant to the respondent's duty of fair representation. The respondent based its actions pertaining to the COVID-19 vaccine in the relevant period on what it considered the best evidence available. Seeking legal advice and choosing the scientific advice of recognized authorities was not unreasonable. I need go no further on this topic.

[108] As stated in *Payne*:

...

*[90] The complaint made to the Board and the complainants' written submissions also contain numerous rhetorical questions and speculative statements on a myriad of issues that seem aimed at raising suspicion and doubt about the Policy's reasonableness*

*and the respondent's actions and intentions, without detailing how and why the answers to those questions could ground an arguable case of a breach of the duty of fair representation. For example, they ask questions pertaining to guidelines issued to physicians by their provincial regulatory bodies and the impact of those guidelines on the Policy's implementation. They inquire about the PSAC's failure to put the Policy to a vote of its members and the data available to the PSAC with respect to the vaccine's necessity. They question what training was provided to PSAC representatives to address human rights violations.*

*[91] As previously indicated, factual allegations presented in support of a complaint under s. 187 of the Act must have an air of reality to ground an arguable case of the breach of the duty of fair representation. They cannot be mere accusations or speculation. Accusations and speculation need not be taken as true in the context of an arguable-case analysis. Factual allegations can also not take the form of rhetorical questions. Rhetorical questions, alone, cannot support a duty-of-fair-representation complaint.*

...

[109] The respondent did not act in an arbitrary fashion but rather based on the information at its disposal. Given the trend of the jurisprudence, it was reasonable to believe that challenging the policy would likely be unsuccessful. Rather, the respondent supported individual grievances based on claims of medical or religious discrimination. It considered the complainants' individual situations. It had no obligation to follow their strategy or defend their opinions.

[110] There was no discrimination against a group of employees. People who oppose COVID-19 vaccination do not form a protected group under human rights legislation. Moreover, no evidence was presented that the respondent treated the complainants differently than it did other bargaining unit members. It stated its position and inquired into their situation. Disagreement is not discrimination.

[111] There was no bad faith in the respondent's actions. It addressed the policy in a straightforward manner and sought legal opinions and health information. It responded to the complainants' inquiries and clearly stated its position. It did not withdraw representation but gave advice as to the circumstances in which it would support a grievance related to the vaccine mandate.

[112] In short, nothing in the complainants' allegations shows an arguable case for a breach of s. 187 of the Act. Because the complaint is dismissed on the basis that it reveals no arguable case, I need not deal with the respondent's mootness argument.

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

*(The Order appears on the next page)*



**V. Order**

[114] The complaint is dismissed.

February 14, 2024.

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